

[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

PUBLIC EMPLOYEES' LOCAL 71)
and CONFIDENTIAL EMPLOYEES)
ASSOCIATION,)
)
 Complainants,)
)
 vs.)
)
STATE OF ALASKA,)
)
)
 Respondent.)
_____)

ORDER AND DECISION NO. 100

SUBJECT: DUTY OF EXECUTIVE TO SUBMIT NEGOTIATED PAY RAISES TO
LEGISLATURE FOR FUNDING.

The State Labor Relations Agency (the "Agency") convened a hearing on July 18, 1986 to consider the unfair labor practice charges brought by complainant Public Employees' Local 71 ("Local 71") and Confidential Employees Association ("CEA") against the State of Alaska with respect to the State's obligation to submit the terms of contractual pay increases to the legislature. The hearing was conducted using telephonic communications for the convenience of witnesses and the Board. At the hearing, Chairman C. R. "Steve" Hafling and Ben Humphries were present in Anchorage and Marlene Johnson was present in Juneau and participated telephonically, and said membership so constituted a quorum. Local 71 was represented by Kevin Dougherty, Esq. and CEA was represented by James Johnsen, president of CEA. Various witnesses testified in Anchorage and from Juneau for the benefit of each party.

The Agency requested posthearing briefs. The Agency took note of the objection by Local 71 to the technically late filing of a posthearing brief by the State, but accepted and considered all posthearing briefs. The Agency having considered the arguments, the briefs supplied at various points in time including posthearing briefs, the evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following order and decision dismissing the complaint sought by the complaining parties.

FINDINGS OF FACT

1. Local 71 represents a substantial number of employees throughout the State of Alaska primarily in "blue collar" trades. CEA represents certain confidential employees in the classified service who are involved primarily in personnel and labor relations areas. During the relevant periods to this matter, each of these collective bargaining entities had a valid and enforceable contract with the State of Alaska for purposes of representation of specified employees.

2. The Local 71 and CEA contracts with the State provide by their terms for increases to covered employee compensation, and those terms were negotiated and were part and parcel of those contracts. The contracts specifically provided for no salary increase in fiscal year 1985, 5% increase in fiscal year 1986 and 3.8% increase in fiscal year 1987.

3. Collective bargaining agreements require good faith negotiation and participation by each party, and are subject to existing law. Article XXX of the Local 71 contract also provides:

The parties recognize that any monetary provisions of this agreement are subject to legislative appropriation in accordance with AS 23.40.215(a).

The employee shall be held free of any penalty paid or other punitive action for a period that is 90 days following the appropriation by the legislature for the funding of this agreement and when funds become available.

If a resolution disapproving the monetary terms of the agreement is passed by the legislature pursuant to AS 23.40.215(b), the party shall immediately reenter negotiations, to be conducted in accordance with AS 23.40.

CEA's contract with the State contains a similar provision.

4. In 1985, the Governor requested and the legislature funded the 5% fiscal year 1986 salary increase for Local 71 and CEA employees. At the end of the 1985 legislative session with respect to funding for fiscal year 1986, the legislature provided funding to implement the negotiated 5% salary increases and also adopted Legislative Resolution No. 19. That Resolution stated the intention of the legislature "that the Alaska State Legislature will not fund the monetary terms of the existing contracts for future years..." and gave further direction to the parties to renegotiate the monetary terms proposed for fiscal year 1987.

5. Local 71 and CEA were not able to renegotiate the terms of the salary increase projected for fiscal year 1987.

6. At the beginning of the 1986 legislative session, the Governor submitted, as required by the Executive Budget Act, a budget. That budget provided for an increase in the salaries of Local 71 and CEA employees of 3.8% and said submission was consistent with the terms and provisions of the contracts between the State and Local 71 and CEA. Subsequent to this submission of the budget including the requested pay increases for employees noted above, State revenue forecasts declined as oil prices began to slide in early spring 1986. The anticipated revenue was substantially less than that projected in the revenue forecasts which existed at the time of entry into the Local 71 and CEA contracts with the State.

7. The Governor's submission of a budget at the beginning of the 1986 legislative session included more than just the request for the full 3.8% funding for Local 71 and CEA salary provisions. The submission to the legislature included 16 "opening sections" in proposed HB 500 including a request for appropriation of \$20,716,000 to fund the 3.8% salary increase requests. The 16 opening sections dealt with various matters including continuing appropriations such as those relating to program receipts and other unique appropriations not generally or properly included within the regular agency budget. The extensive, detailed agency budget requests then followed the 16 sections.

8. Following the projected revenue decline in March, 1986, the Governor submitted to the legislature a revised operating budget identifying \$120,000,000 in proposed reductions to the State operating budget. On April 8, 1986 the proposed budget cuts were received by the legislature as a message from the Governor. The cover letter of April 8 expressly stated that "these pages provide for an additional \$120,000,000 in necessary operating cuts." The message did

not contain the first 16 sections of HB 500 as originally submitted to the legislature. The evidence indicates that the April 8, 1986 message to the legislature was not meant to exclude or otherwise change the initial 16 sections, which included reference to increases for the 3.8% salary increase, but was intended rather to relate solely to savings effected in the agency's budget--that is, in the sections ("these pages") following section 16. The testimony of Jay Hogan and Ray Gillespie support this conclusion.

9. Local 71 and CEA contended that it was the Governor's intention to delete the proposed 3.8% funding increase by omission of the relevant section in HB 500 from the April 8, 1986 message. This does not appear to be the intention in the April 8 message. Rather the omission of the salary increase provision simply meant that the April 8, 1986 budget message did not relate to that subject matter.

10. The legislature ended the 1986 legislative session by enacting certain appropriations. The legislature specifically declined to appropriate funds to implement the pay increase. In section 20 of the budget act as adopted by the legislature, the legislature stated, "Failure of the legislature to adopt a separate appropriation item for the pay raise constitutes rejection of the monetary terms of the collective bargaining agreement in accordance with AS 23.40.215." All the other appropriation requests set out in the "opening" sections of HB 500 (the original 16 sections as submitted by the Governor) were included in the final bill.

11. Following the adjournment of the legislature, the June, 1986 revenue forecast showed yet another even more dramatic decline in estimated revenue for fiscal year 1987.

12. Local 71 filed an unfair labor practice complaint in this matter dated April 17, 1986. CEA joined with Local 71, without objection by the State, and filed its unfair labor practice complaint dated July 16, 1986. No evidence was presented, nor did the complaints assert, that the State refused to negotiate with the unions following a denial of funding as referenced in AS 23.40.215.

CONCLUSIONS OF LAW

1. The Agency has jurisdiction to hear and consider complaints regarding unfair labor practices described in AS 23.40.110, and is authorized and charged with responsibility to make appropriate orders concerning such complaints pursuant to AS 23.40.140.

2. The State and collective bargaining agencies are obligated to bargain in good faith with one another. The contracts ultimately produced as a product of good faith negotiation, including the wage terms in them, are however subject under the Public Employment Relations Act to funding by the legislature. AS 23.40.215 provides:

a) The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

3. The Governor is obligated pursuant to the Executive Budget Act to submit a budget for the succeeding fiscal year to the legislature. The Governor complied with the mandates of the Executive Budget Act and included in that submission the 3.8% salary increase provided for under the collective bargaining agreements with Local 71 and CEA.

4. Under Alaska's Constitution, the legislature is responsible for determining funding and levels of funding for State government and expenditures. The executive branch is charged with negotiating collective bargaining agreements consistent with the law, and is further responsible for submitting a budget. These separate responsibilities of coordinate and equal branches of government fall within Alaska's Constitutional system of separations of power and checks and balances. Under that system the Governor can introduce and request a pay increase, but only the legislature can fund it.

This division of responsibilities is specifically recognized as a part of collective bargaining in AS 23.40.215.

ORDER AND DECISION

Based on the foregoing findings of fact and conclusions of law, the Agency by a 2 to 1 vote orders and decides that:

1. The State of Alaska, through its executive branch, acted in good faith by timely submitting a budget to the 1986 legislative session including proposed pay increases for Local 71 and CEA consistent with the terms of the collective bargaining agreements between the State and Local 71 and CEA. The evidence does not indicate that the Governor withdrew that budget request or acted in bad faith in complying with his responsibilities to submit that request to the legislature. The April 8, 1986 message did not constitute a withdrawal by the Governor of his then-standing request for funding of the negotiated 3.8% salary increase.

2. The legislature and not the executive branch is charged with appropriating funds for pay increases, and by law collective bargaining agreements including the Local 71 and CEA agreements with the State are subject to legislative funding. The legislature definitively declined to fund the 3.8% salary increases for Local 71 and CEA, and in the absence of that funding, Local 71 and CEA have no constitutional or contractual rights to it.

3. The State of Alaska, as employer, committed no unfair labor practice with respect to the presentation and funding of the 3.8% salary increases for Local 71 and CEA. As such, the unfair labor practice charges filed by Local 71 and CEA are dismissed.

DATED this 21 day of October, 1986.

STATE LABOR RELATIONS AGENCY

By _____
C.R. "Steve" Hafling
Chairman

[SIGNATURE ON FILE]

DISSENT TO STATE LABOR RELATIONS AGENCY
ORDER AND DECISION NO. 100

Member Ben Humphries respectfully dissents from the decision reached in Order and Decision No. 100 and would find that an unfair labor practice has occurred With respect to the State of Alaska's failure to implement the 3.8% salary increase for Local 71 and CEA employees. The reasons for so holding are:

1. Contract obligations in collective bargaining agreements, particularly wage terms, are special, recognized obligations once those contract terms have been agreed upon between the employer and the employees' collective bargaining representatives. A contract is a contract. Here, Local 71 and CEA negotiated for and won salary increases and as such the State of Alaska was committed as an institution to support those increases.

2. While AS 23.40.215 provides that the monetary terms of a collective bargaining agreement are subject to legislative appropriation, that provision does not mean that agreed upon salary increases should be denied. Rather, budgetary decisions should be applied to the particular groups of employees SO as to accommodate both negotiated salary increases and the overall budget.

DATED: 10-20-86

BEN HUMPHRIES, Member
State Labor Relations Agency

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