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TEACHERS EDUCATION ASSOCIATION)
MOUNT EDGE CUMBE, NEA-ALASKA, NEA)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
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Case No. 05-1398-CBA

DECISION AND ORDER NO. 277

The ALRA Board (Vice Chair Aaron Isaacs, Jr., and Members Colleen Scanlon and Gary Atwood) heard this petition to determine timeliness of payment of an arbitrator's award. Petitioner Teachers Education Association of Mount Edgecumbe (TEAME) was represented by Uniserve Director Willie Anderson, and Respondent State of Alaska was represented by Labor Relations Analyst Dianne Kiesel. The parties agreed to have the Agency Board decide this matter based on the written record and briefing. The record closed on Friday, December 16, 2005, when the Board deliberated this matter.

Digest: The State submitted a request to the Alaska Legislature, for payment of monetary amounts awarded by an arbitrator to TEAME, in a timely manner.

DECISION

Statement of the Case

TEAME filed this petition seeking enforcement of monetary amounts awarded by an arbitrator. TEAME alleges that the State failed to timely request payment, by legislative appropriation, of the arbitrator's award. TEAME asks us to find that the State failed to timely submit payment of the arbitrator's award to the Alaska Legislature.

The State denies it submitted the award untimely. The State contends it submitted the award within a reasonable time after determining the amounts required to be paid under the award.

Issues

1. Did the State request funding of the arbitrator's award in a timely manner?

Findings of Fact

The Panel, by a preponderance of the evidence, finds the facts as follows:

1. TEAME represents the teachers at Mount Edgecumbe High School, which is located in Sitka.

2. TEAME and the State entered into a collective bargaining agreement effective July 1, 2004, through June 30, 2006. (Exh. J-1).

3. During the fall semester of 2004, a dispute arose over payment for preparation time spent by the teachers. The parties' grievance/arbitration procedure is contained in Article 6. This process consists of four steps with the last step culminating in arbitration. (Exh. J-1, Article 6, Section 3). TEAME filed a grievance on behalf of the teachers, and the dispute eventually ended in arbitration.

4. On March 4, 2005, arbitrator Howell Lankford found the State violated Article 7, Section 7 of the parties' collective bargaining agreement and ordered the State to "make the teachers whole." (Exh. J-2 at 8).

5. The State filed a Motion to Reconsider on March 23, 2005. (Exh. J-3). TEAME filed an objection to the State's motion on March 24, 2005. (Exh. J-4). Arbitrator Howell issued a denial of the State's motion on April 15, 2005. (Exh. J-5).

6. On April 25, 2005, Uniserv Director Willie Anderson wrote Labor Relations Analyst Dianne Kiesel and asked that the State "execute the award" of Arbitrator Lankford. Anderson concluded: "Please reply to this request on or before May 5, 2005. Thank you for your attention to this request." (Exh. J-6).

7. On April 29, 2005, Kiesel responded to Anderson by email: "Willie, I am in receipt of your memorandum dated April 25, 2005 You are correct the State believes that the Arbitrator[']s award initiated a monetary term not previously approved by the [legislature], therefore the monetary terms must be submitted for approval (AS 23.40.215)[.] . . Once we compile the final numbers, I will provide you with a copy of the spreadsheet that will be submitted to the Legislature." (Exh. J-7).

8. On April 29, 2005, Kiesel again emailed Anderson and informed him the State would calculate based on daily rate divided by 480 minutes. "65 minutes ("extra" being taught this year) times the minute rate then multiplied by the number of days the teacher physically taught in the year." (Exh. J-8).

9. Anderson replied in a May 3, 2005, email: "My understanding is that the class periods are 80 minutes not 65 minutes as per the schedule at arbitration. My email has been down for the last five days." (Exh. J-8).

10. The parties continued an email 'debate' on whether the calculation should be based on an extra 65 minutes per day or 80 minutes per day. (Exh. J-9). On May 3, 2005, they reached consensus on how to calculate the per diem amounts.

11. On May 4, 2005, Cheryl Frasca, Director of the State Office of Management and Budget, sent Legislative leaders a request to "consider the following late-breaking supplemental amendment." Frasca requested that the Legislature appropriate \$107,865.28 to pay the Mount Edgecumbe teachers as a result of the arbitrator's award.

ANALYSIS

AS 23.40.215(b) provides in part: "The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session." TEAME argues that "the State has not met the '10 legislative days' requirement for submitting [the monetary calculation] for legislative approval and has not established an estoppel." (TEAME October 14, 2005 Brief at 2). TEAME contends that under the 10-day requirement, the State should have submitted a request to the Legislature "prior to March 17, 2005," 10 days after TEAME received the arbitrator's opinion.

TEAME has the burden to prove all the elements of its petition by a preponderance of the evidence. TEAME suggests that this dispute is similar to *International Brotherhood of Electrical Workers, Local Union 1547 vs. Kodiak Island Borough*, Decision and Order No. 190 (July 21, 1995), because in D&O 190, the Kodiak Island Borough refused to submit a collective bargaining agreement for approval by the Borough Assembly. However, in D&O 190, the Kodiak Island Borough refused to recognize that an agreement even existed between the parties. A major dispute in the case was whether the parties had actually reached agreement on a contract. There was no issue regarding the timeliness of submission of an agreement by the Borough to the Borough Assembly.

Further, D&O 190 differs from the dispute between TEAME and the State because here the State did submit the monetary terms for legislative approval. TEAME's

primary contention is that the State delayed unreasonably in submitting the monetary terms of the arbitrator's opinion for approval.

TEAME also argues that *Alaska Public Employees Association AFT Local 4900 AFL-CIO vs. State of Alaska*, Decision and Order No. 180 (November 25, 1994), is similar to the dispute here. But D&O 180 concerned the State's refusal to arbitrate grievances because it claimed it had "run out of money" until the beginning of the next fiscal year. (D&O 180 at 3).

Here, the State exercised its legal right to request reconsideration of the arbitrator's award. After it requested reconsideration, the State held off requesting payment from the Legislature because the arbitrator could have ruled in the State's favor and the State may not have owed any money from the dispute. Only when the litigation was final would the State be obligated to pay under the arbitrator's order. In D&O 180, by contrast, the State was literally refusing to arbitrate grievances at all.

Uniserv Director Anderson received the arbitrator's denial of reconsideration and requested that the State "execute the award." He requested that the State reply to his April 25, 2005, request "on or before May 5, 2005. During the ensuing days, the State and TEAME batted around the alternative ideas on what constitutes making the Mount Edgecumbe teachers whole under the arbitrator's opinion. The parties reached consensus on May 3, 2005, and the State immediately submitted the monetary terms to the Legislature for approval. We find that the State submitted the monetary terms of the arbitrator's opinion within a reasonable time after agreeing with TEAME on a method of calculation of those monetary terms. We will deny TEAME's petition.

CONCLUSIONS OF LAW

1. Teachers Education Association of Mount Edgecumbe is an organization under AS 23.40.250(5), and the State of Alaska is an employer under AS 23.40.250(7).
2. As petitioner, Teachers Education Association of Mount Edgecumbe has the burden to prove each element of its case by a preponderance of the evidence.
3. Teachers Education Association of Mount Edgecumbe failed to prove by a preponderance of the evidence that the State's submission of monetary calculations under Arbitrator Lankford's opinion was untimely.

ORDER

1. Teachers Education Association of Mount Edgecumbe 's petition is denied and dismissed.

2. The State is ordered to post a notice of this decision and order at all work sites where members of this bargaining unit affected by the decision and order are employed, or, alternatively, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron T. Isaacs, Jr., Vice Chair

Colleen E. Scanlon, Board Member

Gary A. Atwood, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order No. 277, in the matter of *Teachers Education Association of Mount Edgumbe, NEA-Alaska, NEA, vs. State of Alaska, Case No. 05-1398-CBA*, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of February, 2006.

Sherry Ruiz
Administrative Clerk III

This is to certify that on the 13th day of February, 2006, a true and correct copy of the foregoing was mailed, postage prepaid to:
Willie Anderson, NEA-Alaska
Dianne Kiesel, State of Alaska

Signature