



## **DECISION**

### **Statement of the Case**

ASEA filed this petition seeking enforcement of an arbitrator's award unconnected to this dispute. ASEA alleges that the arbitrator concluded that the State's application of an unscheduled leave policy at the Alaska Psychiatric Institute ("API" or "the hospital") violated the parties' collective bargaining agreement relating to discipline for good cause. ASEA requests enforcement of the arbitrator's award as it applies to employee Pam Ramey, who was denied a request to take time off to attend a nurse's conference and training because of her attendance record.

The State denies that this dispute relates to the arbitrator's award. The State contends that the arbitrator's finding and award in a prior case is irrelevant to the grievance filed over Ramey's request to take time off for educational training. The State maintains that the Board should dismiss this petition and order the parties to pursue the contractual grievance/arbitration process.

### **Issues**

1. Should the Agency enforce a previous arbitrator's award in this disputed grievance, as requested in ASEA's petition?
2. Should the Agency order the parties to exhaust the procedures in their contract's grievance/arbitration clause?

### **Findings of Fact**

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

1. ASEA and the State entered into a collective bargaining agreement, effective July 1, 2004, through June 30, 2007. (Exh. 6).
2. The parties' grievance/arbitration procedure is contained in Article 16. This process consists of four steps with the last step culminating in arbitration. (Exh. 6, Article 16.01(I)).
3. Article 16.01(A) 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." This Article further provides that "(t)he 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."

4. Psychiatric Nurse Pam Ramey has worked for the State for approximately 20 years. She currently works in the Chilkat unit at the Alaska Psychiatric Institute (API) (hospital). There she assesses all types of mental illnesses.

5. Ramey has an asthmatic condition that sometimes causes her to miss work. She has sometimes exhausted her leave bank and had to take leave without pay.

6. To retain her nursing certification, Ramey (as well as other nurses) is required to obtain 30 credit hours of training every two years, with 20 of the 30 hours obtained outside the hospital and 10 hours inside the hospital. Each nurse has sole responsibility to obtain her or his required training hours. There is no requirement that the hospital provide time off for this training.

7. In September 2004, Ramey requested time off to attend an educational conference outside the hospital, a statewide nurses conference. She requested that the State pay for the costs of training since the training was scheduled on days she was scheduled to work. She previously had received approval for such requests, some of which the hospital allowed her to take without using her personal leave. Her direct supervisor approved the request, but Jane Barnes, then the hospital's Director of Nursing, denied the request.

8. In a September 7, 2004, email, Barnes explained to Ramey that Barnes was "limiting conference enrollment to those employees whose attendance is in the high acceptable to outstanding ranges, which you do not have. Please apply for other conferences when you can meet this criteria." (Exh. 3, page 2).

9. Ramey approached ASEA steward Lenny Grijalva, who asked Barnes for clarification of the policy. In an October 11, 2004, email, Barnes informed Grijalva that the hospital was under no obligation to assist nurses in obtaining continuing education credits. Eventually, ASEA filed a grievance, contending that the hospital's denial of time off for Ramey was a form of discipline. ASEA has advanced the grievance to arbitration.

10. A prior leave policy, applied by the hospital, required that employees would be held accountable if they had more than six unscheduled absences in six months. This policy was challenged in a prior grievance that culminated in arbitration. In an April 15, 2003, "Opinion and Award," Arbitrator Michael Beck concluded that the unscheduled leave policy applied by API, violated the parties' collective bargaining agreement because it subjected employees to discipline without just cause.

12. In his Opinion, Beck found that while the parties' collective bargaining agreement granted the State certain management rights, the agreement also provided that those rights could "not be applied in a manner that conflicts with the express terms of the Agreement. The Union [ASEA] contends that the 1998 Policy conflicts with several express terms of the Agreement." Beck then described the Policy:

Before specifically considering the Union's contentions it will be helpful to describe the general nature of the 1998 Policy. This Policy is generally referred to by arbitrators as a "no-fault" attendance or absentee policy. Such a policy, as is the case here, provides for progressive discipline based on the number of occurrences of absence from work during a specific period of time. Thus, a no-fault absentee plan eliminates the distinction between excused and unexcused absence. What the Employer [State] is trying to accomplish under these plans is to provide fixed disciplinary standards for excessive absenteeism regardless of whether the absences are the employee's fault. Thus, the fact that an absence may be covered by sick leave will not in and of itself render the plan unreasonable.

The 1998 policy equates absenteeism with unscheduled leave and makes clear that the Policy address unscheduled leave "regardless of the validity of the reasons for staff use of unscheduled leave." Therefore, the 1998 Policy can appropriately be described as a no-fault policy.

Under the [Collective Bargaining] Agreement, the Employer cannot discipline an employee without just cause. The question then arises regarding whether discipline can be imposed in a situation where the Employer has not established that the absences for which the Grievant was disciplined were the Grievant's fault.

(Beck Opinion and Award at 9-10).

13. Arbitrator Beck concluded that under the 1998 Policy, an employee could be subject to discipline (a written warning) for accumulating seven "unscheduled" absences in a six-month period, regardless of the nature of the unscheduled absences. These absences could include a request by an employee to take the day off and go fishing, if this request is not made "at least by the end of the employee's shift prior to the shift for which the leave is sought." (*Id.* at 11).

14. Arbitrator Beck found the 1998 Policy violated terms of the parties' collective bargaining agreement because the policy subjected employees to discipline without making a just cause determination. Beck ordered the State to cease and desist from applying this policy.

### **ANALYSIS**

ASEA argues that the State again violated arbitrator Beck's order by applying the no-fault leave policy to Ramey. ASEA maintains that the State did so because it punished Ramey for not having a "high acceptable" or "outstanding" attendance rating, and ASEA contends that arbitrator Beck's opinion was broad in scope and applies when the State seeks to punish an employee. (ASEA October 3, 2005 Brief at 6). ASEA alleges the State subjected Ramey to discipline by denying her request to attend the nurses' conference because of her attendance record, and without determining the reasons for Ramey's work absences.

The State rejects ASEA's argument, contending that arbitrator Beck's opinion and order is irrelevant to the policy the hospital applied to Ramey's training request. The State adds that it stopped applying the "no-fault" leave policy after Beck's opinion. The State argues that it now applies a just cause review prior to disciplining employees. (State's October 2, 2005, Brief at 4). But the State further argues that discipline is not involved in this case, and it requests that the dispute proceed to resolution through the grievance/arbitration process.

The parties' current collective bargaining agreement contains a management rights clause. (Exh. 6, Article 4). This clause gives the State, among other powers, the right to "[r]ecruit, examine, select, promote, transfer and train personnel of its choosing, and determine the times and methods of such actions[.]" (Exh. 6, Article 4, no. 1). The State also has the authority to [d]iscipline, suspend, demote or dismiss employees for just cause[.]" (Exh. 6, Article 4, no. 6).

The parties disagree on whether the State's denial of training for Ramey constitutes a form of discipline without just cause. We find that to make this determination would require us to interpret the parties' collective bargaining agreement. Article 16 of their agreement contains the grievance - arbitration clause. Article 16.01(A) provides in part: "A grievance shall be defined 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. . . The Union or the aggrieved employee . . . shall use the following procedure as the sole means of settling grievances . . . ." (Exh. 6, Article 16).

We find the parties disagree over the interpretation of what constitutes discipline, and their collective bargaining agreement provides that the grievance - arbitration process is the sole means of settling grievances. Therefore, we conclude that this dispute must proceed to resolution through the grievance - arbitration process. We will deny ASEA's petition to enforce the arbitrator's award.

### **CONCLUSIONS OF LAW**

1. ASEA is an organization under AS 23.40.250(5), and the State of Alaska is an employer under AS 23.40.250(7).
2. ASEA failed to prove by a preponderance of the evidence that the Agency should grant its petition to enforce Arbitrator Beck's award against the State in the Pam Ramey grievance.
3. This dispute concerns interpretation of the parties' collective bargaining agreement. The agreement requires that an arbitrator rather than this Agency must decide the parties' disputed grievance.

## **ORDER**

1. ASEA's petition to enforce the arbitrator's award is denied and dismissed.
2. The parties shall proceed to resolution of this grievance through the grievance - arbitration process contained in the parties' collective bargaining agreement.
3. The State is ordered to post a notice of this decision and order at all work sites where members of this bargaining unit affected by the decision and order are employed, or, alternatively, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

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Gary P. Bader, Chair

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Dennis Niedermeyer, Board Member

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Gary A. Atwood, 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 Decision and Order No. 276, in the matter of *Alaska State Employees Association, AFSCME Local 52, AFL-CIO, vs. State of Alaska, Case No. 05-1350-CBA*, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of February, 2006.

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Sherry Ruiz  
Administrative Clerk III

This is to certify that on the 13<sup>th</sup> day of February, 2006, a true and correct copy of the foregoing was mailed, postage prepaid to:  
Doug Carson, ASEA  
Nancy Sutch, State of Alaska

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Signature