

**MARYLAND STATE EMPLOYEES’
UNION**

Plaintiff

v.

ROBERT L. EHRLICH, JR.

Defendant

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**IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 24-C-05-003451**

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MEMORANDUM

This is an appeal on the record from a decision of the State Labor Relations Board (Case No. 05-U-01) dismissing Plaintiff’s Unfair Labor Practice Complaint. A hearing on the record was held on September 23, 2005, pursuant to §10-222 of the State Government Article and Maryland Rule 7-208.

PROCEDURAL HISTORY

On September 13, 2004, Plaintiff sent a collective bargaining demand to Defendant. Prior to the initiation of negotiations, the parties attempted to agree on ground rules governing the negotiations. Defendant would not agree to ground rules unless they stated that the parties agreed not to discuss with the media or unilaterally issue news releases regarding what transpired at the bargaining session. Plaintiff agreed to language stating that all bargaining sessions would be considered closed sessions and would be closed to the public, and that no recordings or other verbatim transcripts of the proceedings would be made, but would not agree to the language regarding media contact. It was essentially at this point that negotiations regarding the ground rules broke down and collective bargaining did not occur.

Plaintiff filed an Unfair Labor Practice Complaint with the Maryland State Labor Relations Board (Board) on the issue of whether the Defendant committed an unfair labor practice by refusing to engage in collective bargaining negotiations because Plaintiff did not agree on proposed ground rules concerning media contacts. ¹

The Board delegated its hearing authority to the Office of Administrative Hearings pursuant to §§10-205-(a)(1)(ii)(1) and §3-208 of the State Personnel and Pensions Article, with authority to make final findings of fact, proposed conclusions of law and a proposed order.

The Administrative Law Judge issued a proposed Decision which included Final Findings of Fact, proposed Conclusions of Law and a proposed Order on December 23, 2004. Defendant filed Exceptions to the proposed Conclusions of Law and Order on January 7, 2005. The Board dismissed the Unfair Labor Practice Complaint on March 11, 2005.

ISSUES PRESENTED

1. Whether the State Labor Relations Board committed an error of law in concluding that Plaintiff had bargained in bad faith by insisting on the right to discuss the status of bargaining with the public via the media, in view of the Administrative Law Judge's finding of fact that the Defendant informed the Plaintiff that it would not bargain with the Plaintiff unless the Plaintiff

¹ In addition to the issue of ground rules, Plaintiff raised the issue of health insurance. The Proposed Decision of the Administrative Law Judge states, "On September 8, 2004 the Board of Public Works approved service contracts for benefits for State employees. Among the changes approved in the health care plan were an increase in co-payments and a reduction of certain benefits." The Administrative Law Judge found that health insurance is a mandatory subject of bargaining. The SLRB denied the Defendant's exceptions on this issue and the issue regarding health benefits is not a subject of this appeal.

agreed not to discuss with the media or unilaterally issue news releases regarding what transpired during negotiating sessions.

DISCUSSION

The Board did not dispute that the disagreement of the parties occurred in the context of the ground rule negotiations. §3-502(a) of the State Personnel and Pensions Article states that collective bargaining shall include all matters relating to wages, hours and other terms and conditions of employment. These are mandatory matters upon which, if an impasse occurs, the employer can make unilateral changes to wages, hours and other terms and conditions of employment. It is also undisputed that ground rules are ordinarily non-mandatory matters.

§3-501(e) of the State Personnel and Pensions Article requires that negotiations or matters relating to negotiations shall be considered closed sessions under §10-508 of the State Government Article, which states that a public body may meet in closed session ... to conduct collective bargaining negotiations or consider matters that relate to the negotiations.

After a review of the evidence, the Administrative Law Judge made the following Findings of Fact:

- On September 13, 2004, Steven Kreisberg, Chief Negotiator for AFSME sent a bargaining demand to the Defendant.
- On September 28, 2004, Cecilia Januszkiewicz, Deputy Secretary of the Department of Budget Management, responded and identified Charles Rhodes and Andrea Fulton as the Defendant's representatives for collective bargaining. She also informed that Mr. Rhodes and Ms. Fulton would contact Plaintiff early in October to schedule negotiations.

- Mr. Kreisberg and Mr. Rhodes spoke by telephone on October 6, 2004 and agreed to schedule bargaining sessions for October 20 and October 22, 2004.

- On October 8, 2004, Mr. Rhodes e-mailed Mr. Kreisberg proposed ground rules for the negotiations and suggested that Mr. Kreisberg highlight suggested changes.

- Mr. Kreisberg revised the proposed ground rules and returned them to Mr. Rhodes on October 12, 2004.

- Mr. Rhodes accepted each of Mr. Kreisberg's revisions with the exception of changes made to Section 6. Mr. Kreisberg agreed to retain the following language in Section 6: "All bargaining sessions shall be considered closed sessions and shall be closed to the public. No recordings or other verbatim transcripts of proceedings will be made." Mr. Kreisberg redacted the following language: "During the period of negotiations, from the initial bargaining session through the final session, the parties agree not to discuss the proceedings with the media. The parties further agree that neither side shall unilaterally issue news releases regarding what transpires at bargaining sessions."

- Mr. Rhodes and Mr. Kreisberg spoke by telephone on October 13, 2004. Mr. Rhodes informed Mr. Kreisberg that the Defendant would not bargain with the Plaintiff unless the Plaintiff agreed to the entire ground rule set forth in Section 6.

- On October 15, 2004, Mr. Kreisberg wrote to Mr. Rhodes setting forth Plaintiff's position on the disputed ground rules and offered to negotiate with Defendant over mandatory subjects of bargaining.

- On October 18, 2004, Mr. Rhodes replied to Mr. Kreisberg that the Defendant refused to negotiate with the Plaintiff unless and until the Plaintiff agreed on the disputed ground rule.

Defendant insisted on agreement on the ground rule as a “prerequisite to productive negotiations.” Defendant refused to authorize release time for the Plaintiff’s negotiating team until the ground rules were signed.

The Administrative Law Judge concluded that in order for there to be a legitimate impasse allowing unilateral action by the employer, the disagreement must concern a mandatory subject of bargaining. She concluded that since the ground rules are not a mandatory subject of bargaining under §3-502 of the State Personnel and Pensions Article, an impasse on ground rules is an unfair labor practice and is chargeable to the party insisting on the ground rule as a condition precedent. She therefore concluded that the Defendant had committed an unfair labor practice.²

The Administrative Law Judge proposed that the Defendant immediately engage in collective bargaining with Plaintiff, and to restore and maintain the status quo with respect to Plaintiff’s bargaining unit employees’ wages, hours and terms and conditions of employment, including health insurance benefits.

Regarding contact with the media, the Board found that Plaintiff’s position that it had the right to discuss the status of the parties’ bargaining as it saw fit, and that the parties were not meeting their commitments to the public by eliminating the possibility of public discussions of

² Clearly the statute requiring that collective bargaining occur in closed sessions prohibits the parties from bringing members of the press or other members of the public to bargaining sessions. It is also clear that public policy dictates that information as to the collective bargaining process, such as the number of meetings, the timetable and the mechanics of collective bargaining, should be made available to the public. It is also self evident, based on the body of labor relations law, that the parties cannot use appeals to the public as a negotiating tool. Considering these factors, the parties should have been able to agree on parameters of an appropriate public information ground rule.

the bargaining process, constituted an unfair labor practice on the part of Plaintiff. The Board noted that Plaintiff's position is inconsistent with the General Assembly's decision to make collective bargaining sessions an exception to the State's Open Meeting Act and allow bargaining sessions to be closed to the public.

The Court respectfully does not agree with the position of the Board in this regard. As the Administrative Law Judge stated, ". . . it is clear that (the Defendant's) ground rule exceeds the scope of the statutory mandate providing for closed sessions" and "nothing in the statutory language or the cases relied upon by the State supports the State's argument that the Union's refusal to agree to this ground rule is evidence of bad faith."

CONCLUSION

The Court therefore finds that the decision of the Board is affected by an error of law and remands the case to the Board for further proceedings consistent with this opinion.

Joseph P. McCurdy, Jr., Judge