

BEFORE THE KANSAS DEPARTMENT OF LABOR

Laborers' International Union
Of North America Local 1290 PE,
Petitioner,

v.

Case No. 75-CAE--2014
OAH No. 14DL0170 PE

The University of Kansas
Medical Center,
Respondent.

INITIAL ORDER

Petitioner, Laborers' International Union of North America Local 1290 PE, brings this action alleging the Respondent, The University of Kansas Medical Center, has engaged in prohibited practices as outlined in K.S.A.77-4333(b)(1), (b)(5) and (b)(6) of the Public Employer-Employee Relations Act (PEERA).

This matter comes before the Office of Administrative Hearings pursuant to K.S.A. 77-514. Sandra L. Sharon is duly appointed Presiding Officer/Administrative Law Judge. The Petitioner appears by and through its attorney, Morgan L. Roach. The Respondent appears by and through its attorney, Chari J. Young.

Findings of Fact

1. On August 22, 2013, the Petitioner filed a Complaint with the Public Employee Relations Board (PERB). The complaint contains four counts of alleged prohibited practices by the Respondent.
2. The Respondent filed an Answer and a Motion to Dismiss and/or Deny Prohibited Practices Complaints on September 16, 2013.
3. The Petitioner filed a response opposing the Motion to Dismiss and an Amended Count IV of its PERB complaint on October 3, 2013.
4. Count I of the complaint alleges that within six months of the date of the complaint, August 22, 2013, the Respondent laid off KUMC employees who were members of the Local Union 1290 Bargaining Unit and did not negotiate with Local Union 1290 PE over the layoff procedures or the impact of the layoffs had on the terms and conditions of remaining members of Local Union 1290 PE Bargaining Unit.

5. Count II of the complaint alleges that KUMC did not provide Local Union 1290 PE with advanced information regarding the layoffs.
6. Count III of the complaint alleges that KUMC offered confidential separation agreements directly to KUMC employees/members of Local Union 1290 PE as part of the layoffs, bypassing the Union.
7. Finally, the Local Union 1290 PE alleges in Count IV that the Respondent has failed to comply with a material term of its collective bargaining agreement by failing to pay the Union's bargaining unit members in accordance with the wage scale, Appendix 1 of the Memorandum of Agreement.
8. The Respondent has filed a Motion to Dismiss and/or Deny Prohibited Practices Complaint. At this stage of the proceeding, a motion to dismiss or deny prohibited practices complaint is tantamount to a motion for summary judgment.

Discussion and Conclusions of Law

1. Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Robbins v the City of Wichita* 285 KAN. 455, 460, 172p.3rd 1187, 1192 (2007).
2. The standard for Summary Judgment is not whether there is evidence on the record to support the judgment, but rather whether there is no genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. *Sheldon v. KPERS* 40 KAN. App.2d 75, 80, 189P.3d 554, 559 (2008).
3. When opposing a motion for summary judgment, the adverse party must come forward with evidence to establish a dispute as to a material fact. *Miller v. Westport Ins. Corp.*, 288 KAN. 27, 32, 200p.3d 419, 423 (2009). The facts must be viewed in a light most beneficial to the non-moving party.
4. The current Memorandum of Understanding (MOA) between the Petitioner and Respondent was executed on or about April 19, 2013. The agreement is entitled "Memorandum of Agreement between State of Kansas, the University of Kansas Medical Center and LIUNA! Public Service Employees Local Union 1290 PE 2013 to 2015." It is effective until October 31, 2015 and renews annually, unless either party notifies the other in writing at least 90 days prior to the October 31st anniversary that it wishes to modify the agreement.
5. Neither party disputes that this MOA is applicable to the PERB complaint filed on August 22, 2013.
6. Article 2 of the MOA provides, as follows, in part:

All management functions and responsibilities which the Medical Center has not expressly modified or restricted by a specific express provision of this Memorandum of Agreement are retained and vested exclusively with the Medical Center. More specifically, the Medical Center reserves the right to *establish and administer policies and procedures* related to ... layoff and recall employees to work; ... and otherwise generally to manage the Medical Center, attain and maintain full operating efficiency and direct the work force ... (emphasis added)

7. Imperative to the Petitioner's case is a showing of prohibited practices through violations of conditions of employment as outlined in K.S.A. 75-4322(t). The list of conditions of employment listed in K.S.A. 75-4322(t) is not an exclusive list. *Kansas Bd of Regents v. Pittsburg State Univ. Chapter of Kansas-Nat'l Educ. Assn.*, 233 Kan. 801, 818-819 (1983).
8. Because the conditions of employment listed in K.S.A. 75-4322(t) are not exclusive, there is a balancing test the Public Employee Relations Board of Kansas (PERB) uses to determine whether a complaint concerns a "condition of employment" for which mandatory negotiations shall be held pursuant to K.S.A. 75-4327(b). If the subject of the complaint is significantly related to a condition of employment and negotiating the subject will not unduly interfere with management rights reserved to the Employer, the subject is mandatorily negotiable. *Kansas Board of Regents* at 816.
9. In determining whether a topic is a condition of employment and is therefore subject to meet and confer, or whether the topic is not negotiable because it is preempted by statute or constitution, or whether the topic is not negotiable because said negotiations would interfere with the exercise of an inherent managerial prerogative, this balancing test is employed. In order to determine that a meet and confer is not required, the managerial function or prerogative must be significantly interfered with by any decision to mandate further negotiations.
10. Normally, a discussion on how this balancing test should be applied to the circumstances in issue would be warranted at this stage. However, under the circumstances in this matter, the duty of UMKC to negotiate or meet and confer regarding the layoff procedures was addressed in the negotiations of the MOA. The agreement between UMKC Local Union 1290 PE is that the right to *establish and administer policies and procedures* related to layoffs is vested with UMKC. In other words, the topic of a layoff process was negotiated at the time the MOA was negotiated.

Conclusion

1. Count I of the PERB complaint alleges the employer laid off bargaining unit members without negotiating with the union over layoff procedures and the impact of layoffs regarding conditions of employment of the remaining bargaining members. There is no genuine issue as to this material fact that KUMC laid off members of Local Union 1290 PE. However, the Memorandum of Agreement directly recognizes that KUMC retains all rights to *establish and administer policies and procedures* related to layoffs. Pursuant to the agreement between the parties, the respondent is not obligated to bargain on this matter. K.S.A. 75-4326 and the MOA, Article II both support the Respondent's position in this matter. The Respondent is entitled to judgment as a matter of law and Count I is dismissed.
2. As to Count II, again, there is no genuine issue as to material fact. The Petitioner's complaint is that the Respondent failed to provide information to the Union regarding the imposition of layoffs, which was necessary for the Union to meet its duty of fair representation. Once again, the MOA clearly expresses the right of the Respondent to *establish and administer policies and procedures* related to layoffs. Because of the specific terms of the MOA, Article II, negotiations over the right to *establish and administer policies and procedures* related to layoffs has already taken place and rest with UMKC. The Employer was not obligated to provide the Union information that it would be making layoffs or on how it would administer its layoffs. The Respondent is entitled to judgment as a matter of law. Count II must be dismissed.
3. Count III alleges the Respondent bypassed the Union and directly addressed the Union's members regarding the terms and conditions of the layoffs. Again, the Memorandum of Agreement between the Petitioner and Respondent clearly invests with KUMC the right to establish and administer policies and procedures related to layoffs. KUMC was not obligated to work with the Union to establish the policies and procedures related to the layoffs, nor was it obligated to work with the Union in administering these policies and procedures. There is no issue of material fact and the Respondent is entitled to judgment as a matter of law.
4. As to Count IV, the Petitioner amended this Count on October 3, 2013 in response to the Respondent's allegation that there are no facts alleged that support the Petitioner's claim that KUMC has failed to pay its bargaining unit members in accordance with the pay provisions contained in the MOA. The amended Count IV more specifically addresses pay due to bargaining unit members at Appendix One of the Memorandum of Agreement. Even as amended, Count IV fails to allege any underlying facts to support this complaint. Because there are no facts alleged to support this violation, no issue of material fact can be gleaned from the complaint and no prohibited practice can be identified. The Complaint must be dismissed.

Order

The Respondent's Motion to Dismiss Counts I, II, III and IV are granted.

Right of Review

This is an Initial Order issued pursuant to K.S.A. 77-526 which becomes a final order unless reviewed in accordance with K.S.A. 77-527.

The petition for review, stating the basis for the requested review, must be filed with the Public Employee Relations Board, 401 SW Topeka Blvd., Topeka, Kansas 66603 within 15 days after service of this order.



Sandra L. Sharon
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas
Topeka, KS 66612
Telephone: (785) 296-2433

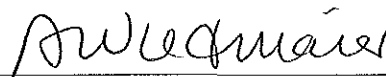
CERTIFICATE OF SERVICE

On April 11, 2014, I mailed a copy of this document to:

Morgan L. Roach
McCauley & Roach, LLC
527 W. 39th Street, Suite 200
Kansas City, KMO 64111

Chari J. Young
Associate General Counsel
2007 Murphy Administration Bldg.
Mail Stop 2013
3901 Rainbow Blvd.
Kansas City, KS 66160

Public Employee Relations Board
401 SW Topeka Blvd.
Topeka, KS 66603-3182



Staff Person
Office of Administrative Hearings