

Employment Relations Board
March 12, 2007 5:00 pm.
Harrigan Centennial Building – Rousseau Room
Minutes

A. CALL TO ORDER

Kainulainen called the meeting to order at 5:00 P.M.

B. ROLL CALL

Members Present: Leigh Kainulainen, Mo McBride, Doris Bailey

Also Present: Theresa Hillhouse (CBS Attorney) and several city employees.

Participating Telephonically: Linda Johnson (ERB Counsel), Rob Johnson (CBS Outside Counsel), Kimberly Geariety, Mike Notar (IBEW), Jake Metcalfe (IBEW Counsel).

Staff Support: Secretary, Cynthia Rogers

C. WELCOME OF GUESTS

No guests were in attendance.

D. APPROVAL OF MINUTES – January 17, 2007, January 18, 2007

MOTION: by McBride to accept the January 17 meeting minutes as amended.

Voice vote PASSED.

MOTION: by Bailey to accept the January 18 meeting minutes as amended.

Voice vote PASSED.

E. ADDITIONS/DELETIONS TO THE AGENDA

Under New Business, “Meetings” was added as agenda item number three upon the request of Bailey.

F. OLD BUSINESS

There was no old business.

G. NEW BUSINESS

1. Results of Public Comment

The board reviewed a document from Linda Johnson entitled “Proposed Changes to Labor Ordinance.”

C. Collective Bargaining Units

MOTION: by Kainulainen to accept the last sentence as amended to read,

“, within 30 days of the date the clerk certifies that written notice of the Board’s final order has been served.”

Voice vote PASSED.

D. Exemptions from Collective Bargaining. 2.

MOTION: by Bailey to strike the language “~~and partially exempt~~” from this section and any subsequent sections where it appears.

Voice vote PASSED.

E. Representatives and Elections. 2.

There was some discussion about regular meetings and special meetings of the ERB.

MOTION: by Kainulainen to add “at its next meeting” in the last sentence.

Voice vote PASSED.

F. Recognition by Mutual Consent. 1.

MOTION: by McBride to remove “~~fifteen~~” add “twenty” and remove “~~calendar.~~”

Voice vote PASSED.

F. Recognition by Mutual Consent. 2.

There was some discussion about why there was a need to change the days from fifteen to twenty. L. Johnson noted that there should be consistency with the amount of days posting the notice and the amount of days to object.

MOTION: by McBride to remove “~~fifteen~~” add “twenty” and remove “~~calendar.~~”

Voice vote PASSED.

I. Impasse Submitted to an Arbitrator. 1.

There was some discussion about AAA and FMCS and the difference between mediators and arbitrators. There was also discussion about the sentence structure and whether or not it was ambiguous or could be misinterpreted.

MOTION: by McBride to accept “The arbitrator shall be selected upon written request of either party, or the local labor board, either by mutual consent of the parties, or, if the parties cannot agree, from a list of regional arbitrators provided by ~~the~~ such organizations as the American Arbitration Association and Federal Mediation and Conciliation Service.”

Voice vote PASSED.

Bailey noted that the minutes should reflect that these changes will be forwarded to the Assembly as ERB recommended changes to the ordinance, 2.08.125 Local control of labor relations through collective bargaining. The board was in agreement.

I. Impasse Submitted to an Arbitrator. 5.

There was some discussion about “must” versus “shall.” L. Johnson noted that the words effectively have the same meaning.

MOTION: by Bailey to accept “**An appeal must be made within 30 days of the certification of service of the arbitrator’s final decision.**”

Voice vote PASSED.

J. Strike Prohibited.

McBride asked L Johnson if there is something already in the city ordinance saying that employees are prohibited from striking. L. Johnson stated it is covered in the title, “Strike Prohibited.” She was not aware of anywhere else in city ordinance that strikes are covered. The reason for the word change is to remove the permissive language and that “must” or “shall” is mandatory. McBride noted that this then would not apply to non-organized groups. (Employees not in a union bargaining group could strike). This may be one area that should be brought to the Assembly’s attention for clarification.

Public testimony was taken later in the meeting on this point. Hillhouse noted that the only employees not subject to this provision, considered “at will,” are exempt, temporary, contract and confidential employee groups.

MOTION: by McBride to accept changing “**may**” to “**shall.**”

Voice vote PASSED.

M. Unfair Labor Practices. 1.

MOTION: by McBride to accept changing “**may**” to “**shall.**”

Voice vote PASSED.

M. Unfair Labor Practices. 2.

MOTION: by Bailey to accept changing “**may**” to “**shall.**”

Voice vote PASSED.

N. Complaint. 1.

There was some discussion about the language “grievance” and “prohibited practice.” Bailey asked L. Johnson whether “alleged” or “claimed” should be added before “prohibited practice.”

MOTION: by Bailey to accept “**The complaint must be filed with the clerk within 30 days of the time the person first learned of the grievance claimed prohibited practice.**”

Voice vote PASSED.

N. Complaint. 2.

There was some discussion about how changing this wording would impact the ERB. Changing the wording would require the board to come up with procedures. L. Johnson agreed that leaving the language would allow the ERB to remain flexible.

MOTION: by Bailey to accept changing “**may**” to “**shall.**”
Voice vote NOT PASSED.

R. Employment Relations Board. 2.

MOTION: by McBride to replace “**include**” to “**be**” and accept “**three members:**”
Voice vote PASSED.

MOTION: by Bailey to accept “one **person member shall be** selected by the city and borough assembly;”
Voice vote PASSED.

There was some discussion whether or not non-represented employees would be allowed to vote. McBride asked whether the Sitka Community Hospital employees would then be included in the “non-exempt and non-confidential” category. Bailey agreed that was also her understanding of how this reads. (Contract and temporary employees are not included here, so would be excluded from voting). Bailey noted that we’re listing who is included in the voting, not who is excluded.

MOTION: by McBride to accept “one **person member shall be** chosen by the city and borough **unions represented, non-exempt and non-confidential** employees in an **secret ballot** election to be conducted by the city clerk;”
Voice vote PASSED.

MOTION: by Bailey to accept “and a third **person member shall be** selected by the two other board members who have been appointed/elected.”
Voice vote PASSED.

S. Definitions. 2.

The language “**nonpartially**” was removed based on the motion made by Bailey in the previous section, **D. Exemptions from Collective Bargaining. 2.**

S. Definitions. 4.

R. Johnson made comment to the board on the next section. He said that CBS’s position was to leave the section as is. He noted that this section would be controversial and should therefore, respectfully, be left to the Assembly. This kind of substantive change that would likely generate opposition, should not be an area where the ERB would want to make recommendations. Hillhouse echoed these comments and added that this is an area that has already been negotiated.

Further discussion followed about this point, including PERA and how Anchorage and Mat-Su define this. Hillhouse explained how CBS had given up positions in order to reach agreement with the unions. She noted that

changing this language would undo all that negotiation and lead to inconsistencies. Further discussion followed regarding what confidential means. The board discussed if changing this language would change the meaning of the ordinance.

Notar stated that the ordinance is designed to allow collective bargaining. He stated that yes they had reached an agreement with the city, but didn't agree on the definition. However, he felt that this particular point should be tabled.

Kim Elliott: Kim Elliott. I'm with the ASEA group and I don't believe that changing this tonight would make any difference in our contract negotiations. I wanted you to understand that. I think that if you don't address it tonight I'd like to see it again.

McBride: There's nothing we're doing here that's going to change...

Kainulainen: We still have to make recommendations to the Assembly.

McBride: We don't do the change.

Kainulainen: If we were to – most of these items we can make straight recommendations, this is what we suggest the Assembly do. This one is something that we may...

Bailey: I can, I could, um, I could support um, this particular addition to the ordinance if the letter to the Assembly with our recommendations indicated that this was the one controversial issue and that we, and that we are forwarding it to them for their discussion and decision without taking...

McBride: A side.

Bailey: Right.

Kainulainen: Would you like to make a motion to that?

Bailey: If I just say so moved, have you got that? Okay.

McBride: Thank you Cynthia.

Bailey: Yes, sorry. Because I just keep saying so moved and leave it up to you to come up with the wording. I apologize.

Kainulainen: Do I hear a second?

McBride: Second.

Kainulainen: Oh I'm sorry. All those in favor?

All: Aye.

Kainulainen: That basically is my position as well, that you indicate the controversiality of it and um...

Bailey: Right.

McBride: Well and you have Nancy on the Assembly who was part of that original board and went through the same - what I've discussed about that frustration. So she would be able to talk to the Assembly about that.

Bailey: I think to send it to the Assembly as something important for them to consider is appropriate, but I would prefer to do it without a recommendation.

McBride: Yes.

Bailey: This is language that had been discussed during the original organizing phase at the board level and that there are strong feelings on both sides of the issue and you know, they're the ones that are in the hot seat, so they can figure it out.

Kainulainen: All those in favor?

All: Aye.

Kainulainen: Two more little things and then we'll go back to J. Um, number seven under management employee.

Bailey: Those are still partially exempts.

S. Definitions. 7.

The language "~~or partially exempt~~" and "~~or other partially exempt employee~~" were removed based on the motion made by Bailey in the previous section, **D. Exemptions from Collective Bargaining. 2.**

There was then discussion about having L. Johnson draft a letter to the Assembly to suggest these changes.

MOTION: by Bailey to incorporate changes made by the ERB be drafted to the Assembly by L. Johnson and that the letter be brought forward to the next meeting for approval.

Voice vote PASSED.

A fifteen minute break was taken at 7:35 pm.

2. Ethics Correspondence

The board reviewed letters sent to the board by John Cyr on 1/30/07, by Theresa Hillhouse on 2/23/07, and by Linda Johnson on 2/22/07. McBride asked that the letters be attached to the minutes and that the letters be summarized. Bailey added that the board should take comment afterwards.

Kainulainen noted that that Hillhouse and L. Johnson explained the circumstances surrounding the allegations by Cyr. They both denied any impropriety. She noted that Mr. Cyr had not joined the meeting telephonically or in person.

Hillhouse noted that Cyr had not been attendance at the meeting where the comment was made he had referred to in his letter. She also stated that she was responsible for compiling the material found in the board member's binders and therefore had responded that yes, L. Johnson did cover that material. Hillhouse also reiterated that discussion at the airport revolved around their families and that no ERB discussions took place. She pointed the board to the ethics materials attached to her letter.

L. Johnson also said that she stands by her letter and will leave it to the board to determine if she holds any bias.

McBride responded that she doesn't believe there was any impropriety at the meeting or at the airport. She was concerned about PSEA's comment that they would object to having L. Johnson as a hearing officer. McBride doesn't think there would be any concern in having L. Johnson act as the hearing officer, but she didn't want to discount Cyr's concern either.

Bailey added that the comment was after an education session where L. Johnson was covering ordinances and training for the new board members. She was surprised that he took issue at the comment, based on the context of what was being discussed. Bailey doesn't believe there has been an impropriety, but agrees with McBride that the concern should not be discounted.

Kainulainen agrees and reminded all that we should be aware that Alaska is a small state where professionals often know each other. Comments can be easily misconstrued.

McBride noted that Hillhouse asked the ERB to "provide better guidelines to the parties to avoid this type of baseless accusation from being circulated in the future." McBride doesn't think "no contact" is appropriate.

Hillhouse noted that neither she nor L. Johnson were copied with the letter before it was sent to the ERB and added as an agenda item. She also stated that the person making the accusation should attend the meeting where it is being discussed. Before a claim like this is published, it should go through some sort of screening, otherwise it amounts to a personal assassination.

The board agreed that attorneys already have ethics rules, and therefore it would be unnecessary for the ERB to create guidelines.

Kainulainen offered to draft a letter to Cyr responding to his concerns. R. Johnson interjected that there should be a final decision on this by the board, that they find impropriety or not, so that there would be no point for appeal in the future if L. Johnson eventually acts as the hearing officer.

Bailey asked if Cyr should be given some opportunity to respond. Hillhouse noted that Cyr was copied on both her letter and that of L. Johnson and that there was no response. He was also copied on the email announcing the date and time of the meeting with the attached agenda.

MOTION: by Bailey that the ERB has read the letters, all parties have had the opportunity to respond, and while we have a concern about Mr. Cyr's letter and the issues that he raises, and concerned about not hearing from him tonight personally, under the circumstances we find that no impropriety occurred and that we have full faith and confidence in Ms. Johnson's neutrality.

Voice vote PASSED.

Kainulainen again offered to draft the letter to Cyr responding to his concerns. The board decided that Kainulainen should simply email a letter to Cyr with the wording of the motion.

MOTION: by Bailey to authorize Kainulainen to communicate with Mr. Cyr about the motion that was passed in tonight's meeting.

Voice vote PASSED.

Bailey and McBride noted that Cyr's letter indicated he may not have understood the context of the meeting where he alleged impropriety. The board felt it important to communicate with Cyr about this so that there is no problem later with L. Johnson acting as the hearing officer.

3. Meetings

Bailey asked about the need for a "regular" meeting. The consensus was that ERB meetings should be scheduled on an "as needed" basis.

MOTION: by Bailey that the secretary direct the municipal clerk that the ERB intends to meet as needed and each meeting will be decided on an individual basis as business comes up.
Voice vote PASSED.

There was some discussion about how people can attend board meetings telephonically. The city clerk is the only contact for the phone number and conference ID. Only those outside of Sitka are given this option, per the ordinance. Anyone with questions should contact the city clerk's office in advance of the meeting if they wish to attend telephonically.

H. Public Participation

Participation was taken during discussion of new business. No other public participation was given.

I. NEXT MEETING – The next meeting will be on April 3, 2007 at 12 noon at Harrigan Centennial Hall, Maksoutoff Room.

J. ADJOURNMENT

MOTION: by Kainulainen to adjourn.
Voice vote PASSED.

Respectfully Submitted by,

Cynthia Rogers, Secretary