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ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL 2404, AFT, AFL-CIO (Re: LOVELAND, NARANGS),

Complainant,

vs.

UNIVERSITY OF ALASKA,

Respondent.

CASE NO. 96-428-ULP

DECISION AND ORDER NO. 204

Digest:

The employer's action of bypassing the bargaining representative and negotiating directly with members of a bargaining unit on terms and conditions of employment is an unfair labor practice under AS 23.40.110(a)(5). Threats of litigation by unit members did not excuse or justify the direct dealing.

DECISION

Statement of the Case

Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO, on July 12, 1995, filed this unfair labor practice charge under AS 23.40.110(a)(1), (3), and (5) against the University of Alaska. The Alaska Labor Relations Agency investigated the charge and on December 29, 1995, found probable cause to support it. The Agency issued the notice of accusation on December 29, 1995. On January 17, 1996, the University filed its notice of defense denying the charge. The charge was heard on May 15, 1996, and the record closed that same day.

Panel: Board members Stuart H. Bowdoin, Robert A. Doyle, and Raymond P. Smith, were present and participated.

Appearances: William K. Jermain, Jermain, Dunnagan & Owens, P.C., for complainant Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO; Patrick J. McCabe, Owens & Turner, P.C., for respondent University of Alaska.

Procedure in this case is governed by the Administrative Procedure Act, AS 44.62.330 -- 44.62.630, AS 23.40.130, and 8 AAC 97.340. Hearing examiner Jan Hart DeYoung presided.

Issues

1. Did the University bargain conditions of employment directly with bargaining unit members, thereby bypassing the exclusive bargaining representative and violating the duty to bargain in good faith in AS 23.40.110(a)(1) and (5)?

2. Did the University change the terms and conditions of employment for unit members and violate the duty to bargain in good faith under AS 23.40.110(a)(1) and (5) by

(a) deleting the participation of peer review committee members;

(b) precluding participation as a result of union membership;

(c) providing an additional benefit, payment of union dues;

(d) increasing salary; or

(e) guaranteeing a special workload?

3. Is negotiating directly with a bargaining unit member to settle actual or threatened litigation an unfair labor practice?

4. Does the exclusion of union members from a peer review committee violate AS 23.40.110(a)(1) and (3)?

5. Do threats of litigation from represented employees excuse by-passing the labor organization representing them?

Summary of the Evidence

A. Exhibits

ACCFT offered the following exhibits, which were admitted into the record:

1. Agreement (May 8, 1992-June 30, 1994);

2. B. Spurr, memorandum to D. Edwards (June 9, 1992);

3. University of Alaska, Operating Budget Request Increments (fiscal year 1994);

4. W. Miller, memorandum to Chairs, Arts and Sciences (Mar. 1, 1993);

5. Workload assignment sheet;

6. W. Miller, memorandum to B. Beeton (June 14, 1993);

7. Ruth, memorandum to search committee (Sept. 24, 1993);

8. A. Kuhner, memorandum to R. Flournoy (Oct. 1, 1993);

9. W. Miller, memorandum to R. Flournoy (Oct. 20, 1993);

10. Job announcement (Nov. 16, 1993);

11. C. Newman, memorandum to CAS Department Chairs (Mar. 1, 1994);

12. W. Miller letter to K. Narang (June 27, 1994);

13. W. Miller letter to S. Loveland (June 27, 1994);

14. Workload assignment notes;

15. C. Newman, memorandum to D. Dau (Aug. 18, 1994);

16. R. McCoy, memorandum to J. Connors (Sept. 20, 1994);

17. A. Kuhner, memorandum to W. Miller (Sept. 20, 1994);

18. A. Kuhner, memorandum to W. Miller (Sept. 20, 1994);

19. R. Flournoy, memorandum to A. Kuhner (Sept. 21, 1994);

20. W. Miller, memorandum to S. DeSoer (Sept. 26, 1994);

21. ACCFT Grievance (Sept. 28, 1994);

22. E. Gorsuch, memorandum to R. McGrath (Oct. 18, 1994);

23. W. Miller, memorandum to S. DeSoer (Nov. 2, 1994);

24. R. Huffman, letter to E. Gorsuch (Nov. 15, 1994);

25. D. Dau, letter to K. Narang (Nov. 28, 1994);

26. R. McGrath, letter to S. DeSoer (Dec. 7, 1994);

27. R. McGrath, letter to S. DeSoer (Dec. 21, 1994);

28. S. DeSoer, memorandum to R. McGrath (Dec. 23, 1994);

29. R. McGrath, letter to S. DeSoer (Jan. 18, 1995);

30. W. Miller, letter to D. Narang (May 3, 1995);

31. W. Miller, letter to K. Narang (May 3, 1995);

32. W. Miller, letter to S. Loveland (May 3, 1995);

33. R. McGrath, letter to S. DeSoer (June 20, 1995);

34. S. DeSoer, memorandum to R. McGrath (June 23, 1995);

35. A. Bukowski, and R. Flournoy, letter to E. Gorsuch (June 23, 1995);

36. S. DeSoer, memorandum to J. Freeman, L. Armstrong, C. Griffin, T. Dienst, J. Parten, and P. Jacobs (July 10, 1995);

37. J. Sagan, memorandum to K. Narang (Jan. 29, 1996);

38. J. Sagan, memorandum to D. Narang (Jan. 29, 1996);

39. J. Sagan, memorandum to S. Loveland (Jan. 29, 1996);

40. S. Loveland, D. Narang, and K. Narang, memorandum to J. Sagan (Jan. 31, 1996);

41. J. Sagan, memorandum to S. Loveland, D. Narang, and K. Narang (Feb. 1, 1996); and

42. J. Sagan, memorandum to S. Loveland, D. Narang, and K. Narang (Feb. 2, 1996).

The University offered the following exhibits, which were admitted into the record:

A. W. Miller, memorandum to S. DeSoer (Nov. 16, 1994);

B. J. Sagan, letter to R. Huffman (Dec. 22, 1994);

C. J. Sagan, letter to R. Huffman (Jan. 25, 1995) (Loveland);

D. R. Huffman, letter to J. Sagan (Mar. 10, 1995);

E. J. Sagan, letter to R. Huffman (Mar. 22, 1995);

F. J. Sagan, letter to R. Huffman (Jan. 25, 1995) (Narang and Narang;

G. Advertisement, The Chronicle of Higher Education B39 (Dec. 1, 1993); and

H. B. Wick, memorandum to E. Gorsuch (Nov. 1, 1994).

B. Testimony

The ACCFT presented the testimony of Jean Sagan, Associate General Counsel; Ralph McGrath, President of ACCFT; Joe Connors, ACCFT Campus Representative; Ruth S. Flournoy, Professor; Art Bukowski, Professor; and Kamal Narang, Professor.

The University presented the testimony of Jean Sagan, Associate General Counsel.

C. Agency case file. 8 AAC 97.410.

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO (ACCFT), is the certified bargaining representative of a unit of instructional staff at the University of Alaska. The ACCFT and the University are in the process of negotiating a successor agreement to their May 8, 1992 -- June 30, 1994, collective bargaining agreement.

2. The University recruited for three positions in the mathematics department.

3. Kamal and Deborah Narang and Susan Loveland responded to the University's advertisement and were interviewed for the positions.

4. During their recruitment the hiring committee did not address the question of unit placement with candidates Kamal and Deborah Narang and Susan Loveland. Exh. 18.

5. The positions were classified as nonbargaining unit positions by the University.

6. ACCFT objected that Kamal Narang and Susan Loveland's positions were not placed in the ACCFT bargaining unit, Exh. 17, and it filed a grievance. Exh. 21. ACCFT sought inclusion of the faculty members in the unit, University payment of the members' agency fees for one year, and the University and faculty members' execution of an agreement authorizing the assignment of upper division courses without exclusion of the member from the ACCFT bargaining unit. Exhs. 15, 17, & 21.

7. ACCFT prevailed at step 2 of the grievance procedure and Chancellor Gorsuch ordered the placement of Kamal Narang and Susan Loveland in the ACCFT bargaining unit effective August 14, 1994. Exh. 22.

8. The University paid the agency fees owing for the 1994-1995 on behalf of Kamal Narang and Susan Loveland. Exhs. 25, 26, 27, & 28.

9. After the positions were placed in the ACCFT bargaining unit, Kamal and Deborah Narang and Susan Loveland retained attorney Richard Huffman to pursue breach of contract claims against the University.

10. University counsel Jean Sagan entered into negotiations with Huffman on the contract claims.

11. Sagan advised the three faculty members that they could have an ACCFT representative present during settlement discussions, but the members declined.

12. The University and the three faculty members reached a settlement agreement that included the following terms: payment of agency fees; an increase in pay in the amount of any agency fees; the exclusion of union members and professors Art Bukowski and Ruth Flournoy from any peer employment review committee. Exh. 30, at 3.

13. The University did not advise ACCFT of the negotiations and ACCFT did not participate in the negotiations.

Discussion

The dispute in this case concerns the bargaining unit status of three positions in the mathematics department. At the time of hire the University did not tell the candidates chosen for the position that they would be in a bargaining unit represented in collective bargaining, and initially the University did not place them in the bargaining unit.

In 1994, when these positions were recruited, the University faculty was divided into two groups for purposes of collective bargaining. The larger group was not represented in bargaining. The second group, consisting of faculty who teach at the community college level, is represented in bargaining by the ACCFT. Bargaining unit status depends on the workload assignment. Faculty assigned to the remote campuses, or whose principal assignment is vocational instruction, or who teach exclusively at the lower division with a single part service assignment (a bipartite teaching load) are in the ACCFT bargaining unit. ACCFT/University Agreement § 1.2.A. & B. (1992-1994), Exh. 1, at 5.

Although the positions in the mathematics department were hired to perform a predominantly lower division, bipartite, teaching assignment, the University assigned the positions to the nonrepresented group. After two of the three positions were filled, ACCFT objected that the positions had not been placed in the ACCFT bargaining unit and filed a grievance. Exhs. 17 & 21. As a remedy the ACCFT sought payment by the University of the service or agency fee for a period of one year; placement in the bargaining unit and benefits under the agreement; and an agreement between the University and faculty member that the teaching of upper division courses would not remove the positions from the unit. Exh. 21, at 3.

ACCFT prevailed at step 2 of the grievance. In his decision Chancellor Edward Lee Gorsuch concluded that Kamal Narang and Susan Loveland should have been in the ACCFT bargaining unit effective August 14, 1994. Exh. 22, at 1. He directed the two faculty members to sign the agreement to teach upper division courses. Id. The positions were placed in the bargaining unit.

The faculty members, whose terms and conditions now varied from those represented at hire, sought to enforce their initial contracts by retaining attorney Richard Huffman to represent them. University counsel Jean Sagan entered into negotiations with Huffman. She advised the three faculty members that they had the option of having an ACCFT representative present during settlement discussions. The faculty members declined.

During these negotiations the University extended an offer of employment to Deborah Narang for the third position, which included notification that she would be in the bargaining unit and would be required to pay agency fees as a condition of employment. Exh. 30. At the same time the University entered into a settlement with Deborah Narang that provided an adjustment of pay in an amount needed to pay agency fees. The University also agreed with Deborah Narang that her peer review committee would not include union members or professors Art Bukowski or Ruth Flournoy. Exh. 30, at 3. Similar employment and settlement agreements were made between the University and professors Kamal Narang and Susan Loveland. Exhs. 31 & 32.

Thus, the outcome of the negotiations was a number of amendments to the employment contracts of these three faculty members: an adjustment in pay, assumption of any agency fees, and exclusion of union members and two specific faculty members from any peer review committees that would be convened to review their employment.

ACCFT has charged violations of AS 23.40.110(a)(1), (3), and (5). It charges direct dealing and unilateral changes in

terms and conditions of employment in violation of AS 23.40.110(a)(1) and (5) and it charges discrimination to encourage or discourage union membership in violation of AS 23.40.110(a)(1) and (3). The University's position is that its actions were excused or justified by the threatened breach of contract litigation.

I. AS 23.40.110(a)(5): Refusal to bargain in good faith.

AS 23.40.110(a)(5) provides:

> A public employer or an agent of a public employer may not . . . refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

ACCFT argues that the University violated the duty to bargain in good faith in two ways. First, the University engaged in prohibited "direct dealing." Second, the University unilaterally changed the terms and conditions of employment for the three faculty members.

A. Direct dealing

A fundamental component of the duty to bargain in good faith in AS 23.40.110(a)(5) is the duty to observe the labor organization's status as the exclusive representative of the employees. Bypassing the labor organization undercuts its effectiveness and can damage the relationship between the labor organization and the employees it represents. J.I. Case Co. v. N.L.R.B., 321 U.S. 332, 14 L.R.R.M.(BNA) 501 (1944). Direct dealing can be a per se violation, which means the labor organization does not need to prove motive to establish the violation. 1 Patrick Hardin, The Developing Labor Law 601-602 (3d ed. 1993), citing General Electric Co. 150 N.L.R.B. 192, 194, 57 L.R.R.M.(BNA) 1491, (1964), enforced 418 F.2d 736, 72 L.R.R.M.(BNA) 2530 (2d Cir. 1969), cert. denied, 397 U.S. 965, 73 L.R.R.M.(BNA) 2600 (1970); Medo Photo Supply Corp. v. N.L.R.B., 321 U.S. 678, 14 L.R.R.M.(BNA) 581 (1944).

Bypassing the union and dealing directly with employees on individual employee contracts that depart from the terms of a collective bargaining agreement is an unfair labor practice. Kendall College of Art & Design, 288 N.L.R.B. No. 136, 130 L.R.R.M.(BNA) 1261, 1262 (1988). The expiration of the parties' agreement should not affect whether there is an unfair labor practice because an employer may not change terms and conditions of employment that are mandatory subjects of bargaining without first negotiating with the union. N.L.R.B. v. Katz, 369 U.S. 736, 50 L.R.R.M.(BNA) 2177 (1962).

The University, however, argues that it is not a per se violation to deal directly with employees if the resulting changes are more advantageous to the employee. Employer's Prehearing Statement, p. 8. It relies on J.I. Case Co. v. N.L.R.B., 321 U.S. 332, 14 L.R.R.M.(BNA) 501, and Caterpillar Inc. v. Williams, 482 U.S. 386, 125 L.R.R.M.(BNA) 2521 (1987). These cases state that an individual employee contract is not superseded necessarily by a collective bargaining agreement, but they do not hold that the individual contracts are valid if they are more generous. The J.I. Case Co. decision addresses an employer's use of individual employment contracts predating its bargaining relationship with the union to defend its refusal to bargain. The court rejected this defense but declined to find that collective bargaining agreements supersede all individual contracts or that all individual contracts would be impermissible. Importantly, the court rejects the argument that more advantageous contracts could be permissible, stating "The practice and philosophy of collective bargaining looks with suspicion on such individual advantages." J.I. Case Co. v. N.L.R.B., 482 U.S. at 338, 14 L.R.R.M.(BNA) at 504. In Caterpillar Inc., the court found that a collective bargaining agreement did not automatically supersede any individual employee contracts. The question under consideration was removal to federal court of a state court breach of contract claim. The court found the issue of impermissible direct dealing irrelevant on this question. 482 U.S. at 398, n. 12, 125 L.R.R.M.(BNA) at 2525, n. 12. In neither of these cases was the formation of the individual employee contract an issue. We reject the University's argument that negotiating more advantageous terms directly with employees is permissible.

In further defense of its direct dealing the University argues that special circumstances excused its actions. The University believed the faculty members had a credible claim against it for breach of contract. Any changes to the terms of employment were the result of settlement of their claims. The University believes it satisfied any obligations to the

labor organization by advising the faculty members that they could be represented by the labor organization in the negotiations. The faculty members did not choose for ACCFT to be present.

The University refers to Public Service Co. of Colorado and International Brotherhood of Electrical Workers, Local 111, 301 N.L.R.B. 238, 137 L.R.R.M.(BNA) 1071 (1991), in which the NLRB held that the employer did not violate sections 8(a)(5) and (1) of the Labor Management Relations Act(LMRA) by participating in court ordered settlement conferences without providing the union an opportunity to be present. In that case an employee had a number of actions pending against the employer including a union grievance. Her representatives in the nonunion actions engaged in settlement negotiations with the employer without including the union in the negotiations. The NLRB found significant the employer's written request to the employee to contact the union and anyone else needed to insure the employee's authority to enter into a binding agreement. Eventually the employer did negotiate a settlement of the grievance with the union. Because the employer made no effort to avoid the union and asked the employee to contact the union, the NLRB concluded that it did not commit an unfair labor practice.

Under the LMRA an employee and employer may resolve grievances provided the resolution is consistent with the collective bargaining agreement and the labor organization has an opportunity to be present. 29 U.S.C.A. § 159(a) (West 1995). In Public Service Co. of Colorado the NLRB found that this right did not include the right to be present at settlement discussions of judicial actions when the employer did not avoid the union and asked the employee to contact the union. Contra U.S. Postal Service and Postal Workers, AFL-CIO, Columbus Area Local, 281 N.L.R.B. No. 138, 123 L.R.R.M.(BNA) 1209 (1986) (finding that failure to provide the union an opportunity to be present at settlement of employees' EEO claim was a refusal to bargain in good faith with the union, which had filed a related grievance).

We view with concern the reliance in Public Service Co. of Colorado on notice through the affected employee. Employees cannot waive their right to representation in bargaining by a labor organization. To be effective and fair, the organization must represent the entire unit, not only its supporters. The employer may not circumvent the labor organization and deal directly with members of the unit even if the individual unit member wants to negotiate directly. A recognized bargaining representative has the right and obligation to represent all of the members of the bargaining unit. A bargaining unit member cannot choose to act independently of the labor organization. We note General Electric Co., 150 N.L.R.B. at 195, 57 L.R.R.M.(BNA) at 1500, which states, "The employer's statutory obligation is to deal with the employees through the union, and not with the union through the employees." Cited in Public Service Co. of Colorado, 301 N.L.R.B. at **, 137 L.R.R.M.(BNA) 1071, 1991 WL 17065, at 24.

Unlike the employee in Public Service Co. of Colorado, the interests of the three faculty members and union in this case diverge. Adding the members to the bargaining unit is the heart of the three faculty members' claims against the University. The three faculty members feared retaliation from the union because of their positions. They sought to exclude union members from their peer employment review committees. Kamal Narang testified about his concern about retaliation. The three faculty members have no incentive to keep the union informed.

Offering the unit members the option of bringing the union into the negotiations under such circumstances cannot satisfy the employer's duty to recognize the union as the exclusive bargaining agent. The right and obligation of the union to represent the members of the bargaining unit is not contingent on the employees' consent or support for the union. The University should have provided ACCFT with the opportunity to be present and participate in any discussions affecting mandatory subjects of bargaining.

We conclude that the University committed an unfair labor practice under AS 23.40.110(a)(5) when it negotiated directly terms and conditions of employment with the three employees.

B. Unilateral changes in terms and conditions of employment

Changing terms and conditions of employment, unilaterally, that is, without first bargaining to impasse, is a per se refusal to bargain. N.L.R.B. v. Katz, 369 U.S. 736, 50 L.R.R.M.(BNA) 2177. The University changed the salary and assumed the agency fee obligations of these employees without bargaining with the ACCFT. The University argues in this case that the threatened breach of contract claims by the three faculty members excused or justified its actions in making unilateral changes. For the reasons stated in subsection A, supra, we reject the University's defense and conclude the union should have been allowed the opportunity to participate in any discussions before changes were

made to the terms and conditions of employment.

II. AS 23.40.110(a)(3): Discrimination to encourage or discourage union membership.

AS 23.40.110(a)(3) provides that it is an unfair labor practice for an employer to "discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization." Discriminating in terms or conditions of employment can violate this section if "the discrimination is motivated by an antiunion purpose" or is inherently destructive of collective bargaining rights and "has the foreseeable effect of either encouraging or discouraging union membership." 1 Patrick Hardin, supra, at 190 & 191, citing Retail Clerks, Local 770, 208 N.L.R.B. No. 356, 85 L.R.R.M.(BNA) 1082 (1974); see also Carpinteria Lemon Ass'n v. N.L.R.B., 240 F.2d 554, 39 L.R.R.M.(BNA) 2185 (1956), cert. denied 354 U.S. 909, 40 L.R.R.M.(BNA) 2200 (1957).

The University argues that it did not discriminate because, to date, the three professors have not been evaluated, a peer review committee has not been convened, and neither Flournoy nor Bukowski have been excluded. However, the existence of the agreement shows the University distinguishing between faculty members on the basis of union membership. The evidence does not establish an antiunion motive, but the University's conduct in agreeing to exclude union members or activists from peer review participation is destructive of employee rights under PERA and has the foreseeable effect of encouraging or discouraging union membership. The threat of exclusion from participation in peer review could discourage or chill union activities by other faculty members. Certainly such an effect is reasonably foreseeable.

III. AS 23.40.110(a)(1): Interference with protected rights.

Conduct that violates AS 23.40.110(a)(3) and (5) can also interfere with rights protected under AS 23.40.110(a)(1) and violate that section as well. See generally 1 Patrick Hardin, supra, at 75 (discussing derivative section 8(a)(1) violations). Because we have found that the University violated AS 23.40.110(a)(5) by its direct dealing and unilateral action and AS 23.40.110(a)(3) by its discrimination, we conclude that the University did commit a "derivative violation" of AS 23.40.110(a)(1).

IV. Remedy

The remedy for a refusal to bargain in good faith in violation of AS 23.40.110(a)(1) and (5) is usually an order to cease and desist the refusal to bargain. If unilateral action is involved, the parties are usually returned to the status quo existing before the illegal conduct. Inlandboatmen's Union of the Pacific, Alaska Region v. State of Alaska, Decision & Order No. 149 (Dec. 3, 1992); see also Katz's Deli, 316 N.L.R.B. No. 65, 149 L.R.R.M.(BNA) 1103 (1995). ACCFT, however, urges this Agency not to remove the economic benefits from the faculty members. It is concerned that such an order would create animosity against the union. It also argues persuasively that return of the status quo would accomplish little because it would probably result in an agreement by the University to pay damages to the three faculty members.[1]

We note that the NLRB does not rescind economic benefits from bargaining unit members without an express request from the bargaining representative. Bituminous Roadways of Colorado, 314 N.L.R.B. No. 167, 147 L.R.R.M.(BNA) 1074 (1994). In this case we have a specific request from the union not to rescind the economic benefits. We therefore decline to order the recision of the pay increase and the University's payment of agency fees. We do, however, order the recision of the noneconomic terms -- the changes to the composition of the peer review committees.

The ACCFT argues further that an order to cease and desist is not sufficient to remedy the violations in this case. It urges an award to the entire bargaining unit of the financially favorable changes to the bargaining agreement. ACCFT names these changes as a pay increase of $1,000 per year retroactive to May 11, 1995; payment of union dues in any semester the faculty members does not teach upper division courses; and maintenance in the bargaining unit when teaching upper division courses.

The financial impact of such an award over time would probably reach several hundred thousand dollars, which seems punitive. We also have concerns about requiring the University to pay all of the union dues and agency fees. Payment

of union dues is a questionable use of public funds; it removes an important link between the members and their bargaining representative; and it raises questions about employer domination of the employee organization under AS 23.40.110(a)(2). We also note that the collective bargaining agreement has expired. The NLRB will not order an employer to pay dues to a labor organization in the absence of a dues check-off clause in a valid collective bargaining agreement. Xidex Corp. v. N.L.R.B., 924 F.2d 245, 136 L.R.R.M.(BNA) 2310, 2318 (D.C. Cir. 1991). For these reasons we decline to issue the award requested.

We agree with ACCFT, however, that ordering the University to cease and desist the unfair labor practices does not sufficiently redress the wrong in this case. However, the only alternative would be the restoration of the status quo, which would include rescinding the economic benefits negotiated with the three faculty members. The ACCFT has clearly communicated that this outcome is not in its interest. We therefore see no alternative to restricting restoration of the status quo to the noneconomic terms only. However, because of the seriousness of the violations, which go to the heart of the ACCFT's status as the exclusive bargaining representative of these employees, we issue a broad order requiring the University to cease and desist from infringing in any other manner the rights guaranteed under AS 23.40.070 -- 23.40.260. Opportunity Homes Inc. and Service Employees Local 627, 315 N.L.R.B. No. 156, 148 L.R.R.M.(BNA) 1306 (1994).

Conclusions of Law

1. The University of Alaska is a public employer under AS 23.40.250(7) and the Alaska Community Colleges' Federation of Teachers, Local 2404, AFT, AFL-CIO is a labor organization under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.110 to consider this complaint.

2. Bypassing the ACCFT and negotiating with the three faculty members changes to the terms and conditions of their employment violates AS 23.40.110(a)(5) and AS 23.40.110(a)(1).

3. Changes to the terms and conditions of employment were unilateral changes during the bargaining relationship and violations of AS 23.40.110(a)(5) and AS 23.40.110(a)(1).

4. Negotiating changes to the composition of a peer review committee to exclude two ACCFT members had the foreseeable effect of discouraging union membership and thereby violated AS 23.40.110(a)(3) and AS 23.40.110(a)(1).

5. The existence of threatened litigation and possible breach of contract claims against the University does not excuse its actions.

ORDER

1. The University of Alaska violated AS 23.40.110(a)(1) and (5) when it negotiated with three faculty employees represented in bargaining and unilaterally implemented changes in the terms and conditions of employment;

2. The University of Alaska violated AS 23.40.110(a)(1) and (3) when it agreed to restrict the participation of union members on certain peer review committees;

3. The University of Alaska is ordered to cease and desist from infringing in any manner the rights guaranteed under AS 23.40.070 -- 23.40.260;

4. The University of Alaska is ordered to restore the status quo ante on the noneconomic changes to the terms and conditions of employment for faculty members Kamal Narang, Deborah Narang, and Susan Loveland and to allow the bargaining representative ACCFT an opportunity to participate in any future negotiations; and

5. The University of Alaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Vice Chair

Robert A. Doyle, Board Member

Raymond P. Smith, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL 2404, AFT, AFL-CIO (Re: LOVELAND, NARANGS) vs. UNIVERSITY OF ALASKA, CASE NO. 96-428-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 20th day of August, 1996.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 20th day of August, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

William K. Jermain, ACCFT

Patrick J. McCabe, University of AK

Thomas P. Owens, University of AK

Signature

1The ACCFT's status as agent for these employees extends only to collective bargaining. The University should have been able to resolve the threatened litigation without implicating the collective bargaining agreement or mandatory subjects of bargaining. By negotiating with the faculty members on terms and conditions of employment and changing them, it ran afoul of its duties under AS 23.40.110(a).