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STATE OF ALASKA,)
)
 Petitioner,)
)
 vs.)
)
 ALASKA STATE EMPLOYEES)
 ASSOCIATION/AFSCME LOCAL 52,)
 AFL-CIO,)
)
 Respondent.)
)
 _____)
 CASE NO. 96-532-SP)

DECISION AND ORDER NO. 205

Digest: The services of certain of the State's computer support employees may be interrupted for a limited but not indefinite period of time and the employees therefore should be classified as class (a)(2) for purposes of strike eligibility under AS 23.40.200.

DECISION

Statement of the Case

The State of Alaska filed on May 1, 1996, a petition to determine the strike class of certain employees in the Division of Information Services, Department of Administration. It seeks to reclassify the employees from class 3 to either class 1 or 2. On May 10, 1996, the Alaska State Employees Association opposed the petition and the proposed changes.

The case was heard on July 19, 1996, before a panel of the Alaska Labor Relations Agency.

Panel: Stuart H. Bowdoin, Jr., vice-chair, and board members Robert A. Doyle and Karen J. Mahurin, present and participating.

Appearances: Art Chance, labor relations analyst, for petitioner State of Alaska; Stan Hafferman, business agent, for respondent Alaska State Employees Association/AFSCME Local 52, AFL-CIO.

Procedure in this case is governed by 8 AAC 97.350. Hearing examiner Jan Hart DeYoung presided.

Issues

Should the employees currently performing technical support services in the Department of Administration for the Departments of Corrections and Public Safety be reclassified as class 1 or class 2 for purposes of strike eligibility under AS 23.40.200?

Summary of the Evidence

A. Exhibits

The State of Alaska offered the following exhibits, which were admitted into the record:

1. Position description questionnaire (PDQ) for position control number (PCN) 026400 (data security specialist);

2. PDQ for PCN 026408 (analyst programmer II);
3. PDQ for PCN 026414 (database specialist);
4. PDQ for PCN 026402 (data communications specialist II);
5. PDQ for PCN 026506 (systems programmer III);
6. Request for classification action and related documents for PCN 026108 (data communications specialist);
7. PDQ for PCN 026514 (systems programmer II);
8. PDQ for PCN 026524 (data communications specialist);
9. PDQ for PCN 026607 (data processing technician III);
10. PDQ for PCN 026611 (data processing technician II);
11. PDQ for PCN 026613 (data processing technician II);
12. PDQ for PCN 026647 (data processing technician II);
13. Class specification, analyst programmer series;
14. Class specification, data processing technician series;
15. Class specification, data communications specialist series;
16. Class specification, systems programmer series; and
17. Class specification, data security administrator.

The Alaska State Employees Association/AFSCME Local 52, AFL-CIO, offered the following exhibit, which was admitted into the record:

- A. Department of Administration, Division of Information Services, organizational chart.

The Agency took notice of the following exhibits, which are part of the record:

20. ASEA/State bargaining agreement (1990 -- 1992);
21. ASEA/State letter of agreement re. interim terms (1995 -- 1996); and
22. ASEA/State bargaining agreement (1996 -- 1999).

- B. Testimony

The State of Alaska presented the testimony of Allan Terreault, Cook Inlet Pretrial Facility Superintendent; Ted M. Bachman, Lieutenant, Alaska State Troopers; and Karen Morgan, Deputy Director of Division of Information Services, Department of Administration.

The Alaska State Employees Association presented the testimony of Larry Rabideau; Sheila Fowlkes; and Judy Morris, ASEA Shop Steward.

- 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 State Employees Association/AFSCME Local 52, AFL-CIO, (ASEA) is the certified bargaining representative of the general government unit of State of Alaska employees.
2. The parties stipulated to the following finding from Alaska Public Employees Association v. State of Alaska, Decision & Order No. 143, at 3, ¶ 5 (1992), affirmed State of Alaska v. Alaska Public Employees Association, No. 1JU-92-1882 (Super. Ct. May 27, 1993):

ASEA and APEA each proceeded to binding interest arbitration for class 1 employees without objecting to the State's strike classification assignments under AS 23.40.200.

3. The correctional institutions rely on computerized information to make decisions about prisoners at intake, release, and eligibility for furlough. The information is essential to assess the risk of the prisoner and determine the degree of custody needed in the institution and the measures that should be taken at release from the institution. The institutions delay booking or releasing prisoners when the computer system is down.
4. The State computer system includes the Alaska Public Safety Information Network (APSIN), which stores information on everyone in the State. It includes such information as concealed handgun permits, driving records, warrants, arrest records, and criminal records. It is linked to a national system. The Alaska State Troopers rely on information in the system in criminal investigations, to locate suspects and witnesses, to gauge the risk in routine traffic stops, and to serve warrants. Absence of this information affects the troopers's ability to perform these tasks, resulting in increased risk to the officers and the public.
5. The information relied upon by Corrections and Public Safety is accessed through or stored in computers located in the Division of Information Services (DIS), Department of Administration. The computer applications generally are performed in the various departments but they are performed on platforms that reside in DIS and are maintained by DIS employees.
6. The DIS system runs itself without human intervention most of the time. The system is subject to hardware, power supply, or line failures, however, which can snowball to make the system inoperable. While the system fails regularly for short periods, it is available 99.3 percent of the time.
7. The State selected the fewest DIS employees it believed could keep the computer system operating for Corrections and Public Safety applications without overtaxing the employees chosen. See Exhs. 1-5 & 7-12. It considered such factors as training, expertise, work shift, location, and experience with Corrections and Public Safety applications.
8. If one of the selected employees were to change job duties or shifts, the State would need to select a new employee. The selection criteria are time sensitive and the employees or positions needed to keep the system operating will change from collective bargaining agreement to agreement and even during the life of an agreement.
9. The position description qualification worksheets (PDQ) for the employees selected do not describe any duties or responsibilities or contain any other information that identify that position's role in Corrections or Public Safety computer applications.
10. Depending on the terms of the collective bargaining agreement, strike class can affect the rate of compensation and benefits an employee receives. The date and amount of wage increases differed for class 1 and classes 2 and 3 employees, for example, in 1990 and 1991. Exhs. 20, 21, & 22; Alaska Public Employees Ass'n v. State of Alaska, Decision & Order No. 143, at 4 & 10.
11. Supervisors in the supervisory unit of employees identified as essential can perform the work of the employees they supervise.
12. The State contracts out computer backup services with a private company.

Discussion

This case addresses an impact of technology on the Public Employment Relations Act. Police, correctional institution employees, and more recently, probation officers are considered strike ineligible because of the impact on the public if their services are interrupted. AS 23.40.200(b); Alaska Public Employees Association v. State of Alaska, Decision & Order No. 143. As these job classes have come to rely on computers to perform their work, the question is, do the employees who make the computers run become so essential that they should also be ineligible to strike?

The State in its petition seeks to limit the right to strike under AS 23.40.200 of the employees who support the mainframe computer that handles Corrections and Public Safety information. ASEA, on the other hand, maintains that the employees with the same job description and work should be classified similarly and in this case the appropriate classification under AS 23.40.200 is class (a)(3), eligible to strike.

AS 23.40.200 states, in part:

(a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

- (1) those services which may not be given up for even the shortest period of time;
- (2) those services which may be interrupted for a limited period but not for an indefinite period of time; and
- (3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or the state boarding school. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so. . . . In AS 23.40.200(b) and (c), the legislature has determined the strike class of a number of job classes. The list is representative rather than exclusive and can be expanded. State of Alaska v. Alaska Public Employees Ass'n, No. 1JU-92-1882, slip op. at 11.

The key to determining strike class is the impact of an interruption in services on the public. Alaska Public Employees Ass'n v. State of Alaska, Decision & Order No. 143, at 10; Alaska Public Employees Ass'n v. Fairbanks North Star Borough, Decision & Order No. 131, at 9 (Mar. 15, 1991). The greater the impact of the interruption is on the public's health, safety, and welfare, the higher the likelihood is that the right to strike will be restricted. If even the shortest interruption cannot be tolerated, the position is classified as class 1, ineligible to strike. AS 23.40.200(a)(1). Class 1 employees are provided binding interest arbitration as a substitute impasse tool for the rights lost. AS 23.40.200(b). If some but not an indefinite interruption of services can be tolerated, the right is limited, rather than extinguished. AS 23.40.200(a)(2); In re Alaska Marine Ferry System Workers, SLRA Order & Decision No. 20 (Feb. 24, 1976). Class 2 employees may strike but the employer may apply to court for an injunction. If the court enjoins the strike and impasse continues, the State and labor organization proceed to binding interest arbitration. AS 23.40.200(c).¹

The testimony of Cook Inlet Pretrial Facility Superintendent Allan Terreault and Alaska State Trooper Lieutenant Ted M. Bachman is persuasive on the essential role of computer services in today's criminal justice system. Less persuasive was the testimony on the role of the positions the State identified as essential to providing those computer services. The statewide computer network requires maintenance to remain operating, but 99.3 percent of the time the system is available to the department employees performing the applications essential to the work of Corrections and Public Safety. We conclude that the departments could obtain the information they need if these employees's services were interrupted for a limited period, but we further conclude that an interruption for an indefinite period would curtail the departments's access to essential information and seriously affect the safety of the public and State employees.

Thus, these employees should be categorized as class 2, eligible to strike after impasse and mediation but subject to recall upon a court issued injunction.

However, ASEA has raised an additional issue -- the apparent arbitrariness of the State's selection. The State has selected these employees on the basis of facts existing today, including such criteria as training, work shift, location, and experience with Corrections and Public Safety applications. For example, the only factor distinguishing one of the employees selected from others not selected was work shift. Shift assignment can depend on seniority, and that employee's shift could change after she has accrued additional seniority. The facts that the State relied on today to identify these employees may not exist at the time of an actual strike. Thus, identifying these employees by name today does not serve any purpose.²

On the other hand, identifying the employees by name does create problems. It pits similarly situated bargaining unit members against each other. Employees sitting next to each other at the same worksite performing very similar work may be classified differently. The classification can have a substantial impact on the terms of employment and working conditions of the employees. Identifying these employees and classifying them differently could be divisive.

Moreover, leaving it to the State to identify the employees at the time of a work stoppage could lead to abuses. The record in this case does not support a finding that the State considered such factors as union activism or support for a strike to affect its selection. However, the system it used does not protect sufficiently against its doing so in the future.

The solution is classifying a larger group as class 2 to treat similarly situated employees alike. If a work stoppage occurs and the interruption of these employees's services is long enough to threaten the health, safety, or welfare of the public, the State can proceed to superior court and identify at that time the employees it needs to provide essential computer services. Under AS 23.40.200(c) the court will consider the "total equities" to determine whether and which employees to enjoin from striking. Judicial review should protect against any abuses.

Therefore, the employees employed in positions in the Division of Information Services, Department of Administration, in the general government unit who are in the following job classes should be classified for purposes of strike eligibility as class 2. The affected class specifications are the data processing technician series, data communication specialist series, systems programmer series, database specialist series, data security specialist series, and data security administrators.

Conclusions of Law

1. The State of Alaska is a public employer under AS 23.40.250(7) and the Alaska State Employees Association/AFSCME Local 52, AFL-CIO is an organization under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.200 to consider this matter.
2. The State of Alaska, as the petitioner, has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).
3. Employees in the job classes data processing technician, data communication specialist, systems programmer, database specialist, data security specialist, and data security administrator in the general government unit in DIS are employees whose services may be interrupted for a limited period but not for an indefinite period of time under AS 23.40.200(a)(2) and (c).

ORDER

1. Positions in the following job classes located in the Division of Information Services, Department of Administration, and in the general government unit are classified for purposes of strike eligibility as class 2 under AS 23.40.200(a)(2): data processing technician series, data communication specialist series, systems programmer series, database specialist series, data security specialist series, and data security administrators.
2. The State 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

Dissent

I respectfully dissent from the decision of my colleagues. The State has not provided enough facts to convince me that these employees perform a service that may not be interrupted. I do appreciate the importance of computers to the criminal justice system, but I do not believe a strike of these employees would interfere with access to essential information. The employees the State seeks to reclassify support the computer system, rather than apply it. Corrections officers, troopers and other employees in Corrections and Public Safety run the applications that result in the patrol or booking officer obtaining the information needed to make a traffic stop or classify a prisoner. If the State computer system fails -- for example, if there is a power outage -- the work of these Division of Information Services employees becomes critical. The State's representative, however, states that the system operates 99.3 percent of the time. When a failure occurs, the supervisors outside of the bargaining unit of the employees identified by the State have the ability to correct the problems. In addition, the State contracts for computer back-up services from a private contractor. The record in this case does not justify abridging the very important rights of these employees to engage in economic weapons in the event of an impasse in bargaining.

I agree with that part of the decision addressing the problems with the manner in which the State has identified the employees for reclassification. However, I would place these employees in the least restricted strike category -- class 3 under AS 23.40.200(a)(3).

Karen J. Mahurin, 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 State of Alaska v. Alaska State Employees Association, AFSCME Local 52, AFL-CIO v. Case No. 96-532-SP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 27th day of August, 1996.

Jan Hart DeYoung

Hearing Examiner

This is to certify that on the 27th day of August, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

Stan Hafferman, ASEA

Art Chance, State

Signature

1Other decisions under the Public Employment Relations Act addressing strike class are In re Tri-Trades Public Service Council Strike Ballot Election, SLRA Order & Decision Nos. 17 & 17A (1975); see also Alaska Inf. Op. Att'y Gen. (663-87-0559, 1987).

2At the time the State filed this petition, it was preparing for the possibility of a strike by the general government, supervisory, and other units. However, by the time the petition was heard, a strike was not imminent.