ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 208
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
907-269-4895
FAX 907-269-4898

ALASKA PUBLIC EMPLOYEES ASSOCIATION, AFT/AFL-CIO,

PETITIONER,

vs.

CITY OF FAIRBANKS,

RESPONDENT.

Case No. 99-1010-CBA

DECISION AND ORDER NO. 249

Digest: The wage survey dispute between the parties is subject to the arbitration procedure in the parties' collective bargaining agreement. The dispute concerns the interpretation, application, or alleged violation of a provision of their agreement.

DECISION

Statement of the Case

On August 9, 1999, the Alaska Public Employees Association (APEA) filed a petition requesting that we order the parties to arbitrate their dispute over Article 23, Section 6 of the parties' collective bargaining agreement. The employer, City of Fairbanks (City), contests this petition, arguing that APEA's request is not appropriate for arbitration.

The parties submitted exhibits and written arguments. This decision is based on those documents, arguments, and the pleadings. After initially closing the record, we reopened the record and ordered the filing of additional documentation, including a copy of the collective bargaining agreement between the parties. The record again closed on February 22, 2000, after we received the required documentation.

Panel: Vice-chair Blair Marcotte, and members Dick Brickley and Karen Mahurin.

Appearances: Bob Watts, business agent for Alaska Public Employees Association (APEA); and Patrick Cole, deputy city attorney for City of Fairbanks (City).

Issues

1. Whether this Agency has jurisdiction to decide the issue of arbitrability in this case;

2. If the Agency has jurisdiction, whether the Agency or an arbitrator should decide the issue of arbitrability; and

3. If the Agency decides arbitrability, whether the particular dispute is arbitrable.

Findings of Fact

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

1. The Alaska Public Employees Association (APEA) is recognized as the exclusive collective bargaining representative of certain employees of the City of Fairbanks (City). (Collective Bargaining Agreement).

2. In May 1994, the parties entered into a collective bargaining agreement (CBA), effective for the period January 1, 1994, to December 31, 1997.

3. The parties' CBA provides for a grievance procedure in Article 7. It states that "[i]t is the mutual desire of the City and the APEA to provide for the prompt adjustment of grievances in a fair and reasonable manner, with a minimum amount of interruption of the work schedules." It defines grievance as follows:

> A grievance is defined as any good faith and material dispute between any member(s) of the Association and the City involving the interpretation, application, or alleged violation of any provision of this Agreement, department Rules and Regulations or the Fairbanks General Code. The City and the Association may mutually agree to use the grievance procedure for other matters.

4. On December 23, 1997, APEA filed a grievance (number FCI-97-03) pursuant to the CBA's Article 7 provisions. (Petitioner's Exh. 17). The grievance alleged the City violated Article 23, section 6 of the CBA – Annual Wage Survey. That section states:

> Starting in July 1995 the City and APEA will conduct a comprehensive wage survey of classifications covered by APEA during July of each year of this agreement. The City shall pay at the average level as revealed by the survey. Salaries found to be above average shall be frozen until the survey reveals that they have fallen below average. The process shall be the same as the wage survey conducted by the parties in September 1993. Increases, if any, are to be implemented on January 1 of each following year.

5. The City denied the grievance throughout the three-step process provided for in the CBA. A conciliation meeting was also unsuccessful. In a January 12, 1998, letter to Bob Watts, City Mayor James C. Hayes outlined the reasons for denial of the grievance at step 3:

> [T]he reasons include untimeliness, the fact that the CBA expired December 31, 1997 (which relates to the question of implementation, if any, on a date after expiration of the CBA) and the fact that the grievance asks for a remedy that is not in accordance with the CBA (Article 23, section 6), even if the CBA had not expired.

6. APEA then requested arbitration pursuant to the procedure outlined in Article 7, section 2 of the CBA. This section states in part: "If the decision of the City Manager is unsatisfactory to the grievant, APEA may, within fifteen (15) calendar days of the delivery of the decision, advance the matter to binding arbitration." The City denied it was required to arbitrate the dispute.

7. On August 9, 1999, APEA filed a petition with this Agency, requesting that we order the parties to arbitration. In its petition, APEA contends the parties' CBA requires that the City provide annual wage surveys, and submit those surveys to the City Council for consideration. It alleged the City did not conduct the surveys.

8. On September 13, 1999, the City responded. It denied it was required to arbitrate this dispute. The City acknowledged that the CBA included a provision for an initial wage survey and recurring surveys. However, the City argued, among other things, that the Alaska Supreme Court has ruled that "there is no legal obligation for payment of the increases by the City to the employees [pursuant to a wage survey]."

DISCUSSION

1. Whether this Agency has jurisdiction to decide the issue of arbitrability in this case.

APEA argues that this Agency has jurisdiction to decide the issue of arbitrability here. Citing to previous Agency decisions, APEA contends we have concluded we do have jurisdiction to decide an issue over arbitrability. The City did not address this issue in its briefing. In any event, APEA points out correctly that in *Fairbanks Fire Fighters Association v. City of Fairbanks*, Decision and Order No. 244 (June 8, 1999), we addressed this issue. In concluding we had jurisdiction over the arbitrability issue between the parties, we cited the following language from another case involving the City, *Fairbanks Fire Fighters Ass'n v. City of Fairbanks*, Decision and Order No. 142 (July 15, 1992):

> The Agency's authority to enforce the agreement under AS 23.40.210 can be analogized to the courts' authority under Section 301 of the Labor Management Relations Act. Under Section 301 the United States Supreme Court defined a relationship that recognizes arbitration as the principal mechanism to resolve disputes arising under the bargaining agreement. See Steelworkers trilogy, Steelworkers v. American Mfg. Co., 363 U.S. 564, 46 L.R.R.M. (BNA) 2414 (1960); Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 46 L.R.R.M. (BNA) 2416; Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 46 L.R.R.M. (BNA) 2423 (1960), discussed in 1 Charles J. Morris, supra 917; see also, AT&T Technologies v. Communications Workers of America, 475 U.S. 643, 121 L.R.R.M. (BNA) 3329 (1984).
>
> This view is consistent with that of our predecessor in this case, DOLLRA.[1] When DOLLRA considered the Fire Fighters' earlier petition to enforce the collective bargaining agreement, it stated that it would not substitute itself for the parties' dispute resolution procedures in their agreement. Instead, it would give effect to the agreement by compelling the parties to arbitration.

(Decision and Order No. 142 at 11).

As we have consistently concluded in prior decisions, we again find that we do have jurisdiction over the arbitrability issue. We find that the Public Employment Relations Act (PERA) grants us jurisdiction over certain public employers and public employees in Alaska. *See* AS 23.05.370(a)(5), and Section 4, ch. 113, SLA 1972. PERA addresses grievance arbitration in AS 23.40.210. It provides this Agency with jurisdiction to enforce arbitration clauses: "The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency." AS 23.40.210(a) (in part). The Agency does consider petitions to enforce collective bargaining agreements. 8 AAC 97.510--520.

This grant of jurisdiction includes our consideration of disputes that arise out of the parties' collective bargaining relationship. There is no statute in PERA (and the City has not pointed to one) that suggests our jurisdiction extends to all matters except arbitrability determinations.

As the above-cited language in Decision and Order 142 states, we have consistently held that under PERA, we have jurisdiction to decide the arbitrability issue. In *Fairbanks Fire Fighters Association, Local 1324, IAFF, v. City of Fairbanks*, Decision and Order No. 244 (June 8, 1999), we discussed the problems that could result if we did not have jurisdiction:

> We find that to cede jurisdiction at the arbitrability stage would create an awkward, time-consuming and inefficient procedure: a party would first have to file a petition with the Agency, then put proceedings before the Agency on hold while it takes the arbitrability issue to court, and finally (assuming the court finds the dispute arbitrable) take the dispute to a third forum--the arbitrator. Additional litigation with the Agency could follow the arbitrator's decision. Assuming the court, this agency and the arbitrator all retained jurisdiction over certain issues, the parties would be required to pursue resolution of various aspects of their dispute at all three forums. Such a procedural scenario would be not only inefficient and inconvenient but expensive too. In this regard, we would be concerned if the courts decided to get involved in this threshold issue between parties subject to PERA. We believe the legislature accorded that jurisdiction to this Agency. Therefore, we again find, as we have done previously for many years (including cases involving the City), that we have jurisdiction to decide arbitrability disputes between parties over whom we have jurisdiction. That includes the parties in this case.

Id. at 6.

Based on the above analysis, we find we have jurisdiction to decide the issue of arbitrability.

2. If the Agency has jurisdiction, should the Agency or an arbitrator decide the issue of arbitrability?

APEA contends that only this Agency can decide the issue of arbitrability. The City did not take a position on this issue in its briefs or pleadings. As indicated from the discussion in issue number one above, we find we have jurisdiction to decide the issue of arbitrability in this case. We have reviewed the parties' agreement and do not find an article requiring that an arbitrator must decide the arbitrability issue. In fact, Article 7, section 2(c) states in part that "[t]he arbitrator shall consider and decide only the specific issue or issues submitted in the grievance and shall have no authority to decide other issues." APEA argues that this provision indicates that "only the ALRA [this Agency] has jurisdiction to decide this question of arbitrability." (Petitioner's opening brief at 12). We find that the provision in section 2(c) gives the arbitrator jurisdiction to decide all issues related to the interpretation, application, or alleged violation of any provision of the agreement. That jurisdiction would include deciding any issues related to the parties' grievance. However, as indicated in issue one above, we will decide the threshold issue of whether the dispute is arbitrable and whether it should be submitted to an arbitrator. We do not deem it necessary to determine whether we have exclusive jurisdiction, as APEA contends.

3. If this Agency decides arbitrability, is the particular dispute is arbitrable?

APEA requests that we find the dispute over Article 23 arbitrable, and that we order the parties to arbitration. APEA contends that the particular grievance issue is "arbitrable by an arbitrator." (*Id.* at 12).

The City contends it is not required to arbitrate this dispute, in light of *University of Alaska Classified Employees Ass'n v. University of Alaska* (*UACEA*), 988 P.2d 105 (Alaska 1999). The City argues that this case "made it clear once and for all that an arbitrator's grievance award which would require increased funding of a contract is meaningless." (City's brief at 1-2).

The City agrees that if the Article 23 wage survey was done, the City would incur a financial cost. It admits that it has not funded any APEA wage increases. (*Id*. at 2-3). It argues that "the law is clear." It contends that "[a]s a matter of law, unless the governing body of a municipality **acts** to fund the monetary terms of a CBA provision, the provision is not effective. The City Council has not **acted** to fund any increases." (*Id*. at 3. bold in original).

In addition, the City points out that in *Alaska Public Employees Ass'n v. City of Fairbanks*, 4FA-96-0757 CI (January 20, 1998), Judge Richard Savell stated: "The Alaska Supreme Court has held three times that, under §215(a), the monetary portions of bargaining agreements secured under PERA are not effective until funded by the appropriate legislative body." (4FA-96-0757 CI at 5; underline in original.).

The City goes on to argue that "there is no requirement that a CBA provision for wage survey updates be "submitted" to the City Council for section 215 to apply." It concludes that "[s]ince there is no legal right for APEA to obtain a binding and valid arbitrator's award that would require the survey updates be done and any increases paid," we should dismiss the petition. (City's brief at 3-4).

APEA responds that the issue in *UACEA* "is not even close to the issues before the Agency in this current petition." (APEA response brief at 1). APEA argues: "While the [City]'s arguments are not at issue before the Agency in this case, APEA contends that the City Council has not been presented with any negotiated salary increases whatsoever. The City Council cannot accept or reject something that they have not seen. [The City] relies on Supreme Court cases where the legislative body has reviewed negotiated salary increases and either accepted or rejected them. That is not the case here." APEA asserts that to follow the City's argument "would result in a situation whereby the City Council would be deprived of making their judgement to accept or reject a negotiated salary increase." APEA concludes the City's argument is a "red herring."

We find the parties have agreed to a procedure for settling disputes over "interpretation, application, or alleged violation of any provision" of their collective bargaining agreement. That procedure is found in Article 7 of the agreement. We

further find they dispute the interpretation, application and alleged violation of Article 23, a provision of the agreement. Therefore, we find this dispute must proceed through the grievance/arbitration procedure that is required in Article 7 of the agreement. Since the parties have completed the first three steps of the grievance procedure and have attempted conciliation, the next step under Article 7 is arbitration. The parties shall proceed to arbitration.

We reject the City's assertion that it is not required to arbitrate this dispute because the City Council might ultimately choose to decline to fund the monetary terms of an arbitration award or fail to act on the award. Under this scenario, the City, as employer, could circumvent the funding authority of the City Council by informing APEA that the City Council will not fund any increases in monetary terms; therefore, it refuses to participate in the contract's grievance/arbitration process regarding monetary terms. Such a policy would deprive the bargaining unit members of the right to the grievance/arbitration terms that the employer had agreed to in the negotiated contract. Whether or not the City, as employer, believes the City Council would not fund any salary increases required by the survey updates is not determinative. APEA has a contractual right to arbitrate any dispute over the interpretation, application, or alleged violation of the provision regarding those updates. If an arbitrator then finds in APEA's favor, any arbitration award containing a monetary increase must then be submitted to the City Council.

We also reject the notion that Judge Savell's decision stands for the proposition that the City alleges. In that decision, APEA had presented an arbitration award to the City Council for review. The City Council never took action on the award. APEA filed suit in superior court to require the City to fund the award. Judge Savell held that under supreme court precedent, the City did not have an obligation to act on the award, that is, to either approve or reject the award. Judge Savell's decision clearly did not discuss the issue in dispute here, whether the City is even required to arbitrate a dispute over contract terms.

CONCLUSIONS OF LAW

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

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

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 7. The grievance procedure culminates in binding arbitration.

5. 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.

6. The subject matter of this dispute, grievance FCI-97-03, is arbitrable because it raises issues concerning the interpretation, application, or alleged violation of Article 23 of the parties' agreement.

ORDER

1. The Alaska Public Employees Association's petition to enforce the collective bargaining agreement and compel arbitration is GRANTED. The parties shall proceed to arbitration pursuant to their collective bargaining agreement, within thirty days of issuance of this decision.

2. The City of Fairbanks 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

Blair Marcotte, Vice-chair

Karen Mahurin, Board Member

Dick Brickley, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained 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 PUBLIC EMPLOYEES ASSOCIATION, AFT/AFL-CIO, V. CITY OF FAIRBANKS*, Case No. 99-1010-CBA, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 24th day of March, 2000.

_____

Donna Bodkin

Administrative Clerk III

This is to certify that on the 24th day of March, 2000, a true and correct copy of the foregoing was mailed, postage prepaid to:

Bob Watts, APEA_____

Patrick Cole, City of Fairbanks___

_____

Signature

DOLLRA is the acronym for Department of Labor Labor Relations Agency, one of this agency's predecessors.