

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

UNION OF PROFESSIONAL POLICE, INC.,)
Complainant,)
and)
CITY OF DAVENPORT,)
Respondent,)
and)
AFSCME IOWA COUNCIL 61,)
Intervenor.)

CASE NO. 8571

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PUBLIC EMPLOYMENT
RELATIONS BOARD

PROPOSED DECISION AND ORDER

Complainant, the Union of Professional Police (UPP), filed the present prohibited practice complaint on September 27, 2012 with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 (2011) and rule 621—3.1(20). The complaint alleges that Respondent, the City of Davenport (the City), committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a). The City filed a motion to dismiss and AFSCME Iowa Council 61 (AFSCME) intervened and joined in the motion. The motion was denied in a ruling dated March 8, 2013. A hearing on the merits was held on May 2, 2013. UPP was represented by Alicia D. Gieck and Jennie Clausen. The City was represented by Richard A. Davidson and Wendy S. Meyer. AFSCME was represented by Mark Hedberg. The parties submitted post-hearing briefs, the last of which was filed on July 17, 2013.

Having reviewed the record and arguments of the parties, I issue the following proposed findings of fact, conclusions of law and order.

FINDINGS OF FACT

The City of Davenport has six bargaining units represented by various employee organizations. Chauffeurs, Teamsters and Helpers, Local Union No. 238 (Teamsters) represents a unit of road and park maintenance workers, the Davenport Association of Professional Firefighters, Local No. 17 (Firefighters) represents fire department employees, the American Federation of State, County and Municipal Employees, Local No. 887, AFL-CIO (AFSCME) represents two units, one composed of library employees and another composed of city clerical staff, technicians, inspectors and other positions, and the Amalgamated Transit Unit, Local Union No. 312 (Transit) represents transportation employees. The complainant, UPP, represents police officers.

In the fall of 2011, UPP and the City began negotiating the terms of a collective bargaining agreement to take effect July 1, 2012. UPP initially proposed a three year contract to run from 2012-2015 with the unit receiving a 3.25% wage increase in each of the three years. The City's initial offer was a one year contract with a 1% wage increase. The parties held several negotiation sessions that did not result in an agreement. On February 14, 2012, the City gave UPP a final offer that again proposed a 1% wage increase. On February 15, 2012, the City Council held a meeting and conducted an "[e]xecutive session for the purpose [of] discuss[ing] strategy for upcoming labor negotiations with the City's organized employees pursuant to Iowa Code

[s]ection 20.17(3).”¹ On February 16, 2012, an attorney for the City sent UPP’s counsel a letter stating that the City Council had decided to revise its final offer to a 0% wage increase. In late February 2012 UPP learned that the other bargaining units had reached tentative agreements with the City and agreed to a 0% wage increase for fiscal year 2012, a 1% wage increase in July 2013, a 1.5% wage increase in July 2014 and a 1.5% wage increase in January 2015. Throughout the bargaining process, the unions, including UPP, communicated with one another to keep each other informed on the offers being exchanged.

UPP and the City continued to bargain through mediation and negotiation sessions. The final negotiation session took place on March 27, 2012. At this session the City provided UPP with a copy of a side letter that the Teamsters, Firefighters, and AFSCME had tentatively agreed to.² The side letter agreed to by AFSCME and contained within its collective bargaining agreements states,

If another bargaining unit receives a voluntary settlement or an arbitration award for an economic increase, (including GWI,³ deferred comp, retirement health plan, or any other major economic item in lieu of GWI, but not including minor allowances, minor reimbursements or the cost of regularly scheduled existing step increases) greater than the GWI applicable to the AFSCME bargaining unit, the City will not reduce AFSCME bargaining unit positions in order to cover the associated costs. This is applicable to any of the Fiscal Years 2012-2015.

¹ Section 20.17(3) provides in part that meetings of public employers held for the purpose of discussing strategy for collective bargaining are not subject to the open meetings law in Iowa Code chapter 21.

² The contract for the Transit unit does not contain the side letter and the record is unclear as to whether the Transit unit agreed to the side letter. However, the Transit unit settled for the same economic package as that agreed to by the Teamsters, Firefighters and AFSCME.

³ GWI stands for Gross Wage Increase.

If the City voluntarily settles an agreement with another bargaining unit for any of the Fiscal Years 2013, 2014, and 2015 with total economic increases (GWI, deferred comp, retirement health plan, or any other major economic item in lieu of GWI but not including minor allowances or minor reimbursements or the cost of regularly scheduled existing step increases) in excess of the total GWI increases applicable to the AFSCME bargaining unit for the same fiscal year, then the City will offer the same package of economic items for the same duration to the AFSCME bargaining unit, for acceptance or rejection, which may shorten or extend the contract duration if applicable.

The City agrees to not attempt to associate a residual cost to the AFSCME bargaining unit for the January 1, 2015 wage increase during the successor contract negotiations.

The side letters in the Teamsters' and Firefighters' contracts are substantively identical. In each side letter, the City agrees that if another bargaining unit receives an economic package between 2012 and 2015 that is higher than the present bargaining unit (Teamsters, Firefighters or AFSCME, depending on the contract), the City will not reduce positions in the applicable bargaining unit to cover the costs of the increase. In the side letters, the City also agrees that if it reaches a voluntary settlement with another bargaining unit between 2013 and 2015 that includes an economic package that is higher than the present bargaining unit (Teamsters, Firefighters or AFSCME, depending on the contract), it will offer the same package to that bargaining unit.

The City made no movement on its wage proposal after it presented the side letter to UPP. After seeing the side letter at the March 27, 2012 negotiation session, UPP's president, Shawn Roth, believed that the City was "stuck on what [it] had agreed to the other units" and "it felt like [UPP was] bargaining for all of the other unions." He testified that "once we knew that

there was an agreement with other unions, we knew that they weren't going to come off what they already decided." He surmised that in the City Council executive session on February 15, 2012, the City realized that offering a 1% to UPP "would have cost them 1 percent for the entire city employee group" and therefore they revised their offer to 0% the next day.

The record does not show when each individual unit ratified their contract but on March 28, 2012, the City ratified the contracts for all City bargaining units except the UPP unit. The contracts became effective July 1, 2012. Each contract was signed on a different date:

Teamsters:	June 27, 2012
Firefighters:	not dated
Transit:	July 30, 2012
AFSCME (clerical):	October 30, 2012
AFSCME (library):	November 13, 2012

Each contract was posted on the City website on a different date:

Teamsters:	July 25, 2012
Firefighters:	September 7, 2012
Transit:	September 7, 2012
AFSCME (clerical):	October 31, 2012
AFSCME (library):	November 15, 2012

Meanwhile, the UPP and the City did not reach an agreement on wages and proceeded to arbitration. At the arbitration, the City proposed a 0% wage increase and UPP proposed a 2.5% wage increase. The arbitrator selected the City's proposal and therefore the 2012-2013 contract provided a 0% wage increase for UPP.

The parties began bargaining the 2013-2014 contract in the fall of 2012. On October 9, 2012, UPP presented its initial position to the City and proposed

a three year contract with a 3% wage increase on July 1, 2013, July 1, 2014 and July 1, 2015. On October 16, 2012, the City presented its initial position. It proposed the same wage increases that the other units had agreed to: a 1 % wage increase in July of 2013, 1.5% wage increase in July of 2014, and a 1.5% wage increase in January of 2015.

In the first week of November, the parties held their first closed negotiation session. UPP President Roth recalled from the meeting that City Council member, Bill Edmond “kept saying we have to mirror what the other unions had, and that it wouldn’t be fair to give [UPP] a better wage package than what they have agreed to with all of the other unions.” At this session, the finance director, Brandon Wright explained to the UPP bargaining team that in estimating the cost of a wage increase for UPP, he also calculates it as a wage increase for the other units. This gave Roth the impression that UPP was not only bargaining for its unit members, but also for the other bargaining units who had agreed to the side letter. At a subsequent negotiation session several weeks later, the City continued to offer the wage increase package that the other unions had previously agreed to and was contained in the other collective bargaining agreements.

UPP altered its strategy and focused negotiations on the third year of a proposed three year contract. Because the other unions had negotiated three year agreements (including the side letter) that were set to expire on June 30, 2015, UPP believed the City would have more flexibility in discussing terms for the contract year beginning July 1, 2015. The parties eventually settled on a

three year contract with the following wage increases: 1% effective July 1, 2013, 0% effective July 1, 2014, 3% effective January 1, 2015, and 2.5% effective July 1, 2015. The parties also agreed to a 1% increase in retirement health savings effective July 1, 2015. The economic package UPP and the City agreed to in its contract for 2013 to 2016 was different from the economic package in the AFSCME, Firefighter and Teamster contracts.

UPP filed a prohibited practice complaint on September 27, 2012 claiming the side letters in the Teamsters, Firefighters, and AFSCME contracts contain illegal “parity clauses” and having such agreements violates Iowa Code sections 20.10(1) and 10.10(2)(a). The complaint contends “the parity clause is coercive, requires the [UPP] to negotiate and bargain on behalf of other bargaining units, and restricts the City of Davenport’s freedom to negotiate in good faith.” UPP requests that the Board declare the parity clauses in the other unit contracts “illegal and void,” order the City “to negotiate future contracts in good faith irrespective of the parity clause,” and award a retroactive one percent wage increase for the 2012 fiscal year and attorney fees.

At the hearing and in post hearing briefs, the City argued the complaint should be dismissed as untimely and alternatively that the side letters are not illegal parity clauses and the City negotiated in good faith irrespective of the side letters.

CONCLUSIONS OF LAW

The City first claims that UPP’s complaint is untimely. It asserts that UPP knew of the side letter on March 27, 2012 when the City provided UPP a

copy of the side letter at a negotiation session. It also claims that UPP knew that the other unions had agreed to the side letter no later than March 28, 2012, the date the City Council ratified the contracts for all other units except for the UPP unit. According to the City, the alleged violation occurred on the date the City ratified the contracts containing the side letter, and UPP's complaint, filed on September 27, 2012, is untimely.

UPP claims that the statute of limitations did not begin to run until the City signed the contracts and posted them to its website. It argues that the alleged violation could not have occurred before July 25, 2012, the date the Teamsters contract was posted on the City's website. Before this date, UPP claims it could not be charged with having full knowledge of the contents of the contracts and side letters.

Iowa Code chapter 20 provides that "[p]roceedings against a party alleging a violation of section 20.10 shall be commenced by filing a complaint with the board within ninety days of the alleged violation" Iowa Code § 20.11(1). Our rules also provide that a "complaint shall be filed with the board within 90 days following the alleged violation." 621 IAC 3.1. The Board and the Iowa Supreme Court have determined that the statute of limitations "is mandatory, not directory, and is jurisdictional in nature." *Brown v. PERB*, 345 N.W.2d 88, 93-94 (Iowa 1984); *Kincaid & AFSCME Iowa Council 61*, 02 PERB 6445 at 2. The complainant bears the burden to establish that the statutory 90-day jurisdictional requirement has been satisfied. *Brown*, 345 N.W.2d at 94; *Kincaid*, 02 PERB 6445 at 2. Therefore, UPP must prove that the alleged

violation occurred no more than 90 days prior to September, 27, 2012, the date it filed the prohibited practice.

I have not found, nor have the parties cited, cases determining when an action accrues on a claim that an employer violated its duty to bargain in good faith. However, prior PERB case law provides general parameters for determining when an "alleged violation" occurs for purposes of calculating the statute of limitations under Iowa Code section 20.11(1). One prior case considered how the National Labor Relations Board views the issue and emphasized that the statute of limitations commences when the complainant has notice of the alleged prohibited practice:

Section 10(b) of the NLRA provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." 29 U.S.C. §160(b). Section 10(b)'s limitations period commences when the aggrieved individual has actual notice that an unfair labor practice has been committed.

The 10(b) period begins when the victim of an unfair labor practice receives *unequivocal notice* of a final adverse decision. Rumors or suspicions will not do; nor is it relevant when an unlawful decision was actually made, if the decision was not communicated to the affected party until later. Moreover, the decision must be final, and not subject to further change; knowledge that another party *might* commit an unfair labor practice when the time is right will not start the 10(b) period.

The 10(b) period does not commence until an aggrieved party has knowledge of the facts necessary to support a present, ripe, unfair labor practice charge. (Citations omitted).

Area Educ. Agency 7 Educ. Ass'n & Area Educ. Agency 7, 91 PERB 4252 at 16 (quoting *Esmark, Inc. v. NLRB*, 887 F.2d 739, 745-46 (7th Cir. 1989)). UPP stresses that under our prior cases, the action does not commence until "final action" is taken. It cites *Rector and Des Moines Police Bargaining Unit*, 87 H.O. 3469 and *Lomen & AFSCME Iowa Council 61*, 99 PERB 5966 for this principle. In *Rector* and *Lomen*, the hearing officer and Board concluded that the statute of limitations begins to run when there is a final decision on the matter or final action that adversely affects the complainant. *Rector*, 87 H.O. 3469 at 7-8; *Lomen*, 99 PERB 5966 at 4.

I agree that under our prior cases, the statute of limitations does not commence until the complainant receives notice of a final adverse decision. But I cannot accept UPP's argument that in this case the UPP did not know the contents of the side letters and the City's final decision on the side letters until the contracts were executed and posted on the City's website. Furthermore, the date the contracts were signed or posted to the City's website in no way relates to the City's actions that UPP alleges were prohibited practices. (See, e.g., *Public, Professional & Maintenance Employees, Local #2003 and Benton County*, 94 PERB 4848, at 8-10, rejecting the union's claim that the statute of limitations did not accrue until the contract was signed and finding that the date of the alleged violation was when the complainant received notice of the changes the County implemented to the contract).

UPP alleges the side letters the City had with other unions were coercive and illegal and prevented the City from bargaining in good faith with UPP.

UPP's claims concern the effect the side letters had on the bargaining process. The critical time period thus for determining the alleged violation was when UPP learned that the City had made a final decision on the side letter agreements, not the date the contracts and side letters were executed or were posted to the website. For purposes of calculating the statute of limitations, I find the alleged violation occurred when UPP learned that the City had made the final decision to ratify the contracts with the side letters. UPP knew that the other units had reached tentative agreements in late February 2012. UPP was given a sample copy of the side letter on March 27, 2012 and learned that the City officially agreed to the side letters on March 28, 2012 when the City ratified the contracts with the other unions. As of the March 28, 2012 ratification date, the City officially became bound by the side letters and could not retract from the terms unless agreed to by the other unions. It would be at this point that the alleged violation occurred because the City's bargaining was now influenced by the allegedly illegal side letters.

UPP contends that even though the minutes from the City Council meeting on March 28, 2012 state that the City ratified the contracts with the other unions, the minutes do not provide the exact terms of the contracts and therefore UPP cannot be charged with having knowledge of the side letters. This argument is not convincing. Testimony at the hearing showed that the City's unions maintain communication throughout the bargaining process to keep the unions informed about offers that are exchanged. It is undisputed that UPP knew that tentative agreements were reached by all other units in late

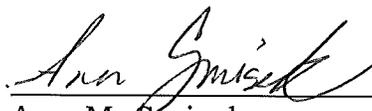
February 2012 and that UPP received a copy of the side letter on March 27, 2012. As of March 28, 2012, UPP knew the City had made a final decision on the side letters and knew the contents of the side letters. In light of these facts, I cannot conclude that UPP did not have knowledge of the City Council's decision and the contents of the side letter until the contracts were signed and posted online.

The 90-day statute of limitations therefore began to run on March 28, 2012. UPP's complaint of September 27, 2012 was not filed within the required timeframe. Because I conclude UPP's complaint was not timely filed, I need not reach the issue of whether the side letters themselves constitute a prohibited practice or whether the City failed to bargain in good faith due to the side letters. Accordingly, I hereby issue the following:

ORDER

UPP's complaint in case no. 8571 is dismissed in its entirety.

DATED at Des Moines, Iowa, this 16th day of September, 2013.



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Administrative Law Judge

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