

[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION (APEA),)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA, DEPARTMENT OF)
CORRECTIONS,)
)
Respondent.)
_____)

PET 86-1

ORDER AND DECISION NO. 101

SUBJECT: INTERPRETATION OF LETTER OF GRIEVANCE RESOLUTION IN LIEU OF ARBITRATION; PETITION TO ENFORCE

The State Labor Relations Agency (the "Agency"), having duly appointed Robert M. Johnson to act as hearing officer in the foregoing matter, adopts as its decision the proposed findings of fact, conclusions of law, and recommended decision by Mr. Johnson, as attached hereto.

DATED this 1 day of December, 1986

STATE LABOR RELATIONS AGENCY

By: _____
C.R. "Steve" Hafling
Chairman

[Signature on File]

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HEARING OFFICER'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND RECOMMENDED ORDER AND DECISION

The State Labor Relations Agency (the "Agency") appointed Robert M. Johnson to act as hearing officer in a hearing to consider the petition of the Alaska Public Employees Association ("APEA") to enforce the terms of a letter of grievance resolution between APEA and the State of Alaska Department of Corrections ("State") concerning probation officer Donald Allen. APEA filed a petition to enforce dated September 19, 1986, and a hearing was conducted in the matter on November 5, 1986 in Juneau, Alaska. Robert M. Johnson, attorney, presided at the hearing. APEA presented its case through Bruce Ludwig, general counsel. The State presented its case through Kimberly Gerraghty. Each side called witnesses and presented arguments. After having considered the arguments and evidence presented, the hearing officer enters the following proposed findings of fact, conclusions of law and recommended decision.

Findings of Fact

1. APEA is the collective bargaining representative for the State Department of Corrections' probation officers including Donald Allen. Mr. Allen is a Probation Officer II in Fairbanks, Alaska.

2. The State suspended Mr. Allen for various alleged infractions of policies and procedures. The actions of the State were appealed through the grievance procedure specified in the APEA-State collective bargaining agreement. Concurrently other grievances involving probation officers in Fairbanks were being processed as well and a total of five actions were prepared for presentation to an arbitrator.

3. On September 14 and 15, 1986, the State represented by Deputy Director Bruce Cummings and Labor Analyst Darlene Livermore negotiated with Bob Watts, APEA field representative, concerning a means of resolving the five grievances by way of settlement rather than arbitration. The State proposed a draft agreement encompassing Mr. Allen's case and four other cases. APEA retyped the agreement. The agreement was discussed with the principals involved, including the Regional Director for the Department of Corrections (with respect to the State's interest) and Don Allen (the employee whose interests were being represented by APEA).

4. A pertinent subject for discussion with respect to all the grievances concerned documentary evidence in the personnel records of each employee about alleged improprieties, suspensions and the like. The four grievants other than Don Allen were terminating their employment with the Department of Corrections, while Don Allen was transferred within that Department from a probation officer field assignment to the Fairbanks Correctional Center. As to the four individuals leaving State employment, the proposed agreement stipulated that specified documents would be removed from their respective personnel files. The State indicated, with respect to Don Allen, that material needed to remain in his personnel record for uses including any future disciplinary proceedings. All witnesses testified that no discussion occurred with respect to the use of materials left in Mr. Allen's record for evaluations. Bruce Cummings and Darlene Livermore testified that the use of documents in Allen's file for any future disciplinary proceedings was meant to be an example of use and not the exclusive or sole possible use of those materials. Bob Watts indicated that he interpreted the State's desire to keep records relating to Mr. Allen to be only for limited purposes and, although he did not discuss the point, not for evaluations.

5. The State and APEA agreed to execute a "Letter of Grievance Resolution Between the State of Alaska and Alaska Public Employees Association" dated September 16, 1985 ("Letter Agreement"). Cummings and Watts signed for the State and APEA respectively and all grievants affected signed. The Letter Agreement contained several critical elements with respect to Mr. Allen:

A. Language of integration. The Letter Agreement provided that "The parties agree that the following constitutes full and final resolution of all grievances filed on behalf of...Donald Allen..." and further that "the parties agree that this resolution constitutes full and final settlement of all grievances..."

B. Specific provisions for each grievant. Terms specific to each of the five grievants considered in the Letter Agreement were outlined and, in all cases other than Mr. Allen's, documents to be expunged from personnel files were listed. The provision relating to Mr. Allen was:

Mr. Allen shall be compensated in full for any loss of wages for the periods of suspension commencing February 27, 1985 and June 26, 1985; however these suspensions remain a matter of personnel record.

The Letter Agreement was thus silent on expunging or limiting the use of any of Allen's personnel records.

C. Language of coverage and non-liability. The final paragraph applicable to resolution of all grievances provided:

The parties agree that this resolution constitutes full and final settlement of all grievances, claims and actions of any nature by these named individuals concerning their employment with the State of Alaska, up to and through the date of signing of this resolution. The parties agree that this settlement is nonprecedent setting and shall not be referred to in any other grievance, arbitration negotiation, hearing, nor any other matter, except as may be necessary to resolve any dispute arising from the parties' rights and obligations in implementing its terms. The parties agree that this settlement does not constitute any admission of guilt or wrong doing on the part of either party [emphasis added].

The State testified that, except as to the underlined language in the foregoing, the paragraph was boiler plate with respect to the understandings of the parties, and appeared in most letter agreements entered into between the State and collective bargaining entities.

6. Subsequent to the entry into the Letter Agreement, several months of time elapsed during which the State and APEA engaged in communications and various steps to implement the Letter Agreement, including consolidation of medical reports, calculating wages owed, and the like.

7. On July 22, 1985 (prior to entry into the Letter Agreement), Mr. Allen was transferred from field responsibilities to the Fairbanks Correctional Center. This transfer entailed assignment to a new supervisor. It is normal personnel practice for a supervisor to prepare and send to the employee's new job station a signed interim performance evaluation in order to maintain a continuous record and to assist the new supervisor in rating the employee. An interim performance evaluation was prepared by Mr. Allen's supervisor for the period prior to July 22, 1985 and submitted on December 4, 1985 to Mr. Allen's new supervisor. The performance evaluation report rated Mr. Allen "unacceptable" in all rating categories, and contained a narrative section referencing Mr. Allen's prior performance and the reasons for prior suspensions. Attached to the interim performance evaluation were memoranda relating to Mr. Allen's prior suspension.

8. Mr. Allen's APEA representatives contacted the State and contended that the preparation of the narrative section, including the attachment of documents contained in Mr. Allen's personnel file, in the interim performance evaluation breached the understandings reached in the Letter Agreement. The State disagreed with that analysis and contended that it had not breached the Letter Agreement. APEA represented Mr. Allen in filing a new grievance relating to the asserted breach by the State of the Letter Agreement in referring to Mr. Allen's suspensions in the interim performance evaluation. The parties exhausted the grievance procedure provided in the APEA-State collective bargaining agreement. Each step of the grievance procedure was unsuccessful for Mr. Allen's case, and the parties prepared to submit the issue to binding arbitration. The parties then agreed that an alternative approach to binding arbitration was to submit the dispute to the Labor Relations Agency as a petition to enforce a contractual provision, specifically enforcement of the Letter Agreement which had the weight of binding arbitration.

9. Sometime after the interim performance evaluation, Mr. Allen's new supervisor prepared an annual performance evaluation of Mr. Allen. In that report, issued in

accordance with normal personnel practices, Mr. Allen was rated "acceptable."

10. The Agency agreed to hear the case through a hearing officer. The parties agreed to the propriety of these proceedings. The parties further agreed that the hearing officer could submit his proposed findings of fact, conclusions of law, and recommended decision to the Agency, and the parties would await acceptance, modification or denial of those recommendations in the form of a decision from the Agency.

Conclusions of Law

1. AS 23.40.210 provides that either party to a collective bargaining agreement has "a right of action to enforce the agreement by petition to the Labor Relations Agency." APEA, in this case, is seeking to enforce a letter of grievance resolution which was in lieu of binding arbitration, a procedure and process authorized pursuant to the APEA-State collective bargaining agreement. The request to enforce the Letter Agreement is an appropriate subject for a petition pursuant to AS 23.40.210, and the parties have not disputed that propriety. To enforce the Letter Agreement, APEA requested the Agency in its petition to either (a) set aside the Letter Agreement as to Mr. Allen and order that Allen's case be resubmitted to an arbitrator or (b) remove the December 4, 1985 evaluation from Allen's personnel file and preclude all further use of the suspension-related documents in Allen's file for anything other than future charges of misconduct.

2. The Letter Agreement is a contractually enforceable document, and as such it is appropriate that principles of contract interpretation (in the labor relations context) should apply. Here the parties stipulated that the Letter Agreement constituted the full and final resolution of their contentions. Thus in the absence of a patent ambiguity in the agreement, all the understandings of the parties are presumably contained within the four corners of the document. McMillan v. Anchorage Community Hospital, 646 P.2d 857 (Alaska 1982). An integration clause effecting this principle is contained in Article 33 of the APEA-State collective bargaining agreement.

3. The provisions relating specifically to Mr. Allen in the Letter Agreement are relatively brief and, unlike provisions entered with respect to four other grievants, did not refer to expungement of any records. The sole reference to documents or evidence was the statement, "The suspensions remain a matter of personnel record." It logically follows that the existence of "suspensions" can be recorded only by documentary evidence. Those documents therefore would remain

a matter of Mr. Allen's "personnel record." No restrictions on the use of those documents is contained in the paragraph related directly to Mr. Allen.

4. The final paragraph of the Letter Agreement provides that the resolution constituted the full and final settlement of claims and actions "by these named individuals." This language restricts the grievants, including Mr. Allen, from bringing further actions against the State as a consequence of their employment with the State. Further, the parties agreed that the settlement, as distinct from documents in a matter of personnel record, would not be referred to in any other grievance, arbitration, hearing or other matter except as necessary to resolve a dispute as to the implementation of the terms of that settlement. Thus, this language is not a restriction on the use of documents; it is a restriction on the use of the settlement agreement per se. This conclusion is amplified by the parties' expressed understanding that the "settlement" does not constitute any admission of guilt or wrongdoing in the part of either party. The parties, by the terms of the Letter Agreement, limited the use of the Letter Agreement itself and not, unless specified, documents relating to the parties.

5. There is no apparent ambiguity in the terms of the Letter Agreement suggesting that the parties mutually agreed to restrict the use of documents remaining in Mr. Allen's personnel file. The understandings of the parties constitute parol evidence which is admissible only in the event of an ambiguity. The understanding that Mr. Watts may have had as to what might be done with certain documents was in any event never even discussed by the parties, much less evidenced in any specific language contained in the Letter Agreement. Thus, even if there was an ambiguity in the terms of the Letter Agreement (which there does not appear to be), the mutual understandings of the parties concerning documents were never addressed in the Letter Agreement.

6. No contractual term, statute, or policy precludes the use of material in Mr. Allen's personnel file (or personnel record) from being included in an evaluation. Further no contractual term, statute, or policy precludes issuance of an interim performance evaluation under these circumstances and at the time issued.

Recommended Decision

For the reasons set forth in the foregoing proposed findings of fact and proposed conclusions of law, the hearing officer recommends that the Agency issue an order and decision,

1. Dismissing the petition for enforcement, and denying the relief sought under either of the petitioners' alternative prayers for relief;
2. Finding that the State did not breach the Letter Agreement in preparing an interim performance evaluation for Mr. Allen in the form of that report issued on or about December 4, 1985.

DATED this 13th day of November, 1986.

FOR THE LABOR RELATIONS AGENCY

By _____
Robert M. Johnson
Hearing Officer

[SIGNATURE ON FILE]