

BEFORE THE PERB BOARD

Service Employees Union Local 513,)
)
 Petitioner,)
)
 vs.) CASE NO: 75-CAE-7-1990
)
 Russell County Commissioners,)
)
Respondent.)

PRESIDING OFFICER'S INITIAL ORDER

On the 16th day of March, 1990, the above captioned case came on for hearing before William J. Pauzauskie, presiding officer. This case comes on for hearing to determine the merits of the petitioner alleging respondent failed to bargain in good faith.

APPEARANCES

The Petitioner appeared by and through its business agent Arthur J. Veatch, 417 E. English, Wichita, Kansas 67202

The Respondent appeared by and through its counsel Mark Blehm, Russell County Attorney, Russell County Courthouse, Russell, Kansas 67665.

PROCEEDINGS BEFORE THE BOARD

1. Petition was filed December 12, 1989, alleging bad faith bargaining, and requesting an order that a cease and desist order of bad faith bargaining be issued and that the Russell County Commissioners be ordered to sign the bargained agreement.
2. An answer was filed December 22, 1989, by respondent.
3. An amended answer was filed by respondent.
4. A copy of the answer was mailed to petitioner December 28, 1989.

5. A pre hearing conference notice was set February 2, 1990 in Russell, Kansas.
6. An amended notice of pre hearing conference was set February 9, 1990, at 2:00 pm in Russell, Kansas.
7. The pre hearing conference was held February 9, 1990, in Russell, Kansas, after which the parties exchanged witness and exhibit lists.
8. Notice of hearing was set for March 14, 1990, in Russell, Kansas.
9. Notice of hearing was rescheduled and held March 16, 1990, in Russell, Kansas.
10. Both parties waived their rights to a post hearing brief.

FINDINGS OF FACT

1. That Petitioner and Respondent of the appropriate parties pursuant to K.S.A. 75-4321 et seq. for determination of the issues.
2. Bargaining between the parties began August 21, 1989; continued on September 5, 1989, continued on October 16, 1989, and ended October 30, 1989.
3. At the aforementioned dates the parties exchanged proposals and had reached tentative agreement on all topics, excepting the reduction to writing of a salary and wage scale. The salary and wage scale was tentatively agreed to October 30, 1989, and was thereafter prepared by Petitioner and mailed to respondent within seven days.

4. On October 31, 1989, the petitioners met and formally ratified the tentatively bargained agreement.
5. The respondent negotiated at the bargaining table by and through its three county commissioners.
6. None the three county commissioners had ever collectively negotiated a contract with employees of Russell County, or any other group.
7. On November 6, 1989, the chairman of the Russell County Commissioners, Mr. Boxburger, summoned Mr. Willhelm, the chairman of Local 513, to the commissioner's meeting room. Mr. Boxburger informed Mr. Willhem that two of the three commissioners agreed with the contract as written, however there was a third commissioner who did not agree with them.
8. The county commissioners had not sent the tentative agreement to the county attorney prior to November 6, 1989.
9. Respondent refused to sign the agreement.
10. Respondent has recently proposed a substantially different agreement to Petitioner.

DISCUSSION AND ORDER

Based on the findings of fact, I conclude that Respondent violated K.S.A. 75-4333(b)(5), by failing to meet and confer in good faith.

The Respondent bargained for an entire agreement, before suddenly changing course, and deciding to send the matter to

Initial Order
Service Employees Union Local 513 vs.
Russell County Commissioners
Page 4

their attorney. The Respondent misled the Petitioner into believing they had a contract with Respondent.

The lack of good faith is evidenced by the timing of Respondent's refusal to sign the tentatively bargained agreement, and that an entire agreement had been negotiated.

I do not grant the Petitioner's requested relief of mandating respondent sign the agreement. I am persuaded that the commissioners inexperience in collective bargaining, and lack of counsel, mitigate against such an order. I conclude that individual commissioners were hesitant to bind the county into a long term agreement, or were personally upset as they were not addressed during the bargaining sessions. But for the commissioner's inexperience this particular fact situation could have been avoided. The individual commissioner must understand their obligation to object to proposals before a tentative agreement is made.


The Respondent is ordered to immediately negotiate with Petitioner in good faith.

I next address the issue of whether all commissioner must agree on any contract. The legislative scheme sets the number of commissioners to be three, five or seven. Unanimity for all decisions is not contemplated by the legislature, nor is it required to bind the county to a Peera agreement.

Initial Order
Service Employees Union Local 513 vs.
Russell County Commissioners
Page 5

This order is the decision of the presiding officer, and will become the final order of the PERB Board in accordance with K.S.A. 77-530, unless appealed to the PERB Board within 15 days in accordance with K.S.A. 77-527.

Entered in Topeka, Kansas this 17th day of April , 1990.



William J. Pauzauskie
Hearing Officer

Initial Order
Service Employees Union Local 513 vs. Russell County
Commissioners (75-CAE-7-1990)
Page 6

CERTIFICATE OF SERVICE

I, Sharon L. Tunstall, Secretary III for the Kansas Department of Human Resources for the State of Kansas, do hereby certify that a copy of the above Initial Order was mailed this 18th day of April, 1990, by first class mail, postage prepaid, to the following:

Art J. Veach, Business Agent
Service Employees Union Local 513
417 East English
Wichita, KS 67202

Mark A. Blehm
Russell County Attorney
Russell County Courthouse
Russell, KS 67665

Dean Boxberger, Chairman
Russell County Commissioners
Russell County Courthouse
Russell, KS 67665

Sharon L. Tunstall
Sharon L. Tunstall