

[Labor Relations Agency Stationery]

PUBLIC SAFETY EMPLOYEES)
ASSOCIATION,)
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 Complainant,))
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vs.))
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DEPARTMENT OF PUBLIC))
SAFETY, STATE OF ALASKA,))
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 Respondent.))
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ULPC 86-11

ORDER AND DECISION NO. 103

SUBJECT: EMPLOYER RECLASSIFICATION OF EMPLOYEES AND
ASSIGNMENT TO DIFFERENT BARGAINING UNIT; UNFAIR
LABOR PRACTICE CHARGE

The State Labor Relations Agency (the "Agency") convened a hearing on February 5, 1987 to consider the unfair labor practice charges asserted in a complaint and supplemental complaint brought by the Public Safety Employees Association ("PSEA") against the Department of Public Safety, State of Alaska ("State") with respect to a reclassification of certain employees in the PSEA bargaining unit and reassignment of said employees to a different bargaining unit. Chairman C. R. "Steve" Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. PSEA was represented by William K. Jermain, Esq. and the State was represented by Joseph W. Geldhof, Assistant Attorney General. Various witnesses testified for each party, and upon agreement of the parties the Agency members considered a videotape deposition

of another witness subsequent to the adjournment of the hearing. The State filed a written response to the complaint, and PSEA filed a written brief. The Agency, having considered the arguments, the evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following order and decision awarding certain relief requested by PSEA.

Findings of Fact

1. PSEA represents a bargaining unit comprised of specified public safety officers, including State troopers, employed by the State's Department of Public Safety. Since at least 1977, the PSEA bargaining unit included non permanent "training classifications" among the titles encompassed by the regular commissioned public safety officers bargaining unit.

2. PSEA and the State entered into a collective bargaining agreement effective January 1, 1984 which by its terms expired on December 31, 1985. PSEA and the State commenced negotiations for the renewed contract and the terms of the 1984-85 PSEA-State contract were continued by mutual agreement of the parties during the periods relevant to this matter. The PSEA-State contract contained provisions including wage rates and benefits applicable to temporary employees, grievance procedures, management rights, and the like.

3. "State trooper recruit" was a training classification for non-permanent employees of the State who were placed initially in the police academy at Sitka. At Sitka they received 13 weeks of training in the fundamentals of police enforcement and law, and a mixed academic/physical training/practical course. The state trooper recruits passing through the Sitka academy were designated by annual classes, such that each class had a numeral designation assigned to it. The 1986 class of recruits was designated "RC 39" or "R 39." Historically, upon successful completion of the Sitka academy course, a trooper recruit would be assigned a field training officer position for infield training and then subsequently were employed as Alaska state troopers or employees with other law enforcement agencies in the State.

4. At the end of 1984, officials of the State sought to implement a "law enforcement college intern program" in lieu of the trooper recruit program and commenced communication and discussion of that program with principals of PSEA. PSEA and the State met and discussed the proposal but did not reach agreement. Until 1986, these discussions apparently presumed a maintenance of the program, however labeled, within the PSEA bargaining agreement. The interns as envisioned would need to successfully complete the three months of academy training, three months of field training and then bid or compete for State trooper recruit positions. The deviation

from the existing program apparently related to the inability of the State to insure inclusion of academy trained officers into the State trooper system due to budget constraints.

5. Further communications between the State and PSEA throughout 1985 including correspondence by the Division of Labor Relations with PSEA and a State draft proposal called "letter of agreement" which referenced the interns as non permanent employees of the Department of Public Safety within the PSEA bargaining unit and employing a basic pay schedule. PSEA responded and maintained an apparent willingness to bargain concerning the overall terms and conditions of the revised program.

6. By spring 1986 the State and PSEA had not reached agreement on a recruit program, there being unresolved issues such as concern over linkage of different "classes" of employees in one bargaining unit and concerns for lost PSEA dues. At that time, the State apparently determined that PSEA was not willing to agree with the terms and provisions which the State desired concerning the State trooper recruit/intern employees. The State declared a "unilateral impasse" and that, for the 1986 class at Sitka, the State would implement the college intern program as it had proposed and that the college interns would be removed from the PSEA bargaining unit and placed in the Alaska Public Employee Association, General Government unit (APEA-GGU). The State asserted its right to reclassify employees as falling within its general management prerogatives and asserted that any challenge to this reclassification should be resolved through a unit clarification petition.

7. PSEA attempted to grieve the redesignation/reclassification of the State trooper recruits, and specifically grieved the matter to Commissioner of Public Safety Robert Sundberg. Commissioner Sundberg responded in a letter of May 27, 1986 referencing PSEA grievance number 86-011 and rejected the grievance stating specifically that:

I do not consider this a grievance properly before me as the individuals in question do not belong to your bargaining unit. Rather they are members of the [APEA] general government bargaining unit and as such are subject to the continuing terms and conditions of that agreement. Based upon this, the grievance is being returned unanswered.

PSEA testified that it did not then seek to appeal or otherwise take the step 3 challenge beyond Commissioner Sundberg to the step 4 level with Commissioner of Administration Andrews

because it perceived that effort to be futile. The evidence indicated that previous responses by Commissioner Andrews to PSEA were in fact drafted by the Division of Labor Relations, whose representatives had taken the position that the State trooper recruits/interns could in fact be reclassified and redesignated. See for example Exhibit 26.

8. The 1986 class of State trooper recruit/college interns commenced in May, 1986. Testimony from two participants in the 1986 academy program and testimony from prior participants in the academy program established no substantial or fundamental changes in the 1986 13-week program at the academy from previous programs. The 1986 academy participants were informed that they would be participating in a "Alaska state trooper candidate training program." Participants were informed that upon completion they were qualified to be further considered as a candidate for the position of "State trooper recruit." The 1986 training syllabus indicated very few if any changes from past academy efforts. The grading and weighting among subjects in determining class standing were similar. The candidates wore the same uniforms as in years past, had many of the same instructors, carried the same red handled training revolver, were given similar certificates with the same types of classes, and were generally referred to as recruit classes with a number designation. The 1986 academy participants also indicated that they had no contact with Island Community College and were never informed to their knowledge that the academy was being deemed a college intern or college preparatory schedule, as contended by the State to differentiate college interns from trooper recruits. The witnesses testified that it was not their intention to participate in a college preparatory program but to become State troopers.

9. The participants in the Sitka academy were evidently informed only toward the end of their 13 week program at Sitka that they would not be placed with the State troopers, but that they would rather be eligible to compete for positions among a pool of recruits.

10. The State was faced with budgetary considerations in determining how to best utilize the Sitka academy and in good faith determined rather than the State paying specifically for the training of State trooper recruits per se that it would rather pay to create a pool of applicants from which the State could ultimately choose as needed. Under the State system an employee would be a trooper recruit within the PSEA bargaining unit only after completion of both the Sitka academy and the 13-week field training officer program.

11. The participants in the 1986 Sitka academy program were paid at rates consistent with APEA-GGU and were

considered APEA-GGU members. They were paid approximately \$1,000 less per month as APEA-GGU members than they would have received as PSEA members. The drop was from approximately \$2,800 under the PSEA-governed State trooper-recruit classification to approximately \$1,800 in the APEA-GGU college-intern classification. There were also differences in benefits and in the amounts of union dues withheld.

12. PSEA filed its unfair labor practice charge in this matter in October, 1986 and subsequently supplemented that charge on December 31, 1986. The complaints seek certain relief including back pay, a cease and desist order preventing further reclassification of employees as proposed by the State, and other relief.

Conclusions of Law

1. The Agency has jurisdiction to hear and consider complaints regarding unfair labor practices as 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. In making its determinations, the Agency gives great weight to NLRB decisions. 2 AAC 10.440(b).

2. The State and collective bargaining agencies are obligated to bargain in good faith with one another. It is a canon of labor law that good faith negotiation does not require that a meeting of the minds ultimately occur with respect to a negotiated subject.

3. Certain job classes including those established "for training purposes, where satisfactory completion of training and promotional advancement requires...certification [by the Alaska police standards council]" were placed in PSEA pursuant to the Agency's Order and Decision No. 28 (1977).

4. The State as employer maintains management prerogatives including the rights pursuant to the PSEA-State contract to "hire, examine, classify, promote, train, transfer, assign and schedule employees in positions." Article 6(f). However the reclassification of a title is subject to procedures including (a) a determination of proper placement according to regulations and orders and decisions of the Agency and subject to the requirements of contracts between the State and employee organization and (b) that such decisions would be appealable. Order and Decision No. 15-A (1975). Further, movements from one bargaining unit to another bargaining unit are subject to preliminary negotiation and the Department of Administration's determined or proposed actions are subject to a requirement that it notify "all collective bargaining units involved and negotiate on the proposals pursuant

to the affected contract." Order and Decision No. 91 (1984). See also Order and Decision No. 98 (1986).

5. Transfer of the same duties from one bargaining unit to another are mandatory subjects of bargaining. NLRB v. Rockwell Standard Corp., 410 F.2d 953, 957 (6th Cir. 1969). Further, the employer must bargain with respect to a decision to remove employees doing the same work from one unit to another, and not merely the effects of that decision. Soule Glass and Glazing Company v. NLRB, 652 F.2d 1055 (1st Cir. 1981); Office and Professional Employees v. NLRB, 419 F.2d 314 (D.C. Cir. 1969). While here bargaining initially took place with respect to the scope of the State trooper recruit position, the evidence indicates that, at some point in time when PSEA was unwilling to accept the State's proposals relating to that position, the State then stated its intention to move the position from the PSEA power group to APEA-GGU. There appears to have been no bargaining or attempt to bargain with respect to that move. Rather the change from one bargaining unit to another was stated as an apparent fait accompli with justifications offered by the State that a move was within the scope of its management prerogative and constituted a unit clarification issue only. Unilateral transfers of bargaining-unit work to another unit is unlawful in both private and public sector employment. Goleta Union School District, 8 PERB n15134 (Cal. PERB 1984), Niagara Frontier Transportation Authority, 18 PERB ¶3083 (N.Y. PERB 1985).

6. Only if the actual work performed and assigned to a job class had changed, could the State move a position from one unit to another subject only to a unit clarification challenge. See Order and Decision Nos. 91 (1984), 97 (1986) and 98 (1986). The evidence does not indicate a fundamental change in the scope of work performed by employees during the 13-week session at the Sitka police academy and indeed did not indicate anything more than minor deviations. The change therefore is not of a type which was fundamental and inherent to management prerogatives and necessary to fulfill an employer's rights under the PSEA-State contract and under decisional law.

7. The State has contended that the matters should not be brought before the Agency but rather should have been grieved and arbitrated. The PSEA-State collective bargaining agreement provides at Article 10, §4 for certain grievance steps. Step three requires the Commissioner of Public Safety to "answer the grievance within 10 working days." The Commissioner of Public Safety clearly stated that he did not choose to answer the grievance, but rather rejected the grievance as being in an improper forum. Thus the State precluded resolution under step three. Step four was very arguably a futile

act even if it was required to have been performed. Casey v. City of Fairbanks, 670 P.2d 1135 (Alaska 1983). Step four required submission of a grievance to Commissioner of Administration. The Commissioner of Administration had previously (in letters drafted by the Division of Labor Relations) rejected the PSEA's position in this matter. In any event, the Agency has jurisdiction over unfair labor practice charges which include a refusal to bargain in good faith, allegations of which form the basis for this complaint. AS 23.40.110(a) (5).

8. These proceedings do not constitute a unit clarification matter in that the primary focus is upon the failure to negotiate with respect to the removal from one unit to another bargaining unit rather than a review of appropriate placement after certain changes have occurred. The propriety of placement in PSEA or APEA-GGU (i.e., the fundamental changes between "trooper recruits" and "college recruits") is relevant only as it establishes the authority of the employer to take actions without bargaining in good faith concerning those actions. In this situation the evidence indicates that very few if any changes have occurred with respect to the actual duties and responsibilities of the employees in question during their period of time at the Sitka training academy. Since this Agency has previously determined that the training positions at the Sitka academy were appropriately in the PSEA bargaining unit, the movement from one bargaining unit to another unit without substantial or fundamental changes to that position would preclude the transfer from one bargaining unit to another without bargaining.

9. AS 23.40.140 provides:

If the Labor Relations Agency finds that a person named in the written complaint or accusation is engaged in a prohibited practice, the Labor Relations Agency shall issue and serve on the person an order and decision requiring the person to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of AS 23.40.070 - 23.40.260. If the Labor Relations Agency finds that a person named in the complaint or accusation is not engaged or is not engaging in a prohibited practice, the Labor Relations Agency shall state its finding of fact and issue an order dismissing the complaint or accusation.

This provision authorizes the Agency to "issue cease and desist orders barring prohibited practices, and to order affirma-

tive action which will carry out the provisions of the Public Employment Relations Act." Alaska Community College's Federation of Teachers Local No. 2404 v. University of Alaska, 669 P.2d 1299, 1305 (Alaska 1983).

Order and Decision

Based on the foregoing findings of fact and conclusions of law, the Agency unanimously orders and decides that:

1. The State engaged in a prohibited practice within the meaning of AS 23.40 by reclassifying the State trooper recruits to college interns III and IV during 1986 and redesignating those reclassified employees as members of the APEA-GGU bargaining unit rather than maintaining them within the PSEA bargaining unit. This practice violated the obligation to bargain in good faith with respect to terms and conditions, and constituted a unilateral change without appropriate bargaining concerning the position transfers from the PSEA bargaining unit to the APEA-GGU bargaining unit--violating AS 23.40.110(a)(5). The movement of employees from PSEA to APEA interfered with any expectations or presumptions those employees may have had to remain within PSEA and benefit thereby--violating AS 23.40.110(a)(1)--and interfered with the existence of PSEA as a representative of designated employees--violating AS 23.40.110(a)(2).

2. This action is appropriately before the Labor Relations Agency as an unfair labor practice charge.

3. The State is ordered to reimburse those State employees employed as college interns III or IV during the 1986 Sitka academy program for the difference between the wages those employees would have received had they been in the PSEA bargaining unit and what they in fact received.

4. The State is ordered to compensate those employees for an appropriate amount of lowered benefits (if any) to which those employees would have been entitled had they been members of PSEA rather than APEA-GGU.

5. The State is ordered to classify employees similarly situated to those employees in the Sitka academy during 1986 during any future period within the PSEA bargaining unit and maintain those employees in an appropriate classification within the PSEA bargaining unit until such time as a fundamental change occurs within the scope of employment and responsibility of those employees, consistent with the findings of this order and decision.

6. The State is ordered to reimburse PSEA for any dues to which PSEA would otherwise have been entitled had the

affected employees been members of PSEA rather than APEA-GGU. The amount of this reimbursement to PSEA shall be set off against obligations paid to affected employees but only to the extent that obligations owed to PSEA exceed the amounts withheld from said employees' salary as dues to APEA-GGU during 1986.

7. The State shall take such actions required under this order and decision within 60 days from the date of receipt of this order and decision.

DATED this 25th day of March, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

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

{Signature on File}