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HENRY T. MUNSON,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	
ALASKA STATE EMPLOYEES ASS'N	)	
AFSCME LOCAL 52, AFL-CIO,	)	
	)	
Respondent.	)	
<hr style="border:0.5px solid black;"/>		
VERNON L. GILLIAM,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	
ALASKA STATE EMPLOYEES ASS'N	)	
AFSCME LOCAL 52, AFL-CIO,	)	
	)	
Respondent.	)	
<hr style="border:0.5px solid black;"/>		
CASE NOS. 95-358-ULP & 95-362-ULP (Consol.)		

**DECISION AND ORDER NO. 207**

Digest: A union did not commit an unfair labor practice when its steward threatened discipline against another bargaining unit member because (1) the steward's conduct did not violate AS 23.40.110(c)(1)(A) and (2) if it had, the union effectively repudiated the conduct by removing the steward from his position after an internal union proceeding and by pursuing a grievance about the discipline on behalf of the affected bargaining unit member.

**DECISION**

**Statement of the Case**

These two cases ask whether a bargaining representative restrains or coerces an employee in the exercise of rights guaranteed under the Public Employment Relations Act when a member of the unit with supervisory duties serves as a shop steward.<sup>1</sup> State of Alaska general government unit (GGU) member Henry T. Munson filed an unfair labor practice charge against the Alaska State Employees Association (ASEA) on December 7, 1994, alleging actions by a shop steward/supervisor in violation of AS 23.40.110(c)(1) and the duty of fair representation AS 23.40.110(c)(2). Case no. 95-358-ULP. On January 9, 1995, another GGU member Vernon L. Gilliam filed similar charges in case no. 95-362-ULP. The Alaska Labor Relations Agency conducted an investigation into the charges, found the charges under AS 23.40.110(c)(1) supported in part by probable cause, and issued notices of accusation in each case on June 27, 1995. However, the Agency found that charges related to a letter by the chief steward dated November 4, 1994, lacked probable cause. The November 4 letter advised shop stewards to notify their supervisors when conducting union business. The Agency dismissed this charge and others under the duty of fair representation related strictly to internal union matters rather than employment.

ASEA filed its notice of defense in both cases on July 18, 1995. It admits the facts set out in a related judicial panel

decision, Miller v. Galvano, case no. 94-003 (Mar. 14, 1995). ASEA admits that a letter by a union steward was "inappropriate to the circumstances" and states that the steward had been removed from his position following an internal union judicial panel proceeding. ASEA also argues that its steward did not act as an agent of the employer and denies that any employee was disciplined for participating in a petition to recall the steward.

On July 19, 1995, the Agency ordered the consolidation of the two cases against ASEA in 95-358-ULP and 95-362-ULP.

On September 13 and 15, 1995, complainants moved for summary judgment, which ASEA opposed on September 22, 1995. On September 27, 1995, the hearing examiner denied summary judgment because material issues of fact were contested and complainants did not in their motion establish a violation of AS 23.40.110(c)(1).

On September 20, 1995, Munson moved to compel a response to a request for documents that he had served on ASEA on September 7, 1995. The motion was denied by order dated September 27, 1995. The order provided that a subpoena could be issued under AS 23.40.160 for the documents Munson sought. A subpoena was issued on October 2, 1995, and on October 3, 1995, ASEA moved to quash it. On October 4, 1995, the hearing examiner denied the motion to quash.

These consolidated cases were heard on October 11, 1995, in Anchorage, Alaska, before a panel of the Alaska Labor Relations Board. The record closed on October 11, 1995.

Panel: Chair Alfred L. Tamagni, Sr., and Member Robert A. Doyle, present in Anchorage, and Member Raymond P. Smith, participating by review of the record.

Appearances: Complainant Henry T. Munson; complainant Vernon L. Gilliam; and Alison Reardon, business agent, for respondent Alaska State Employees Association.

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

Did the Alaska State Employees Association restrain or coerce employees in the exercise of rights protected under AS 23.40.080 and thereby violate AS 23.40.110(c)(1)(A) by engaging in the following acts:

- (1) posting a letter by union steward Sal Galvano about food theft;
- (2) disciplining Vernon Gilliam for his response to steward Galvano's letter; or
- (3) threatening retaliation and intimidating unit employees for participating in a petition effort to recall steward Sal Galvano.

### Summary of the Evidence

#### A. Exhibits

Complainants Henry T. Munson and Vernon L. Gilliam offered the following exhibits that were admitted into the record:

1. Charge against labor organization (Dec. 6, 1994);
2. Pages 1-4; 6-15: charges of misconduct;
3. V. Gilliam, letter to S. Galvano (Nov. 17, 1994) and attachments (pages 1-13);
4. Pages 6-8: C. O'Connell, letter to F. Sauser (April 11, 1995) (about appeal of D. Goguen grievance);

5. P. Brockman, letter to Executive Board (April 19, 1995);
6. Pages 1-6: Extract, Department of Corrections, Policies and Procedures, code of ethics and standards of conduct;
7. Extract, Department of Corrections, Policies and Procedures, disciplinary action guidelines;
9. ASEA, Seward Chapter By-laws (7/92);
12. D. Finnsson, letter to whom it may concern (Dec. 27, 1994);
14. S. Miller Grievance (May 10, 1995) and related documents (pages 1-9);
15. E. Shaw, letter to D. Williams (Dec. 29, 1994);

Complainants Henry T. Munson and Vernon L. Gilliam offered the following exhibits that were not admitted into the record:

2. Page 5: withdrawn (see Exh. O);
4. Pages 1-5: withdrawn;
6. Pages 7-8: considered as authority;
8. Withdrawn;
10. Pages 1-7: withdrawn; pages 8-9: objection sustained;
11. Page 1: objection sustained; pages 2-5: considered as authority;
13. Objection sustained.

Respondent Alaska State Employees Association offered the following exhibits, which were admitted into the record:

- A. S. Galvano, letter to Sisters & Brothers (Nov. 10, 1994);
- B. D. Williams, cover letter & Miller v. Galvano, ASEA judicial panel decision in case no. 94-003 (Mar. 14, 1995);
- C. V. Gilliam Grievance (Dec. 9, 1994) and related documents (pages 1-5);
- E. J. Philp, memorandum to J. Swick (July 5, 1994) and tabulations of meals served (pages 1-13);
- F. Extract, ASEA policy 5.5.0 (Nov. 9, 1992);
- G. Grievance Review Policy, Resolution No. 1993 (Revised) (Dec. 4, 1993);
- J. 1994 steward list (mailed Nov. 6, 1994) (social security numbers redacted);
- K. ASEA Constitution (as amended 1994);
- L. State/Alaska State Employees Association, agreement (1990-1993); State/Alaska State Employees Association, interim agreement (July 1, 1995 -- June 30, 1996);
- M. AFSCME Constitution (1994);
- N. AFSCME Steward Handbook;

O. Judicial panel file, Miller v. Galvano, case no. 94-003;

P. ASEA, AFSCME Local 52, organizational chart.

Respondent Alaska State Employees Association offered the following exhibits, which were not admitted into the record:

D. Alaska State Employees Ass'n v. State, ALRA Decision & Order No. 195 (Sept. 26, 1995), considered as authority;

H. Withdrawn;

I. Withdrawn.

B. Testimony

The complainants presented the testimony of correctional officers II Donald Finnsson, Sherrie Miller, Henry Munson, and Vernon Gilliam.

The respondent presented the testimony of ASEA business agent Charles L. O'Connell, union steward Kevin Anderson, ASEA business agent Harriet Lawlor; and acting business manager George Masten.

C. The Agency's case files in 95-358-ULP and 95-362-ULP. 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 State's general government bargaining unit.
2. Henry T. Munson is a correctional officer II at the Spring Creek Correctional Center in Seward and a member of the State's general government unit. He is not a member of ASEA and pays an agency fee rather than union dues. The history of Munson's employment and his relationship to ASEA are discussed in Munson v. ASEA, Decision & Order No. 161A (Aug. 23, 1993), affirmed 3AN-93-8752 (Super. Ct. Sept. 13, 1994) (memorandum and order).
3. Vernon Gilliam is a member of the State's general government unit and a correctional officer II at the Spring Creek Correctional Center in Seward. He is a member of ASEA. Exh. 6, at 2.
4. Sal Galvano is employed by the State as a correctional officer III (CO III) at the Spring Creek Correctional Center. As a CO III, Galvano has supervisory duties. Munson v. State of Alaska, Decision & Order No. 206, at 8 ¶8 & 28 ¶3 (September 20, 1996).
5. Galvano also is an ASEA shop steward for general government unit employees in the Spring Creek Correctional Center. Exh. J, at 7. Galvano works a 40-hour shift and is elected steward by the 40-hour employees at the facility. He is the only shop steward with the opportunity to interact with all four of the facility's shifts.<sup>2</sup>
6. Galvano, purporting to act as a union steward, posted a notice on the ASEA bulletin board about food theft at the Spring Creek facility on or about November 10, 1994, which stated:

Dear Sisters and Brothers;

Some rather disturbing information has been brought to my attention by our Food Service brother and the administration. Once again, it concerns the "distasteful" topic of paid staff means.

In the four months of July, August, September, and October, a total of 123 days, 2460 breakfast meals were prepared and 3075 dinner meals were prepared. During that same time period, a total of only 16 breakfasts

and 447 dinners were paid for.

This theft, as I see it, amounts to a loss for this institution's budget of over \$10,000 for four months and over \$40,000 for the year, money we could use for .....

In my opinion, this abuse could result in those meals being discontinued, causing an inconvenience to many of our brothers and sisters. Before it comes to that, 1st let me ask you on more time to *please pay for what you eat; take only what you pay for.*

In solidarity,

/s/

Sal Galvano

ASEA/AFSCME Local 52

Seward Chapter

Chief Steward

Exh. A; ASEA Prehearing Brief, p. 2. He wrote the letter on ASEA Seward chapter stationery, although ASEA chapters are not authorized to have or use ASEA letterhead.

7. Correctional officers II Don Finnsson, Sherrie Miller, and Vernon Gilliam were offended by this letter. Exh. 3, at 5 & 6; Exh. 12.

8. Miller wrote Galvano a letter telling him why she thought his letter was inappropriate. Miller characterized Galvano's response to her letter as "aggressive" and said he left spaces in it for four letter words. Exh. 3, at 5.

9. Bargaining unit member Gilliam responded to Galvano's letter in writing, as follows, Exh. 3, at 1:

November 17, 1994

Sal Galvano, Union Representative ASEA

RE: Your memo

This letter is to inform you that some of your letter if not all of it is in error.

First of all, I do not eat in the staff lunch room I do not consider the food that is served in the staff dining room fit for human consumption, and I would not pay \$2.00 for it.

Second, there is no breakfast set up for the oncoming 0600 hours staff, so we don't have the opportunity to even eat this stuff. I have been working back there and I know that there has been no officer eating breakfast.

Third, you were elected to represent our interests, not those of the administration. I believe that it would be to our benefit if we were no longer served meals. It would relieve us of the responsibility of accepting blame for someone else's shortcomings.

Fourth, I am not your brother. Unlike you, I know who all of my brothers and sisters are; and you are not one of them.

It is my personal opinion that our elected officials are sadly lacking and are only instead furthering their own interests.

Vernon Gilliam, C.O. II

/s/

10. Galvano, purporting to act as a correctional officer III, responded with a letter of instruction to Gilliam:

On 11/17/94 while on duty for the Department of Corrections, State of Alaska, I became aware of a memo addressed to me, signed by you that was posted on the ASEA bulletin board. On 11/18/94 while also on duty, I received a copy of this same memo in my institutional distribution box.

In this memo you addressed your concerns and stated your opinion regarding a letter that I posted to your ASEA union members.

While no one will argue that you are entitled to voice your opinion, your memo was an attack on me personally. It defamed my family and was abusive and profane in nature. This is a clear violation of Department of Corrections Policy and Procedure 202.01, section VI, (A), (6) and 13.AAC 85.230. The department will not tolerate that kind of abuse from you or any other State employee.

You are hereby instructed to read and become familiar with Policy and Procedure 202.01 and 13 AAC 85.236 and to adhere to them in their entirety.

Any future violation of this type will result in a disciplinary action up to and including dismissal.

cc: Earl Shaw, Acting Superintendent, SCCC

Personnel File, SCCC

Exh. 2, at 6. The letter apparently was placed in Gilliam's personnel file but did not result in any loss in pay or benefits. While a letter of instruction is generally considered informational rather than disciplinary, we concluded that this letter was a warning under the ASEA/State collective bargaining agreement. Munson v. State of Alaska, Decision & Order No. 206, at 12 ¶17 (September 20, 1996).

11. ASEA policy addresses grievances by unit members concerning other members of the unit. The aggrieved employee is given priority. Exh. F. If discipline of a higher level member results from the grievance, a different business agent will grieve that member's discipline. Id.

12. Kevin Anderson, an ASEA steward, at Gilliam and Munson's request filed a grievance about Gilliam's letter of instruction. Munson wrote the grievance that Anderson filed. At first Anderson tried to handle the matter informally. He went to assistant superintendent Shaw and argued for the removal of the letter of instruction. Shaw disagreed that it was solely a union matter because Shaw believed the letter had been distributed throughout the facility. The grievance resulted in the removal of the letter from Gilliam's personnel file.

13. Steward Anderson had been supervised by Galvano until a few weeks before he filed the grievance. Anderson, however, never refused to file the grievance. ASEA did support the grievance and obtain relief.

14. Gilliam wanted ASEA to seek discipline of Galvano as part of his grievance. ASEA business agent Harriet Lawlor, who had advised Anderson on the grievance, did not think discipline was appropriate and advised that a judicial panel complaint was an appropriate way to address a dispute between union members.

15. Two petitions to remove Galvano as a steward were circulated at Spring Creek Correctional Center, originating on the C and D shifts at the facility. Munson posted the recall petition on the staff bulletin board in the staff room, but the C shift copy disappeared. Exh. 2, at 7 & 10.

16. Recall by unit members is not addressed in the local ASEA constitution. Exh. K, at 5-7. The Seward Chapter By-Laws does address removal of a steward. Exh. 9, at 5.

17. Munson filed a judicial panel complaint with the ASEA. Exh. 2, at 2.
18. Nonunion general government unit members have no rights to internal ASEA procedures. Munson was unable to continue as the charging party because he is an agency fee payor and is not a member of the union. Miller, a union member, assumed the role of the charging party. Munson intended to continue to present the case to the judicial panel as Miller's representative, but he was not allowed to appear, contrary to union rules. A representative is not required to be a union member. Miller took over as representative and presented the case to the judicial panel.
19. As a result of Miller's charges, the ASEA judicial panel removed Galvano as a union steward. It did not prohibit Galvano from seeking this or any other elected position in the ASEA. Exh. B, at 5.
20. After his removal Galvano was reelected steward by the 40-hour employees and elected chief shop steward by the Seward stewards at a general meeting in Seward. Exh. 9, at 4.
21. ASEA divides the State into geographic units called chapters. Each ASEA chapter is autonomous. It elects delegates to the ASEA biennial convention that sets policy for ASEA. Exh. P. There are also eight at-large seats.
22. ASEA provides training for shop stewards. Most recently business agent O'Connell conducted training for the Spring Creek facility shop stewards in May of 1995. He distributed copies of the stewards handbook. Exh.N
23. Miller had concerns about the Seward chapter. Acting ASEA business manager George Masten suggested that Miller call AFSCME International, and he played a role in obtaining the International's audit of the Seward chapter.

### Discussion

These two cases concern the conduct of a State employee with supervisory duties who serves as a union steward. In related cases against the State of Alaska, we concluded that the State committed an unfair labor practice under AS 23.40.110(a)(2) by failing to ensure that its supervisors did not serve as stewards. Munson v. State of Alaska, Decision & Order No. 206 (September 20, 1996).<sup>3</sup> In these cases against ASEA, we address whether these same facts result also in a union unfair labor practice.

An employer's violation of AS 23.40.100(a)(2) can involve union conduct that violates AS 23.40.110(c)(1)(A). A fairly common example of a joint violation under the analogous provisions of the federal law is the execution of a labor agreement between an employer and a labor organization that does not have majority support of the bargaining unit. See e.g., Maramount Corp. and Production Workers Local 17-18, 317 N.L.R.B. No. 149, 151 L.R.R.M.(BNA) 1094 (1995).

To determine whether the facts constitute a violation in this case, we must look at the language of AS 23.40.110(c). The standards labor organizations must meet are different than those applying to employers. AS 23.40.110(c)(1)(A) provides that "A labor or employee organization or its agents may not . . . restrain or coerce . . . an employee in the exercise of the rights guaranteed in AS 23.40.080 . . ." Unlike AS 23.40.110(a)(1) which prohibits an employer's interference, restraint or coercion against the exercise of protected rights, AS 23.40.110(c)(1)(A) prohibits only restraint or coercion by the union. Mere interference with the exercise of protected rights will not result in a union unfair labor practice.

Initially we address whether allowing a bargaining unit member with supervisory powers to serve as a shop steward violates AS 23.40.110(c)(1)(A) without regard to the member's actual conduct. Because we are not aware of any State precedent on this subject, we turn to federal case law. 8 AAC 97.240(b).

Federal law regulates union conduct more extensively than Alaska law. The federal Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C.A. §§ 401-531 (West 1996 ed.), provides a bill of rights for members of labor organizations, sets out minimum election procedures, and establishes other safeguards for union members. Even so, the federal law does not restrict labor organizations in their choice of officers or stewards or require unions to conduct their affairs so that supervisors are not stewards. The rationale appears to be to avoid regulatory entanglement

in internal union administration unless Congress very clearly intended it. See Brock v. Writers Guild of America, 762 F.2d 1349, 119 L.R.R.M.(BNA) 2808 (9th Cir. 1985) (Congress did not intend to restrict candidate eligibility in union elections based on the supervisory status of the candidate).<sup>4</sup>

Even under federal law, which has more oversight of internal union procedures than Alaska law, there is no absolute, per se prohibition against a union's allowing a supervisor to hold union office. Because this Agency has no specific statutory authority to regulate internal union affairs, we decline to establish a blanket rule on whom may serve as a union shop steward. We therefore find that allowing a unit member with supervisory duties to participate in an election for steward or to serve as a steward, without more, does not violate AS 23.40.110(c)(1)(A).

Nevertheless, a labor organization is responsible for the actions of its stewards. Threats or acts of violence by a shop steward, for example, violate the federal equivalent of AS 23.40.110(c)(1)(A). In Communications Workers of America, Local 9431, 304 N.L.R.B. No. 54, 138 L.R.R.M.(BNA) 1483(1991), the union violated section 8(b)(1)(A) of the Labor Management Relations Act (LMRA) when a steward assaulted a union dissident who was attempting to attend a union meeting. In addition, threats of reprisals can violate this section. Teamsters Union Local No. 287, 304 N.L.R.B. No. 20, 138 L.R.R.M.(BNA) 1327 (1991) (removal of a dissident's name from a dispatch list). Because of the conflicts inherent in the two roles of steward and supervisor, a supervisor/steward may have opportunities to commit unfair labor practices.

Complainants in these cases have raised three circumstances that they claim restrained or coerced them in the exercise of protected rights.

### **1. The letter by union steward Sal Galvano about food theft.**

Sal Galvano, a CO III with supervisory duties who served as chief shop steward of the Spring Creek facility, posted a letter expressing concern about food theft in the institution. His chief concern seems to be that meal service for employees could be discontinued as a result, and he asks union members to pay for their meals. While the letter may have offended several bargaining unit members, it in no way restrained or coerced employees in the exercise of rights protected under the Public Employment Relations Act in AS 23.40.080.<sup>5</sup> Galvano did not single out a particular member. He simply warned all members that certain conduct could result in the loss of a benefit.

The ASEA did not violate AS 23.40.110(c)(1)(A) when its shop steward posted this letter on the union notice board in the Spring Creek facility. Whether or not Galvano was authorized to use Seward chapter stationery or to post such a letter is immaterial because the letter does not coerce or restrain employees in exercising rights protected under AS 23.40.080.

### **2. Discipline or the threat of discipline of Vernon Gilliam for his response to the food theft letter.**

The response of the shop steward to the fuss his letter raised is more troublesome. Despite ASEA's protests to the contrary, Galvano acted as an agent of ASEA when he posted his letter: he printed the letter on chapter stationery; he used the ASEA notice board; and he addressed the letter, as a fellow union member, to his "brothers and sisters." This conduct is consistent with Galvano's role as a shop steward. On the other hand, he responded to Gilliam's letter as a supervisor. The letter of instruction Galvano wrote to Gilliam was a warning that threatened discipline.

Discipline or threats of discipline by a shop steward for speech by a union dissident could chill the exercise of protected rights. But Gilliam was not acting as a union dissident or engaging in any protected conduct when he wrote his letter. He was not forming, joining or assisting a labor organization or even resisting one. He was not engaging in any concerted activity for the purpose of collective bargaining or "other mutual aid or protection." AS 23.40.080. The closest Gilliam comes to engaging in protected activity is his criticism of Galvano for representing management's interests rather than "our interests."

While this is a close case, we cannot conclude from the evidence that Gilliam engaged in concerted activity for mutual aid or protection. He was acting alone and appears to be more affronted by the inference that he was being called a thief than by group concerns.



Because this is a close case, we address whether the union would be liable for Galvano's conduct if we had found he had restrained or coerced Gilliam in the exercise of protected rights. A shop steward is a union's agent in dealing with unit members and management. The doctrine of agency should establish when a union is liable for the acts of its stewards. AS 23.40.110(c) prohibits unfair labor practices by "a labor or employee organization or its agents." Emphasis supplied. See Munson v. State of Alaska, Decision & Order No. 206, at 25 (September 20, 1996). The issue is whether Galvano acted within the scope of his actual or even apparent authority as an agent when he responded to Gilliam's letter. We have found that Galvano acted as a supervisor when he "warned" Gilliam that he acted inappropriately. The union should not be responsible for the conduct of the State's supervisors in the performance of their supervisory duties. Galvano acted outside of the scope of his authority when he wrote Gilliam the letter of instruction.

In addition, ASEA responded to the letter by pursuing a grievance for Gilliam and obtaining the removal of the letter from his personnel file. ASEA also responded to a judicial panel complaint by removing Galvano from his position as steward.

A union can avoid liability for the acts of its agents if it effectively repudiates their conduct. Communications Workers of America, Local 9431, 304 N.L.R.B. No. 54, 138 L.R.R.M.(BNA) 1483 (1991); East Texas Motor Freight, 262 N.L.R.B. No. 101, 110 L.R.R.M.(BNA) 1547 (1982). By pursuing Gilliam's grievance and removing Galvano as a steward in the judicial panel proceeding, the union effectively repudiated Galvano's conduct and would not be liable even if the conduct had improperly coerced or restrained Gilliam in the exercise of protected rights.

A comment is appropriate on ASEA's violation of its own rules by refusing to allow Munson to participate as a representative at the judicial panel proceeding. This Agency does not enforce union constitutions, by-laws, stewards handbooks, or any other policies or procedures the union might have unless the conduct reaches the level of a breach of the duty of fair representation. See Martin Malin, Individual Rights within the Union 418 (1988) (violations of the union constitution or by-laws that are solely internal union matters without employment consequences are not unfair labor practices under section 8 of the LMRA). Although the union did violate its own procedures, it considered the complaint, and the judicial panel removed Galvano as a result. Thus, the procedural violation did not result in any violation of ASEA's duty of fair representation.

### **3. Threatening retaliation and intimidating unit employees for participating in a petition effort to recall steward Galvano.**

Complainants also raise retaliation and intimidation for participating in a recall effort as another instance of a union unfair labor practice. Participating in a recall effort is certainly concerted activity and likely protected under AS 23.40.080. Depending on the specific actions, threatening retaliation or intimidation could be coercion or restraint of employees in the exercise of protected rights in violation of AS 23.40.110(c)(1)(A). But Munson and Gilliam did not offer evidence of any retaliation or intimidation in this case.<sup>6</sup>

Moreover, ASEA responded to the concerns about the recall by advising of its judicial panel procedures and making them available to the union members.

In conclusion, we do not find conduct that violated AS 23.40.110(c)(1)(A). If we had, ASEA would have avoided liability for the conduct because it repudiated the actions of its agent in

two ways -- by pursuing the grievance for Gilliam and for removing Galvano from his position as shop steward.

### **4. Remedy.**

Since we do not find that ASEA committed any unfair labor practices, we do not award complainants a remedy. If we had found a violation, the appropriate remedy under AS 23.40.140 would be an order to cease and desist the specific conduct resulting in the violation. Because we did not find that allowing a supervisor to participate in an election for shop steward was a per se unfair labor practice, we would not order ASEA to cease and desist its practice of allowing supervisory personnel from holding elected or appointed positions or from handling grievances, as Munson requests.

Complainants' prehearing brief, at 6.

### Conclusions of Law

1. This Agency has jurisdiction under AS 23.40.110 to consider this matter.
2. As the complainants in these unfair labor practice charges, Munson and Gilliam each has the duty to prove the elements of his charges by a preponderance of the evidence. 8 AAC 97.350(f).
3. Allowing a unit member who is a supervisor to serve as a shop steward is not a per se violation of AS 23.40.110(c)(1)(A).
4. While a union is liable for the unfair practices of its stewards as its agents, we did not find the conduct of steward Galvano to be an unfair labor practice in this case.
5. If we had found the conduct of steward Galvano to be an unfair labor practice under AS 23.40.110(c)(1)(A), we would conclude that ASEA had effectively repudiated the conduct and therefore avoided liability for the unfair labor practice.

### ORDER

1. The charges filed by complainants in these consolidated actions are dismissed.

ALASKA LABOR RELATIONS AGENCY

Alfred L. Tamagni, Sr., 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 HENRY T. MUNSON vs. ALASKA STATE EMPLOYEES ASS'N/AFSCME LOCAL 52, AFL-CIO and VERNON L. GILLIAM vs. ALASKA STATE EMPLOYEES ASS'N/AFSCME LOCAL 52, AFL-CIO, CASE NOS. 95-358-ULP & 95-362-ULP (Consol.), dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 23rd day of September, 1996.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 23rd day of September, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

Henry T. Munson, Complainant

Vernon L. Gilliam, Complainant

Stan Hafferman, ASEA

## Signature

1The State of Alaska is the respondent in related charges brought by complainants Henry T. Munson and Vernon L. Gilliam in 95-357-ULP, 95-361-ULP, 65-398-ULP, and 95-401-ULP. Munson v. State of Alaska, Decision & Order No. 206 (September 20, 1996).

2The shift schedules at the Spring Creek Correctional Center are described in Alaska State Employees Ass'n/AFSCME Local 52 v. State, Decision & Order No. 195, at 3 ¶6 (Sept. 26, 1995) (sack lunches case).

3AS 23.40.110(a)(2) prohibits a public employer or its agent from dominating or interfering with the existence or administration of a union.

4On the other hand, the union itself might be able to restrict active participation of supervisors in union affairs. See Brennan v. Steamfitters Local 449, 64 F.R.D. 633, 87 L.R.R.M.(BNA) 2782, 2784 (W.D. Pa. 1974) (addressing business owners rather than supervisors), discussing Local 636 of Journeymen and Apprentices of Plumbing & Pipe Fitting Industry, AFL-CIO v. NLRB, 287 F.2d 354, 47 L.R.R.M.(BNA) 2457 (W.D. Pa. 1961).

5AS 23.40.080 provides:

Public employees may self-organize and form, join, or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

6The complainants did provide evidence of Galvano's statements to one of the signers of the recall petition that might have been intimidating but did not intimidate that signer in the cases against the State, but they did not offer this evidence in the cases against ASEA. See Munson v. State, Decision & Order No. 206, at 22 (September 20, 1996).