

[Labor Relations Agency Stationery]

In The Matter Of:

DECERTIFICATION PETITION BY )  
TIMOTHY L. NELSON FOR CERTAIN )  
EMPLOYEES OF THE ALASKA STATE )  
BUILDING AUTHORITY, )  
 )  
and )  
 )  
ALASKA PUBLIC EMPLOYEES )  
ASSOCIATION, )  
 )  
Intervenor )  
 )  
\_\_\_\_\_ )

ORDER AND DECISION NO. 102

SUBJECT:DECERTIFICATION PETITION FILED PRIOR TO EXECUTION OF VALID COLLECTIVE BARGAINING AGREEMENT.

The State Labor Relations Agency (the "Agency") convened a special meeting to consider whether a decertification election concerning certain employees of the Alaska State Building Authority ("ASBA") should proceed in the face of objections by the Alaska Public Employees Association ("APEA"), the certified collective bargaining representative. The meeting was conducted in Anchorage, Alaska on December 1, 1986, and all members of the Agency were present and therefore constituted a quorum. Timothy L. Nelson, who filed the decertification petition, appeared on his own behalf. APEA, as automatic intervenor, appeared through counsel John Gaguine. The parties provided testimony, and APEA and ASBA presented further evidence. The Agency, having considered the arguments and evidence, renders the following order and decision.

## Findings of Fact

1. On December 17, 1985, an election was held and mailed ballots counted with respect to representation of certain employees of the ASBA. APEA was certified through that election to be the collective bargaining representative for a group of between forty and fifty ASBA employees generally described as custodial and maintenance workers.

2. APEA commenced negotiation with ASBA management in July 1986 for a collective bargaining agreement for the covered employees. Tentative agreement covering 44 articles of significant collective bargaining subjects was reached between APEA and the negotiating team for ASBA on October 31, 1986. The tentative agreement was submitted to the forty-seven employees then in the collective bargaining unit. By a vote of 29 to 14, the employees approved the proposed agreement contract by submitting ballots counted on November 21, 1986.

3. In order to be approved by ASBA, the collective bargaining agreement was required to be approved by the ASBA Board of Directors. ASBA Board of Directors holds regular meetings on a quarterly basis, and the last regular quarterly meeting of ASBA was on October 27, 1986. A special meeting was held on November 17, 1986. ASBA was notified of the approval by affected employees on November 24, 1986, a date after the special meeting. The collective bargaining agreement was not presented to the October 27, 1986 regular meeting because it had not yet been tentatively agreed upon, and was not presented to the November 17, 1986 special meeting except in the form of general information. The Board of ASBA expressed an intention at the November 17, 1986 meeting not to specifically act upon the tentative agreement because it sought to maintain a position of neutrality and had not yet heard the results of the submission of the tentative agreement to affected employees at that date.

4. As of the date of this hearing, ASBA's Board of Directors had not approved the proposed collective bargaining agreement between APEA and ASBA. Its next regularly scheduled quarterly Board of Directors meeting is set for January 17, 1987.

5. Petitioner Nelson filed the decertification petition with the Agency on October 6, 1986. His petition contained twenty-three showing-of-interest statements from employees in the affected bargaining unit. Mr. Nelson testified that he had obtained these signed statements from employees by mailing letters to them and talking with employees over the

telephone and face to face. He stated he had received no assistance from ASBA management in this effort.

6. Subsequent to the filing of the petition for decertification, counsel for the Agency met with Mr. Nelson, members of ASBA, and (by telephone conference hookup) APEA representatives on October 20, 1986. APEA preserved its objections to conducting a decertification election. The form of a Notice of Petition and Election was discussed and dates were tentatively set for hearings and further elections. The election was set as a mail ballot election with ballots scheduled to be mailed to affected employees on December 10, 1986 with the ballots to be received by and counted on January 9, 1987.

7. Notices of Petition and Election were posted at the offices of ASBA throughout the State of Alaska with the assistance of ASBA. No objections were entered with respect to the posting or adequacy thereof.

8. It is not known what the decision of the ASBA Board of Directors would be, if any, with respect to considering the tentative collective bargaining agreement at its January 17, 1987 meeting.

#### Conclusions of Law

1. The Agency is charged with responsibility for conducting elections including decertification elections pursuant to AS 23.40.100. AS 23.40.100(c) provides that:

An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding twelve months.

AS 23.40.100(e) provides:

An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

2. The Agency's regulations have amplified the decertification election process in 2 AAC 10.030. The decertification process is initiated by a petition to be accompanied a showing of interest of not less than 30% of the permanent and probationary employees in the unit in which a labor or employer organization is certified by the Agency or currently recognized by the public employer. Further, 2 AAC 10.060 provides that such a petition will not be considered if:

(1) a collective bargaining agreement or timely renewal of one is in full force and effect except during the period between 150 calendar days and 120 calendar days before the expiration date of the collective bargaining agreement; however no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three year have elapsed since the execution of the agreement or the last time a renewal, whichever was later;

(2) an election has been held in the bargaining unit or a subdivision of the bargaining unit within nine months preceding the date of the filing of the petition.

3. The petition filed by Mr. Nelson substantially complies with the content requirements of 2 AAC 10.030. In the absence of a valid collective bargaining agreement, the petition was timely filed, in that it was filed at least nine months after the last election. In as much as no collective bargaining agreement exists in force and effect between APEA and ASBA, there is no expiration for an agreement from which to measure an appropriate window period. Thus, the election, if held after December 18, 1986, falls outside the 12-month period from the date of the last election.

#### Order and Decision

Based on the foregoing findings of fact and conclusions of law, the Agency by a vote of two (Hafling and Johnson) to one (Humphries) orders and decides that :

1. A decertification election utilizing mail ballot procedures shall be held as previously described in the notices of petition and election posted at ASBA's offices; that is, mail ballots shall be mailed on December 10, 1986 and scheduled to be

returned no later than January 9, 1987, on which date a vote count will be held. The Agency will count the ballots at 9:00 a.m. on January 9, 1987 at a specific place to be announced to interested parties.

2. The objections raised by APEA to the convening of the election are dismissed and denied in that, given the absence of a valid collective bargaining agreement between APEA and ASBA, the petition filed by Mr. Nelson was timely and the election scheduled to be held on January 9, 1987 is not inconsistent with the law. No valid reason exists to further extend the election until a date subsequent to ASBA's January 17, 1987 regular meeting given (a) prior notice of the election and (b) the possible multiplication of issues concerning impact on an election by decisions or non-decisions by ASBA's Board of Directors at that time.

3. This Order and Decision sets forth the rationale for the decision announced by the Agency on December 1, 1986.

DATED this 4 day of December, 1986.

STATE OF ALASKA LABOR RELATIONS  
AGENCY

By \_\_\_\_\_  
C.R. "Steve" Hafling  
Chairman

[SIGNATURE ON FILE]