DEPARTMENT OF LABOR
ALASKA LABOR RELATIONS AGENCY
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ALASKA EDUCATION ASSOCIATION/ NEA-ALASKA,
Complainant,

vs.

ANCHORAGE SCHOOL DISTRICT,
Respondent.

CASE NO. ALRA 91-011-ULP

DECISION AND ORDER No. 128

ON RESPONDENT'S MOTION TO DEFER TO ARBITRATION

The Anchorage Education Association filed an unfair labor practice charge under AS 23.40.110(a)(1) and 23.40.110(a)(2) against the Anchorage School District regarding the District's payroll dues deduction practices. The District filed a notice of defense to the charge. In its notice the District stated, among other things, that, under the National Labor Relations Act as amended, the National Labor Relations Board defers to arbitration unfair labor practice charges subject to grievance arbitration provisions in collective bargaining agreements. It stated, furthermore, that the Alaska Labor Relations Agency should follow the NLRB's lead in this case and defer this ULP charge to arbitration. Respondent's Notice of Defense ¶ 9, p. 3 (Sept. 6, 1990). A request to defer the charges to arbitration was the subject of a motion filed by the District on September 28, 1990. The parties briefed the motion and argued it before the members of the Agency by telephone on October 10, 1990.

The Agency grants the motion and suspends the unfair labor practice charge until the grievance arbitration procedures in the parties' contract have been exhausted.

Discussion

The Alaska Supreme Court recently addressed deferring to contract grievance arbitration provisions in Public Safety Employees, v. State of Alaska, No. 3640 (Oct. 5, 1990). The Court held that the existence of an arbitration clause in a contract does not require the Labor Relations Agency to decline jurisdiction of a matter until the grievance arbitration procedures are exhausted. In that case, the Agency took jurisdiction of a matter despite the existence of a grievance arbitration clause in the parties' agreement. The Superior Court reversed, holding that the Agency should have dismissed the complaint because the parties had not exhausted the procedures set forth in the grievance arbitration clause. Slip op., at 7. The Agency had declined to defer to arbitration proceedings because of the futility in that case of requiring the parties to exhaust the arbitration procedures in their contract. The futility of arbitration was demonstrated by the employer representative's statement that the issue was not arbitrable and his refusal to arbitrate. Slip op., at 19. Under these circumstances, the Supreme Court concluded that it was appropriate for the Agency to decline to defer to the arbitration procedures in the contract and reversed the decision of the Superior Court.

The decision is significant because in it the Court recognizes the Agency's discretion in each case to determine whether deferral to the arbitration procedures in a contract is appropriate. In exercising this discretion, the Agency will look for guidance to the decisions of the National Labor Relations Board. 2 AAC 10.440.

The NLRB does defer to arbitration after considering the following factors: (1) the existence of a longstanding stable relationship without claims of antiunion animus; (2) the parties' willingness to arbitrate under an applicable arbitration clause; and (3) whether the center of the dispute is contract interpretation. Collyer Insulated Wire, 192 N.L.R.B. 837, 77 L.R.R.M. (BNA) 1931, 1936 (1971), quoting Joseph Schlitz Brewing Co., 175 N.L.R.B. No. 23, 70 L.R.R.M. 1472 (1968); See also, United Technologies, 268 N.L.R.B. 83, 115 L.R.R.M. (BNA) 1044, 1050 (1984); APEA & Thompson v. Alaska, Order & Decision No. 69, at 4 (Oct 23, 1981). This deferral policy is commonly referred to as the Collyer Doctrine.

The Association argues that the Agency should not adopt the NLRB's deferral policy because it is unsuited to public sector disputes. The Association argues that by adopting the policy the Agency would interfere with the claimant's choice of forum, abdicate its obligation under statute to remedy unfair labor practices, and improperly delegate its authority.

The Agency rejects these arguments. It notes first that precedent supports applying the doctrine to Alaskan public sector labor relations. The Agency's predecessors were guided in the past by the NLRB's deferral policy in examining whether to defer a particular case to arbitration. See e.g., APEA & Thompson v. Alaska, Order and Decision No. 69; Fairbanks Fire Fighters Association, Local 1324, v. City of Fairbanks, DOLLRA Decision & Order No. 90-4 (1990). Second, the Doctrine is consistent with the Public Employment Relations Act. While PERA does not contain a provision like Section 203(d) of the Labor Management Relations Act, which prefers arbitration as a method to resolve disputes, it does require that every collective bargaining agreement "shall include a grievance procedure which shall have binding arbitration as its final step." AS 23.40.210. PERA also authorizes the Agency to enforce the terms of the collective bargaining agreement. Id. Included in this authority is the authority to enforce an arbitration clause. Arbitration is part of the system to resolve labor disputes in PERA and therefore consistent with PERA. Third, deferring to arbitration in an appropriate case would not improperly delegate the Agency's authority. Following the conclusion of the arbitration, either party could petition the Agency to review whether the arbitrator's decision resolved the unfair labor practice. Last, the argument that deferral interferes with claimant's choice of forum is unpersuasive, particularly because the claimant has chosen both the administrative and arbitration forums in this case.

This Agency concludes that it will exercise its discretion and defer appropriate cases to arbitration guided by National Labor Relations Board decisions on deferral. Turning to the NLRB's deferral policy, the Agency applies the three factors outlined in the Collyer decision.

1. Existence of a Long Standing Stable Relationship without Claims of Antiunion Animus.

The District has stated that the dispute in this case arose "within the confines of a long and productive bargaining relationship between the Anchorage Education Association and the District." The Association has not disputed this statement. Moveover, the Association did not claim that the District exhibited any antiunion animus in this case.

2. Parties' Willingness to Arbitrate Under an Applicable Arbitration Clause.

The parties' collective bargaining agreement contains a broad grievance clause. Negotiated agreement § 501, at 41 (1989--1991)(Respondent's Exhibit D). "Grievance" is defined as "a claim by a teacher(s) that there has been a violation, misinterpretation or misapplication of Board Policy or this Agreement." Id. § 510 A. The final step of the grievance procedure is binding arbitration. Id. § 510 F 4, at 45. Both parties have expressed a willingness to resolve this dispute through the grievance arbitration procedures. The Association filed a grievance covering the same conduct covered by its unfair labor practices charge, and the District, after resisting arbitration initially, has agreed to arbitrate the dispute. B. Owens' letter to J. DeYoung (Oct. 24, 1990).

3. The center of the dispute is contract interpretation.

The core of the dispute between the parties is the practice of the District to honor a request by an employee to withhold from wages the dues owed to another union, the American Federation of Teachers. The Association filed unfair labor practice charges under AS 23.40.110(a)(1) and (2). Those provisions prohibit an employer from interfering with an employee's exercise of rights to join a union and engage in collective bargaining and from interfering with the

administration of an employee organization. To determine whether these unfair labor practices have occurred, the Agency must review and construe the parties' agreement and District policy.

At issue is District policy 724.2, which addresses voluntary payroll deductions, and several terms of the collective bargaining agreement (§§ 601, 625 A, 720 A, and 720 C). Section 601 guarantees to "the Association and no other competing labor organization" all rights in the agreement. Section 625 A grants recognition to the Association and "to no other organization." Section 720 A is the District's promise to accept all payroll deductions authorized by employees for association dues and contributions. Section 720 C, which addresses dues withholding, should, the Association argues, prohibit withholding dues from other labor organizations besides the Association. Respondent's Exhibit B, p.1. Construction of these terms is essential to determine whether the District violated employee rights or interfered with the administration of the Association, as alleged by the Association in its ULP. Because the center of the dispute is an interpretation of District policy and contract terms, the dispute is one well suited to arbitration.

The three factors as applied in this case strongly favor deferral of this dispute to arbitration. The fact that the arbitration is pending is perhaps the strongest argument favoring deferral. If the unfair labor practice charges and the arbitration were to proceed simultaneously, inconsistent or conflicting decisions could result. By deferring to the arbitration proceeding, the Agency can avoid this result. By deferring, moreover, the Agency does not delegate its authority to consider upon the conclusion of the arbitration whether the unfair labor practice charges have been resolved. For the foregoing reasons, the decision of the Alaska Labor Relations Agency is that the unfair labor practice charges be suspended until the pending arbitration between the parties concludes. At that time, the Agency will entertain a motion by either party to reopen this case.

Dated: December 10, 1990

THE ALASKA LABOR RELATIONS AGENCY

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Robert M. Goldberg, Board Chairman

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Barbara Huff, Board Member

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H. O. Williams, Board Member

This is to certify that on the 10th day of December, 1990 a true and correct copy of the foregoing was mailed, postage prepaid to

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Signature