IN THE COURT OF APPEALS OF IOWA

No. 8-675 / 08-0063
Filed February 4, 2009

CLINTON POLICE BARGAINING UNIT,
Plaintiff-Appellee,

vs.

CITY OF CLINTON, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Gary D. McKenrick, Judge.

A city appeals the district court's reformation of its contract with a police bargaining unit. **REVERSED AND REMANDED.**

Matthew Brisch, Assistant Clinton County Attorney, Clinton, and Ivan Webber and James Hanks of Ahlers & Cooney, P.C., Des Moines, for appellant.

David Pillers of Pillers & Richmond, Dewitt, for appellee.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

The City of Clinton appeals the district court's reformation of its contract with the Clinton Police Bargaining Unit.

I. Background Facts and Proceedings

The City of Clinton and the Clinton Police Bargaining Unit negotiated a collective bargaining agreement to cover the 2002 through 2006 fiscal years. A key issue involved the salary differentials between officer ranks. These differentials were listed on matrices that denoted police rank vertically and length of service horizontally.

In March 2002, the bargaining unit presented a contract proposal to its members. This proposal listed step increases in wages "from 4% to 4.5% between the matrix both horizontally (longevity) and vertically (ranks)." The proposed 0.5% step increase was in accordance with a proposal proffered by the city.

On April 16, 2002, the city sent the bargaining unit an explanation of how it expected the step increases to be implemented. The city attorney stated that the salaries for officers with a first class rank would be "multiplied by [4.5%] both horizontally and vertically." The salaries of officers with second and third class ranks would not be multiplied by the same percentage because the city was "attracting qualified applicants" to those positions with a lower salary. The city attorney emphasized that this differential application of step increases was consistent with past practice and he reiterated that "[t]he current proposal maintains that gap." He closed his letter by stating, "I have requested Officer

Martinez to provide me his numbers on the step increase so we can see how far apart we are when we meet on Wednesday."

Three days later, the city attorney sent the bargaining unit revised salary matrices. The cover letter stated the matrices contained a differential of "[4.5%] between ranks and longevity." That notation was also at the top of each proposed matrix. However, the salary figures actually listed on the matrices reflected less than a 4.5% increase between the second and third class ranks and the first and second class ranks. Specifically, the percentage between the salary for a third class officer and a second class officer was 4.06% and the percentage between a second class officer and a first class officer was 4.15%.

The bargaining unit did not respond to either of the city attorney's April 2002 letters. In May 2002, the unit informed its members that there would be a contract vote. With respect to step increases, the May notice simply repeated the contract proposal language contained in the March 2002 notice to members: the step increase would be "from 4% to [4.5%] between the matrix both horizontally (longevity) and vertically (ranks)."

A contract was signed. It became effective on July 1, 2002. Almost five years later, the bargaining unit sued the city for reformation of that contract. The bargaining unit alleged that the parties had "agreed to modify the pay matrix with the bargaining unit members by increasing the spread between all rank and longevity to 4.5%." The unit further alleged that "upon execution of the contract, neither Plaintiff nor Defendant realized or understood that the contract and pay matrix were erroneous and did not adequately and appropriately reflect the

agreement of the parties." The bargaining unit asserted the remedy was to "reform the contract to reflect the true intent and agreement of the parties."

Following trial, the district court reformed the contract. The city appealed.

II. Analysis

This action was tried in equity and our review, therefore, is de novo. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995).

Reformation is a vehicle "to uphold the intent of the parties to the contract." *State ex rel. Palmer v. Unisys Corp*., 637 N.W.2d 142, 151 (Iowa 2001). "When the understanding of the parties was not correctly expressed in the written contract, equity exists to reform the contract to properly express the intent of the parties." *Id.* Before equity may be invoked, however, "a definite intention or agreement on which the minds of the parties had met must have preexisted the instrument in question." *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 636 (Iowa 1996) (quoting 66 Am. Jur. 2d *Reformation of Instruments* § 4, (1973)). The preexisting agreement does not have to be a contract. *See Horsfield Constr., Inc. v. Dubuque County*, 653 N.W.2d 563, 571 (Iowa 2002) ("Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein."); John D. Calamari & Joseph M. Perillo, *The Law of Contracts*, § 9-32 (3d ed. 1987) ("It is not a prerequisite to an action for reformation that the antecedent agreement be a contract."). However, there has to be a mutual understanding of the terms. *See* Black's Law Dictionary 67 (7th ed. 1999) (defining agreement as "[a] mutual

understanding between two or more persons about their relative rights and duties regarding past or future performances").

The bargaining unit was obligated to establish by clear, satisfactory, and convincing proof that there was such a preexisting agreement. *See Kufer v. Carson*, 230 N.W.2d 500, 503 (Iowa 1975) (setting forth standard of proof). It did not do so. On April 16, 2002, the city apprised the unit that officers with second or third class ranks would receive less than the 4.5% step increases. Three days later, the city sent the unit matrices containing numbers consistent with its earlier explanation of how second and third class ranks would be treated. Although the cover letter sent with the matrices mentioned increases of "[4.5%] between ranks and longevity," and the matrices also had the same notation, the city did not explicitly repudiate or soften its earlier position that the spread would be smaller for second and third class ranks.

As noted, the unit did not seek to have the city clarify or amend either of its letters. Instead, it notified its members of a "contract vote." The notification made no mention of the city's April 2002 correspondence.

At trial, members of the bargaining unit and the unit's chief negotiator admitted that there was no discussion with the city about its differential application of the 4.5% increase. While they maintained the absence of discussion reflected their understanding that the step increase would be applied uniformly, the city's April 2002 correspondence reflected an opposite understanding. Because the unit failed to respond to this correspondence, there was never a meeting of the minds on the uniform application of the step increases among all police ranks. Notably, the final contract was consistent with

the city's position; the actual salary figures included in the matrices were based on step increases of less than 4.5% between third and second class officers and between second and first class officers. Based on this record, we conclude the bargaining unit did not satisfy its high burden of establishing a preexisting agreement that reflected a different intent than was expressed in the written contract. This failure of proof was fatal to its request for reformation.

We reverse the district court's grant of the bargaining unit's reformation petition and remand for entry of judgment consistent with this opinion.

REVERSED AND REMANDED.