STATE OF KANSAS

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

SERVICE EMPLOYEES' UNION LOCAL 513, Complainant,	)	
vs.	)	CASE NO: 75-CAE-2-1987
CITY OF WICHITA, KANSAS, Respondent.	)	

ORDER

The instant case comes before the examiner on petition of Service Employees' Union Local 513 under the signature of Art J. Veach, Financial Secretary, Treasurer. The union alleges that the city has engaged in activities which violate the provisions of K.S.A. 75-4333 (b) (5). This matter comes on before Jerry Powell the duly appointed hearing examiner for the Public Employee Relations Board.

APPEARANCES

This matter is before the Secretary on stipulations entered into on behalf of the parties by counsel.

For the Complainant: Richard Shull, Attorney at Law.

For the Respondent: Janell R. Jenkins, Attorney at Law.

STIPULATIONS OF FACT

1) On June 27, 1986, a negotiating session was held to discuss the 1987 contract between the City of Wichita and the Service Employees' Union - Local #513 (SEU). The City was represented by Ray Trail and Carol Lakin. The SEU was represented Art Veach and the entire SEU Committee except for Randy Lawson.

2) Prior to the commencement of negotiations for the 1987 contract the parties agreed that all formal proposals would be presented in writing.

3) At the June 27, 1986, session Mr. Trail made several verbal statements to SEU representatives during the course of the negotiations. One statement was that the union representatives should recognize that they cannot come to meet and confer sessions demanding higher compensation without expecting the City to seek contract changes also. Mr. Trail further stated that the only other alternative would be a complete contract extension without changes and that he was prepared to recommend that alternative to the City Commission. The SEU representatives agreed that they would recommend this alternative to the rank-and-file members for approval.

4) That a meeting between the parties was scheduled July 1, 1986, a Tuesday afternoon. Mr. Trail purposely scheduled the meeting on Tuesday afternoon so that he could meet first with the City Commissioners at their regular Tuesday morning meeting and discuss the issues and proposals discussed in the June 27, 1986, session. It was understood that the parties were to exchange written proposals on July 1, 1986.

5) Mr. Trail did, in fact, recommend to the Commission, in executive session, the alternative of extending the 1986 SEU contract through 1987 without changes. However, the Commission chose not to accept the recommendation due to their position regarding the adoption of the Martin Luther King, Jr., holiday.

6) On July 1, 1986, Ray Trail met with SEU representatives, Chuck Steven and Bob Jutz. Art Veach was not present. At that session Mr. Trail presented a formal written proposal to the SEU representatives which included the adoption of the Martin Luther King, Jr., holiday (See Attachment B). That SEU proffered a letter (See Attachment A), however, Mr. Trail stated the SEU might desire to change their letter after reading the letter from Mr. Trail. Chuck Steven then decided not to present the SEU letter to Mr. Trail.

7) On July 8, 1986, Mr. Trail received a written message from Art Veach (See Attachment C), with a letter dated June 27, 1986 (See Attachment A), attached thereto. In that message Mr. Veach stated that the attached letter was a copy of the June 27 verbal agreement which Chuck Steven had failed to give to Mr. Trail.

8) On July 14, 1986, Mr. Trail received a letter dated July 11, 1986 (See Attachment D), from Mr. Veach which reviewed this position that an agreement had been reached on June 27, 1986, subject only to union members approval. Mr. Veach further stated that it was his position that Mr. Trail should place only "authorized" proposals on the table during negotiations.

9) Mr. Trail responded in writing dated July 15, 1986 (See Attachment E), to Mr. Veach's letter and reiterated the events that had occurred on June 27, 1986, and his understanding of the nature of the negotiating process. The response was to no avail and the SEU filed this Complaint on July 21, 1986.

10) Certain correspondence between Mr. Veach and Mr. Trail are attached as Attachment F (3 letters).

CONCLUSIONS OF LAW

The union has alleged that the City violated the provisions of K.S.A. 75-4333 (b) (5) when a representative of the City proposed that the 1986 labor contract be extended through 1987 and then later modified that proposal.

The factual occurrences in this matter have been entered into the record by stipulations of the parties. The examiner is thus limited in his findings by these stipulations. Additionally the union has, in its brief, alleged violations which exceed the scope of its initial complaint. The examiner has not granted an amendment to the original complaint and thus he shall limit his findings and conclusions to the issue as previously set out in this order.

There are several questions raised by this case. 1) Is either party bound by agreements or proposals made at the bargaining table? 2) What authority must be given by either party to its representatives at the table? 3) May the City representative meet with the city commissioners outside the presence of the union for approval or disapproval of a contract proposal prior to it being final?

K.S.A. 75-4322 (n) defines Memorandum of Agreement as:

> "'Memorandum of agreement' means a written memorandum of understanding arrived at by the representatives of the public agency and a recognized employee organization which may be presented to the governing body of a public employer or its statutory representative and to the membership of such organization for appropriate action."

This definition seems to indicate that a memorandum of agreement is the end product of ratification by both parties of an agreement reached at the table. Therefore a memorandum of agreement is that document which is historically known as a labor contract. Until this final ratification takes place the document prepared by the parties upon which agreement has been reached by representatives of the parties is known as a memorandum of understanding. The memorandum of understanding must be a written document which may be submitted to the public employer and to the membership of an organization. The purpose of this written requirement is quite evident in that the written document leaves less room for disagreement over interpretations than would an oral presentation.

K.S.A. 75-4331 sets out a clear procedure to be followed by the parties once a memorandum of understanding has been reached by representatives at the table. This statute, however, contemplates that memorandums of understanding may not always be accepted by "governing bodies" or "authorities" thus it provides that those matters shall be returned to the parties.

K.S.A. 75-4321 et seq., does not contain a clear cut set of directives outlining the process leading up to the memorandum of understanding. K.S.A. 75-4322 (m) does, however, give some

guidance in determining the contemplated process. K.S.A. 75-4322 states:

> "'Meet and confer in good faith' is the process whereby the representative of a public agency and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment."

The representative are thus directed to personally meet to freely exchange information, opinions, and proposals. Give and take bargaining is, therefore, the concept behind the statute. In the event one proposal isn't accepted the parties are to attempt other proposals which may result in an agreement. The representatives must possess the authority to move freely from one proposal to another. It would be foolhardy, however, for this examiner to ignore the fact that the representatives at the table must constantly be aware of certain parameters set by the parties they represent. Certainly a representative might occasionally exceed those parameters and enter into a memorandum of understanding beyond the expressed parameters set by the party he represents. However, the representative who makes a practice of such behavior might soon be replaced as a representative. Furthermore, the representative who exceeds these parameters on a frequent basis may lay his union or employer open to bad faith bargaining charges. It is therefore imperative that the representatives of both parties have the flexibility to move but they must also retain the right to consult with the persons they represents.

K.S.A. 75-4319 (3) appears to contemplate the necessity of a city representatives' need to meet with the governing body for guidance in negotiations. That statute allows a governing body to meet in executive session for consultation with the representative of the body or agency in employer-employee negotiations.

It seems then that while these statutes recognize the potential need for a representative to possess authority to enter into proposals, they also recognized the need for a representative

to consult with his superiors for guidance on the scope of those proposals. Further it appears that the statutes do not preclude the city representative from meeting with the governing body prior to making a proposal "formal", (entering into a memorandum of understanding).

The third question, that of whether a party is bound by an agreement reached at the bargaining table, is answered by K.S.A. 75-4331. That is, if a governing body is not bound by a written memorandum of understanding, they can certainly not be bound by an oral proposal of their representative at the table.

The examiner is aware that games can be played by either party in making a proposal at the table then subsequently reducing that offer in order to see just how far the other party will move. Such a ploy is bad faith bargaining and cannot be tolerated. However, one cannot rule that all proposals made at the table are binding in order to ensure that the above mentioned games are not played. Rather one must view the individual circumstances in order to judge the good faith of either party's actions.

In this case the facts show that;

1) the parties agreed that all formal proposals would be presented in writing;

2) Mr. Trail verbally stated a proposal of contract extension;

3) Mr. Trail purposely scheduled a meeting to exchange written proposals after he had an opportunity to meet with the city commissioners;

4) The Commissioners rejected Mr. Trails proposal of contract extension at least for the current time;

5) The oral proposal of a contract extension was never reduced to writing by Mr. Trail.

It appears that Mr. Trail attempted to stay within the ground rules between the parties when he was unsure that the Commissioners would accept a contract extension. He purposely scheduled a meeting to present his proposal in writing after he consulted with the commission. The examiner would be inclined to question Mr. Trail's good faith motives if he had first presented

a written proposal and then withdrawn it after meeting with the mmissioner and prior to the meeting contemplated by K.S.A. 75-4331. The circumstances as set out above appear to be within statutory limits, designed by Mr. Trail to adhere to the ground rules, and were not motivated by a desire to deceive. Thus the examiner cannot rule that the City or its representative engaged in a violation of K.S.A. 75-4333 (b) (5).

The occurrences appear to be of the nature of an impasse which should be addressed by additional negotiations sessions and/or sessions utilizing the assistance of a mediator as outlined at K.S.A. 75-4332.

In summary the examiner concludes that K.S.A. 75-4321 et seq. does not require a governing body to remain aloof from the negotiations process until a memorandum of understanding is reached. The Kansas Legislature has specifically exempted consultations by governing bodies with its representatives from the open meetings law. The purpose of this exemption must relate to the giving of guidance on negotiations by the governing body to its negotiators. Furthermore, it is only after this guidance is given and the representatives have reduced tentative agreements to writing that a formal presentation must be made in an open meeting.

For the foregoing reasons the examiner recommends dismissal of this complaint in its entity.

IT IS SO ORDERED THIS 30th DAY OF December, 1986.

Jerry Powell by Paul Stith

Jerry Powell, Labor and Employment
Standards Administrator
512 West Sixth Street
Topeka, Kansas 66603