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ALASKA STATE EMPLOYEES ASSOCIATION, AFSCME LOCAL 52, AFL-CIO,

PETITIONER ,

vs.

STATE OF ALASKA,

RESPONDENT.

Case No. 99-995-CBA

DECISION AND ORDER NO. 248

Digest: The classification dispute between ASEA and the State of Alaska is subject to the sole and exclusive method provided in Article 17 of the parties' contract, and not the Article 16 grievance-arbitration provision. The Board will not order arbitration of a matter that is clearly not arbitrable.

Appearances: Kelly Brown, Business Agent for Alaska State Employees Association (ASEA); and Kent Durand, attorney for State of Alaska (State).

Panel: Vice-chair Blair Marcotte, and members Robert Doyle and Karen Mahurin.

DECISION

Statement of the Case

On May 24, 1999, ASEA filed a petition requesting that we order the parties to arbitrate their dispute over the job classification of employee Celeste Sozoff. The State responded that the matter is not appropriate for arbitration; rather, it argues this is a classification dispute subject to the terms in Article 17 of the parties' contract. The State contends Article 17 is the sole and exclusive method for resolving classification disputes.

This matter was decided based on the written record and briefing of the parties. The record closed on November 5, 1999, when reply briefs were due.

Issues

1. Is the dispute in Case No. 99-995-CBA between ASEA (Celeste Sozoff) and the State of Alaska a classification dispute under Article 17 of the parties' collective bargaining agreement?

2. If the above matter is a classification dispute, is it subject to the procedure in Article 17, or is it subject to the Article 16 grievance-arbitration procedure in the parties' collective bargaining agreement?

Findings of Fact

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

1. ASEA filed a grievance on behalf of Celeste Sozoff in March 1996. The grievance alleges sex discrimination by the State, and contends Sozoff should get equal pay for equal work. The grievance states Sozoff was hired by the Department of Transportation and Public Facilities (DOT/PF) in August 1992 as an Administrative Assistant I, Range 12. Effective October 1, 1993, Sozoff was reclassified as an Administrative Assistant II, Range 14. The grievance further states an Engineering Assistant III, Range 18 had performed her duties previously. In an April 16, 1996 letter accompanying the grievance form, Business Agent Richard Seward contended DOT/PF management had not classified her position properly. He stated that a male had previously held Sozoff's position, and that the position like hers in the South-Central Region, also held by a male, was paid at four pay ranges higher. He contended this was a violation of Article 6 of the parties' collective bargaining agreement. He also alleged violations of contract Articles 4 and 10. The grievance asks that the employer reclassify Sozoff's position to Engineering Assistant III. (Joint Exh. III) The grievance was filed under Article 16 of the parties' collective bargaining agreement.

2. On March 28, 1996, James R. Weed responded for the employer. He denied the grievance, stating it was primarily a classification issue and was therefore improperly filed. He asserted it should be filed under contract Article 17. (Joint Exh. III).

3. ASEA filed the grievance at Step II on April 17,1996. On April 25, 1996, the State again denied it. The employer, through Rodney R. Platzke, Director of Design and Construction, denied it because "it is primarily a classification issue to be handled under Article 17 contract provisions. The classification review of PCN 251370 under Article 17 of the ASEA contract is currently in progress." (Joint Exh. III).

4. On May 2, 1996, ASEA filed the grievance at Step III, reiterating the above arguments. Deputy Commissioner Kurt Parkan sent a denial of the Step 3 grievance on May 17, 1996. Parkan stated Sozoff's classification issue was "under review following the explicit process outlined in the contract." Therefore, "a parallel grievance review . . . would not be appropriate." (Joint Exh. III).

5. ASEA filed at Step IV of the grievance process on May 24, 1996. On March 6, 1997, Kathy Dietrich, Business Agent with ASEA,[1] wrote Phyllis Schmidt confirming their conversation from a few days earlier. The letter indicates there was an undocumented verbal agreement to hold the case in abeyance pending the Article 17 process, arbitration, and the personnel board findings. It also indicates the employer understood the Step IV filing to be a demand for arbitration. Dietrich requested that the file remain open while the parties attempt to resolve it.

6. On May 24, 1999, ASEA filed a petition to enforce the collective bargaining agreement. Specifically, ASEA requested that the parties be ordered to proceed to arbitration. The State contested the petition, contending arbitration was not required.

7. On June 16, 1996, Ms. Sozoff's position was reclassified to an Equal Employment Officer II, range 16, step E. Ms. Sozoff was promoted to this reclassified position. (Stipulation of parties. See Petitioner's Hearing Brief at 6).

8. Article 16 of the parties' collective bargaining agreement provides for a grievance-arbitration process. Article 16.01A defines a grievance as "any controversy or dispute involving the application or interpretation of the terms of this Agreement arising between the Union or an employee or employees and the Employer." It goes on to state: "The Union or the aggrieved employee or employees shall use the following procedure as the sole means of settling grievances, except where alternative dispute resolution and appeal procedures have otherwise been agreed to in this collective bargaining agreement, in which case the applicable alternative procedure shall be the exclusive appeal process available to the employee or employees." (Collective Bargaining Agreement, Joint Exh. I [also denoted Petitioner's Exh P-1] at 29-32).

9. Article 17 describes the procedure for classification reviews. It gives an employee the ability to obtain a review of the employee's position. Reviews of individual positions (Article 17.01) may advance through a four-step process, culminating in a decision by the Director of the Division of Personnel, who decides the position's proper allocation and notifies the parties. There is no provision for review or appeal beyond this step. Article 17 states: "The procedures in

this Article shall be the sole and exclusive method for settling any dispute concerning classification matters." (Joint Exh. I at 33-34).

10. The parties dispute the proper job classification of employee Sozoff's position with DOT/PF.

DISCUSSION

Petitioner ASEA requests that, if we do not find this matter subject to Article 17 of the parties' contract, we should order the parties to "arbitration on the merits of the discrimination grievance immediately." (Petitioner's Hearing Brief at 2). It contends, *inter alia*, that the State "refuses to allow an arbitrator to decide a 'question of arbitrability' that has arisen between the parties." (*Id.* at 1). It argues that "within the process" of the employee's classification review, the employer discriminated against the employee on the basis of gender. (*Id*. at 12; Petitioner's Reply Brief at 1, 4.)

The State, in contrast, argues that the dispute raised by ASEA concerns classification matters, which are subject to the "sole and exclusive" procedures outlined in Article 17 of the parties' contract. The State asserts that Article 16 of the parties' contract, the so-called "Grievance-Arbitration clause", "clearly states that alternative appeal process, such as the Article 17 classification review process, are exceptions to the grievance-arbitration process and such exceptions are the exclusive appeal process available to employees and the Union." (Respondent's Hearing Brief at 8.). As such, the State argues that "[t]o grant the Union's request to apply the grievance-arbitration process under Article 16 would be in direct contravention to that Article 16 as well as Article 17 of the parties['] CBA." (*Id*. at 7).

In *Alaska Public Employees Ass'n v. State of Alaska*, 831 P.2d 1245 (Alaska 1992), the Alaska Supreme Court addressed the issue "whether the state's classification plan for state jobs and its assignment of salary ranges to that plan are mandatory subjects of collective bargaining under Alaska's Public Employment Relations Act (PERA)." *Id*. at 1246.

The court stated: "Pursuant to the State Personnel Act, AS 39.25, the state must establish a 'position classification plan' for all state employees covered by the Act. (footnote omitted). Under such a plan, each position, or job, is assigned to a class based on duties, responsibilities, and requirements of training or experience. The Personnel Act also requires the state to establish a pay plan for all classified positions. (footnote omitted). Under the pay plan, the job classes are assigned to salary ranges, and then pay rates are assigned to the salary ranges." The court concluded that the classification plan and its assignment of salary ranges are not mandatory subjects of collective bargaining.

At the time of the dispute in the case, APEA represented the general government unit of employees (as ASEA does now), and the supervisory unit. The court pointed out that

> [p]rior to 1987, the APEA and the state had negotiated agreements for both units that permitted the state to classify jobs and to assign salary ranges to the classifications. (footnote omitted). The agreements also provided APEA with an appeal procedure by which the union could contest the state's job classification decisions and salary range assignments up through the Department of Personnel to, ultimately, the Commissioner of Administration. When the APEA and the state entered into negotiations for new agreements to replace those that expired on June 30, 1987, APEA proposed to alter the provisions covering the union's right to contest job classifications and salary range assignments. In particular, APEA wanted the new contracts to provide that all job classification and pay plan disputes would be resolved through a grievance procedure with binding arbitration as its final step.

Id. at 1246.

APEA also argued that even if job classification and salary range assignment are not mandatory subjects of collective bargaining, the State still must submit disputes over those issues to binding arbitration. The court disagreed, finding that "[b]inding arbitration is not absolutely available when the matter in dispute is not a mandatory subject of bargaining. *See Kenai Peninsula Educ. Ass'n v. Kenai Peninsula Borough School Dist.*, 628 P.2d 568, 569 & n. 1 (Alaska 1981) (*KPEA*)." *Id*. at 1252.

The court held that "APEA's agreements with the State contained no provision for mandatory arbitration of classification plan and pay range assignment disputes, and no basis exists for the implication of such a remedy. See supra note 3 and accompanying text (describing APEA's bargained-for appeals procedure for the state's job classification and salary range assignment decisions). Under the facts of this case, the State's actions related to job classification and salary range assignments are not subject to binding arbitration." *Id.* at 1252.

Here, we find ASEA's argument similar to that urged by APEA in the above case, *KPEA*. The contract in this case provides for a separate procedure for settling classification disputes. This procedure, described in Article 17, is an alternative procedure to that outlined for grievance-arbitration disputes in Article 16. Further, Article 16 applies "except where alternative dispute resolution and appeal procedures have otherwise been agreed to in this collective bargaining agreement, in which case the applicable alternative procedure shall be the exclusive appeal process available to the employee or employees."

We find the parties have agreed to an alternative dispute procedure for settling classification disputes. That procedure is found in Article 17 of their agreement. We further find the parties dispute employee Sozoff's proper job classification. After reviewing the record and considering the parties' arguments, we find this is a classification dispute subject to the "sole and exclusive" method for settling classification matters in Article 17. Article 17 does not provide for arbitration of classification disputes. Therefore, ASEA's petition to order the parties to arbitration is denied and dismissed.

CONCLUSIONS OF LAW

1. The State of Alaska is a public employer under AS 23.40.250(7), and the Alaska State Employees Association is an organization under AS 23.40.250(5). As petitioner, ASEA has the burden to prove all elements of its case by a preponderance of the evidence.

2. This Agency has jurisdiction to consider ASEA's petition to enforce its collective bargaining agreement with the State under AS 23.05.370(a)(5) and AS 23.40.210.

3. AS 23.05.370(a)(5) and AS 23.40.210 authorize this Agency to determine the arbitrability of a dispute.

4. The parties' agreement contains a grievance-arbitration procedure in Article 16. That procedure culminates in binding arbitration.

5. The parties' agreement provides an alternative dispute resolution procedure for classification disputes, in Article 17. This Article provides the sole and exclusive means of resolving classification disputes.

6. As a general rule to promote self-governance, this Agency will enforce a bargaining agreement by compelling the parties to follow their grievance-arbitration procedure for disputes covered under it. However, the Agency is not required to order the arbitration of claims that are clearly not arbitrable. *See, e.g., Alaska State Employees Association v. State of Alaska*, Decision and Order No. 235 (1998).

7. The subject matter of this dispute is classification of employee Sozoff's job position. The procedures in Article 17 of the parties' collective bargaining agreement, rather than the Article 16 grievance-arbitration procedures, govern resolution of this dispute and are the appropriate procedures to follow in resolving this dispute.

ORDER

1. The petition by the Alaska State Employees Association to enforce the bargaining agreement and compel arbitration is DENIED.

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

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/s/ Blair Marcotte, Vice-chair

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/s/ Karen Mahurin, Board Member

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/s/ Robert A. Doyle, Board Member

[Signatures on file]

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtrained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of *ALASKA STATE EMPLOYEES ASSOCIATION, AFSCME LOCAL 52, AFL-CIO,* vs. *STATE OF ALASKA*, Case No. 99-995-CBA, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 7th day of February, 2000.

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Margie Yadlosky

Personnel Specialist I

This is to certify that on the 7th day of February, 2000, a true and correct copy of the foregoing was faxed and mailed, postage prepaid, to

Kelly Brown, ASEA

Kent Durand, State

Signature

1 Dietrich apparently replaced Richard Seward in this matter.