

[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA PUBLIC EMPLOYEES )  
ASSOCIATION, PUBLIC EMPLOYEES )  
LOCAL 71, and CONFIDENTIAL )  
EMPLOYEES ASSOCIATION, )  
 )  
Complainants, )  
 )  
vs. )  
 )  
STATE OF ALASKA and GOVERNOR )  
STEVE COWPER, )  
 )  
Respondents. )  
 )  
\_\_\_\_\_ )

PET 87-2, 87-2(a), 87-2(b)

ORDER AND DECISION NO. 107

SUBJECT: STATE ACTION TAKEN PURSUANT TO BUDGET SETTING PROCESS  
DURING NEGOTIATIONS; UNFAIR LABOR PRACTICE CHARGES

The State Labor Relations Agency (the "Agency") convened a hearing on May 4, 1987 in Juneau, Alaska, to consider the unfair labor practice charges asserted in three separate but virtually identical complaints brought by Alaska Public Employees Association ("APEA"); Public Employees Local 71 ("Local 71"), and Confidential Employees Association ("CEA") against the State of Alaska and Governor Steve Cowper with respect to actions taken by the Governor regarding revised budgets during the pendency of negotiations with each of the three collective bargaining entities. Chairman C. R. "Steve"

Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. APEA was represented by general counsel John Gaguine, Esq.; Local 71 was represented by Don Rouleau; and CEA was represented by Debbie Mannion. The State and Governor Cowper were represented by Susan Cox, Assistant Attorney General. Various witnesses testified for APEA and the State. Local 71 and CEA made no statements other than to confirm their agreement with arguments and positions taken by APEA. APEA and the State filed posthearing briefs. The Agency, having considered the arguments, the evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following order and decision dismissing the unfair labor practice charges filed by APEA, Local 71 and CEA.

#### Findings of Fact

1. APEA represents general government and supervisory units of State employees; Local 71 represents "blue collar" State employees; and CEA represents certain classified employees primarily in the personnel and labor relations areas. Each of the unions is currently negotiating with the State with respect to collective bargaining agreements replacing APEA's existing agreement expiring on June 30, 1987; an agreement with CEA which expired on February 28, 1987; and, with respect to Local 71, extensions subject to 30-day notices of termination. Negotiations have been active.

2. Pursuant to the Executive Budget Act, the Governor is obligated to submit a budget prior to a legislative session. Governor Cowper initially submitted the budget of his predecessor Governor Sheffield with a clear indication that that budget was submitted prior to and subject to the new administration's review. The administration introduced a substitute for budget bill HB 75 on March 18, 1987, with allocations in each budget component reduced to reflect a 10% decrease in personal services for FY 1988 (July 1, 1987 - June 30, 1988). This reduction represented approximately 40 million dollars in savings determined to be needed by the executive branch of government. The administration had reasons to believe that assuming the most favorable oil revenue projections for FY 88 come true the State would not have sufficient oil revenues to cover expenditures in the Governor's revised budget and that only legislative measures could fill a possible 400 million dollar shortfall. Given the uncertainty of passage of revenue-increase measures, the State asserted that a reduction in personal services was indeed necessary for economic and policy reasons.

3. The administration has taken the position for purposes of negotiation with the collective bargaining entities that a reduction in personal services by 10% must be achieved

through the negotiating process. The State has apparently proposed that the 10% reduction could be accomplished through a variety of means, the selection of which could be the product of negotiation.

4. The unions filed virtually identical unfair labor practice charges on March 18, 1987 (APEA); April 1, 1987 (Local 71); and April 2, 1987 (CEA). The unfair labor practice charges were premised upon the duty to bargain in good faith and asserted that the administration, by submitting the revised budget in March, improperly coerced union negotiations and constituted bad faith negotiation. The unions contend that the State did not need, for budget-balancing purposes, a 10% reduction in personal services and that a chilling effect arose by the State's purported apparent refusal to seek other sources of funding rather in the alternative to reducing personal services.

5. The reduced budget presented by the Governor was the only time that the administration reduced the personal services budget during the pendency of negotiation, although the legislature has on at least two occasions (1979 and 1986) refused to fund raises that were already contained in collective bargaining agreements. However, unlike previous years, the pendency in 1987 of expired collective bargaining agreements was a novel situation during a time of budget austerity.

6. The unions contended that alternatives to a 40 million dollar decrease from personal services could have been found through other sources. The parties agree that it was possible that the legislature, independently of the Governor, could put \$40,000,000 back in the FY 1988 budget, or that the Governor could (and had stated that, if necessary, he would) seek a supplemental appropriation for personal service costs.

7. No evidence was submitted to support an argument that the administration had a specific motive to foreclose collective bargaining or to chill collective bargaining activities. Negotiations were continuing, although Local 71 was seeking (but had not been awarded) a declaration of impasse.

#### 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. NLRB precedent, where applicable, is to be given deference by the Agency. 2 AAC 10.440(b).

2. AS 23.40.110(a) provides:

A public employer or agency of a public employer may not

- (1) interfere, restrain or coerce an employee in the exercise of employee's rights guaranteed in AS 23.40.080...
- (5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

3. Unlike collective bargaining in the private sector, the State of Alaska (and its Governor), as employer under the Public Employment Relations Act, has broad scale responsibility to the public, including obligations (a) under Article 12, Section 12 of the Alaska Constitution to submit a budget setting forth expenditures and income and (b) under the Executive Budget Act at AS 37.07. Submission of HB 75 (the initial budget submission) and the March amendment (CSSHB 75) were consistent with obligations of the Governor to submit a budget in detail.

4. The determination of existence of an unfair labor practice charge in this case, particularly an unfair labor practice charge asserting the failure to bargain in good faith, must take into account the obligations imposed upon the employer under Alaska's Constitution and the Executive Budget Act. These obligations of the public employer, as distinct from obligations of a private employer, support evaluation of "the totality of the circumstances" in considering whether a party has failed to negotiate in good faith. See for example NLRB v. Truitt Manufacturing Company, 351 U.S. 149, 153-155 (1956); NLRB v. American Insurance Company, 343 U.S. 395, 409-410 (1952). The rule has generally been that only in limited instances is there authority for finding a per se violation of the duty to negotiate--a finding of bad faith without analyzing intent or context. NLRB v. Katz, 369 U.S. 736 (1962). Such per se violations include unilateral action regarding a mandatory subject in a negotiation such as refusal to bargain on a subject. Such a circumstance does not exist in this matter. At best an argument exists that there is some intent to obtain a leverage position through economic "pressure" in negotiations--a finding which in and of itself does not give rise to an unfair labor practice charge. NLRB v. Insurance Agents, International Union, AFL-CIO, 361 U.S. 477, 490-491 (1960).

5. The Governor has a responsibility to set priorities in proposed revenue measures needed to recover

expenditures. Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985); Malone v. Meekins, 651 P.2d 351 (Alaska 1982). The Governor and executive branch are given the authority to render opinions concerning the State of the budget and act on it. AS 37.07. The exercise of executive branch discretion within constitutional bounds is not subject to the control or review of the courts, for example. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). The legislature of course has authority as co-equal branch to enact appropriations as it determines proper.

6. APEA's reliance upon Pennsylvania v. State Labor Relations Board, 438 A.2d 1061 (Pa. Cmwlth. 1981) is not helpful because in that case the issue related to the duty to support in good faith a specific arbitration finding. Here, the administration is not being asked to support a specific negotiated contract in force and effect, because the negotiations concerned relate to future contracts. Compare, Order and Decision 100 (1986). As the parties have noted, this is the first recognized instance where a decrease in revenue is an issue with respect to the funding of contracts yet to be negotiated.

#### Order and Decision

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

1. The State and Governor Cowper did not engage in an unfair labor practice charge within the meaning of AS 23.40.110(a) by submitting a reduced budget in March, 1987 despite the concurrent negotiation of collective bargaining agreements with APEA, Local 71 and CEA. The Governor's submission was pursuant to his executive responsibilities under the constitution and law, consistent with policy decisions entrusted to the Governor alone, and did not evidence bad faith or a motive to chill, obstruct or avoid ongoing negotiations with collective bargaining representatives.

2. The unfair labor practice charges filed by APEA, Local 71 and CEA are dismissed.

3. This written decision sets forth the rationale for the oral decision announced to the parties on May 27, 1987 following the earlier hearing in this matter.

DATED this 1 day of June, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

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

[Signature on File]