

[Labor Relations Agency Stationery]

MICHAEL M. CARLILE,	)
	)
Complainant,	)
	)
vs.	)
	)
UNIVERSITY OF ALASKA-	)
FAIRBANKS,	)
	)
Respondent.	)
	)
_____ )	)
ULPC 86-7	

ORDER AND DECISION NO. 104

SUBJECT: ALLEGED EMPLOYER DISCRIMINATION AGAINST EMPLOYEE'S UNION ACTIVITIES AND COMPLAINTS; UNFAIR LABOR PRACTICE CHARGE

The State Labor Relations Agency (the "Agency") convened a hearing on April 13, 1987 in Fairbanks, Alaska to consider the unfair labor practice charges asserted in a complaint brought by Michael M. Carlile against the University of Alaska-Fairbanks as a consequence of his discharge for allegedly discriminatory reasons. Chairman C. R. "Steve" Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. Michael M. Carlile represented himself and Mark Neumyer, Esq. represented the University. Various witnesses testified for each party. The Agency, having considered the arguments, documentary evidence and testimony provided by the parties, and deeming itself sufficiently advised, renders the following order and decision denying the relief requested by complainant Carlile.

## Findings of Fact

1. Michael M. Carlile was hired as an electrician by the University of Alaska-Fairbanks in March, 1985 and was laid off effective June 30, 1986. Mr. Carlile had substantial experience as an electrician prior to his hiring.

2. The University claimed that Mr. Carlile's termination was a consequence of a reduction in force caused by budget considerations. The University's budget for fiscal year 1986 (ending June 30, 1986) was facing certain shortfalls as State revenue declined. As fiscal year 1987's budget was prepared it was evident to the University that further budget cutbacks would be necessary given the declining revenue picture for the State of Alaska as a whole. Among the elements of the University's budget in fiscal year 1986 and 1987 was the physical plant department, which department employed various craftsmen including heavy equipment operators, carpenters, plumbers, and electricians.

3. Mr. Carlile was employed as an electrician and as such was the subject of three-month and six-month reviews following his hire. His three month evaluation was performed by his supervisor Ed Province and produced an overall "satisfactory" rating. According to Mr. Carlile, Ed Province was a fairly rigorous evaluator and Mr. Carlile was told by fellow employees that it was standard operating procedure for Mr. Province to assign a "satisfactory" rating. Mr. Carlile raised no objections to this three month evaluation, although Mr. Province had relatively few contacts with him. Three other electricians, Crank, Jirasek and Johnston, had been employed at the same time as Mr. Carlile, and of those one received an excellent rating and the others received satisfactory ratings. In the six month evaluation for the period June 18, 1985 to September 18, 1985, Mr. Carlile and Mr. Crank received "satisfactory," and Mr. Jirasek and Mr. Johnston received "excellent" evaluations. Mr. Carlile did not object to the evaluation because once again he understood that it was standard operating procedure that Mr. Province gave "satisfactory" evaluations only. It is not known whether, at the time of receiving that evaluation, Mr. Carlile knew that Mr. Jirasek or Mr. Johnston received excellent evaluations. Following the six month evaluation, each of the four electricians who had started on the same date were appointed to permanent positions from their probationary status.

4. At the time Carlile and his contemporaries began work as electricians, the standard operating practice for the University was to hire electricians on a nine month staggered schedule. Certain other crafts were kept on for twelve months.

5. During the period when Mr. Carlile was employed as an electrician he undertook union organizing efforts for electricians (and perhaps other craftsmen). Mr. Carlile was a member of the International Brotherhood of Electrical Workers (IBEW), and he sought to have IBEW and Local 71 represent persons similarly situated as him. Various University management officials expressed negative comments concerning IBEW representation and others indicated that while they were not anti-union they would prefer that unions not represent the University employees. An election was held with respect to representation of a particular bargaining unit by IBEW, and the majority of those voting voted against the IBEW and the organizing effort failed. The record did not state when the election was held.

6. In May, 1986, Ed Province, Carlile's immediate supervisor, was transferred from his position as maintenance shop foreman to that of a special assistant to his supervisor Jim Styers. Mr. Styers testified that this transfer was a product of the fact that Ed Province would be retiring within the next two months, primarily due to a heart condition, and that there was a need to appoint a successor to Mr. Province who would be able to render a month by month evaluation for a six month period for an employee who had been reappointed as a University electrician after prevailing on a grievance against the University. Styers stated that Province did not want to get involved in the matter involving the returning employee in as much as some controversy surrounded his grievance and reappointment. Mr. Province did not testify. The evidence did however suggest that, while Mr. Province might have been begrudgingly in favor of being transferred to Mr. Styers' position, he was miffed that his transfer became public knowledge before he could announce it. Shortly after the decision was made to transfer Mr. Province, Mr. Carlile drafted a letter containing the signatures of 28 employees objecting to the way the University had handled Mr. Province's transfer and pending retirement. The letter was prepared at the beginning of May and circulated early in May.

7. Mr. Province was replaced by Bob Shepard and Mr. Shepard and Mr. Carlile did not apparently get along. Mr. Shepard did not testify, but he was described by other witnesses as an abrasive person. Mr. Shepard's abrasiveness apparently applied to both pro-union and non-union people, and his abrasiveness was not limited to Mr. Carlile.

8. The directive to reduce the staff of the physical plant was made in April, 1986. Mr. Styers concluded that four persons from physical plant needed to be laid off with other lay offs arising through simply non-filling of positions. Of the persons to be laid off, Styers in consultation with his staff, concluded that two electricians could be laid off. He

then consulted with Mr. Shepard as to which electricians could be laid off. Mr. Shepard recommended one person to be laid off, and that person was not one of the four electricians (including Carlile) hired at the same time. Styers rejected Shepard's suggestion and inquired into the date of hire of the electricians. Because the University's regulations provided for seniority to be taken into account as a significant element, the last-in, first-out principle applied. The "last-in" employees amounted to the four electricians hired at the same time. Given this circumstance Mr. Styer and Mr. Shepard determined that two of the four had been given excellent recommendations by Mr. Province on September, 1985, and two--Mr. Crank and Mr. Carlile--had by comparison been given satisfactory recommendations. Based upon this difference, the University determined that Mr. Crank and Mr. Carlile would be laid off.

9. Mr. Crank was not a union activist and Mr. Carlile was. Mr. Carlile contended that Mr. Province stated to him that, had Province known that the evaluations were going to be the determinant in retaining or terminating employees, he would have evaluated Mr. Carlile differently.

10. The University implemented lay off and retraining procedures. Mr. Carlile stated that, based on previous experience with University responsiveness, pursuing the grievance procedures would be futile. He attempted no grievance procedures.

11. Mr. Carlile filed unfair labor practice charges with the Agency. A hearing was set in January, 1987, but that hearing was delayed due to unavailability of certain key University witnesses. Mr. Carlile charged that he had been discriminated against in his termination because the University in fact had terminated him because (1) of his union activities and (2) because he had orchestrated a letter critical of the handling of Mr. Province's transfer and departure. The University denied the charges and maintained that Mr. Carlile's termination was due solely to budget restrictions and was consistent with University procedures and regulations.

#### 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.

2. Mr. Carlile has set forth prima facia elements of a claim under AS 23.40.110(a) which provides, in relevant part to this matter, that:

- (a) A public employer or an agent of a public employer may not
- (1) interfere, restrain or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;
  - (2) dominate or interfere with the formation, existence or administration of an organization;
  - (3) discriminate in regard to hire or tender of employment or a term or condition of employment to encourage or discourage membership in an organization;
  - (4) discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or given testimony under AS 23.40.070-23.40.260...

3. An employee has an obligation to exhaust his administrative remedies prior to bringing an action. Casey v. City of Fairbanks, 670 P.2d 1133 (Alaska 1983). The doctrine of exhaustion of administrative remedies generally applies with respect to exhaustion of a grievance procedures and arbitration in collective bargaining contracts prior to bringing actions before the Labor Relations Agency. However, where discrimination or claims of discrimination arise with respect to rights guaranteed under AS 23.40, this Agency has jurisdiction to consider such charges.

4. This Agency has considered charges previously with respect to employer's actions against employees allegedly for reasons relating to union activity, and at least some of those decisions have been reviewed. Alaska Community College Federation of Teachers Local #240 v. university of Alaska, 669 P.2d 1299 (Alaska 1983). As provided in Alaska Community, a demonstration of anti-union motive or retaliatory motive on the part of the University is required with that motive rebuttable by proof of other reasons for University action. 669 P.2d at 1308-09. Mr. Carlile has not rebutted the proper budgetary motives cited here by the University.

5. The University's procedures for grieving and reviewing objections were not pursued by Mr. Carlile. He contended however that pursuit of those procedures would be futile. Demonstrable futility is a rationale for not exhausting administrative procedures. Casey v. City of Fairbanks, supra. However in this instance Mr. Carlile does not appear to

have commenced any filing, but simply drew presumptions on what he expected might happen.

Order and Decision

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

1. Mr. Carlile has not demonstrated that the University of Alaska-Fairbanks committed an unfair labor practice in its termination of his employment with the University. The cumulative weight of the evidence does not establish that the University's action was based upon anti-union animus or in retaliation for the filing of a letter with respect to Mr. Province. Rather the cumulative weight of the evidence indicates that Mr. Carlile was terminated as a consequence of good-faith budgetary considerations giving appropriate and proper weight to Mr. Carlile's relative seniority and relative evaluation rating which was issued independent of and prior to any termination decisions.

2. If and to the extent that exhaustion of administrative remedies, particularly the exhaustion of grievance procedures prescribed by the University of Alaska-Fairbanks with respect to reductions in force, are prerequisites to the filing of an unfair labor practice charge under AS 23.40.110, Mr. Carlile failed to exhaust his administrative remedies.

3. Mr. Carlile's unfair labor practice charge is dismissed.

DATED this 24th day of April, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

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

[Signature on File]