

[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION,)
)
Complainant,)
)
vs.)
)
STATE OF ALASKA and GOVERNOR)
STEVE COWPER,)
)
Respondents.)
)
_____)

PET 87-5

ORDER AND DECISION NO. 108

SUBJECT: EMPLOYER DISCLOSURE OF NEGOTIATIONS IN PURPORTED VIOLATION OF GROUND RULES; UNFAIR LABOR PRACTICE CHARGE

The State Labor Relations Agency (the "Agency") convened a hearing on May 4, 1987 to consider the unfair labor practice charges asserted in a complaint brought by the Alaska Public Employees Association ("APEA") against the State of Alaska and Governor Steve Cowper with respect to the disclosure by the Governor of negotiation subjects in purported violation of negotiation ground rules. Chairman C. R. "Steve" Hailing and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. APEA was represented by general counsel John Gaguine, Esq. The State was represented by Assistant Attorney General Susan Cox. Various witnesses testified for each party and the parties filed posthearing

briefs. The Agency, having considered the arguments, evidence and the testimony of the parties and deeming itself sufficiently advised, renders the following order and decision dismissing the unfair labor practice charge filed by APEA.

Findings of Fact

1. APEA is the collective bargaining representative for general government and designated supervisory employees in the classified service of the State of Alaska. APEA's collective bargaining agreements with the State expire on June 30, 1987, and APEA is engaged in active negotiations with the State of Alaska with respect to renew those agreements.

2. Pursuant to standard negotiating procedures, the parties undertook to develop "Ground Rules for Negotiation" and agreed upon ground rules on February 18, 1987 after considering several drafts to them. In pertinent part, the Ground Rules for Negotiation provided:

* * *

2. Each party shall be represented by a negotiating team of not more than six members. This does not preclude either party from using additional persons as experts on particular subjects during negotiations of said subjects. Each party agrees that any person who is physically present at these negotiations shall be bound by these ground rules.

* * *

9. Neither party shall issue news releases during negotiations except generally by mutual agreement or upon impasse.

* * *

3. Governor Steve Cowper was never physically present at negotiations involving APEA and the State. Therefore because he was not physically present, under the literal language of the Ground Rules he would not be bound by those Ground Rules with respect to any of its terms, including but not limited to "news releases." Nevertheless, APEA has contended that the spirit of the Ground Rules precluded publication by principals of the parties, and APEA maintained that it did not disclose privileged information to the public. Each party acknowledged that the negotiating team would and did disclose discussed material to their various principals such as

(with respect to APEA) APEA chapter heads and (with respect to the State) Commissioners and the Governor.

4. Formal negotiations between the State and APEA began on February 17, 1987, and are continuing. There has been no declaration of impasse. An apparent position asserted early in the negotiations by APEA was that APEA's initial contract demand included a 7.5% pay hike.

5. On March 24, 1987 the Juneau Empire reported that APEA's initial contract demands included the 7.5% pay hike. Two weeks later the Governor was engaged in a conference with the editorial board of the Anchorage Daily News on a variety of subjects and he was asked whether or not rumors that the union was seeking a 7.5% pay raise were accurate. The Governor stated "that's what she [APEA Executive Director Cherie Shelley] did," and then apparently further clarified that because he was not directly involved in negotiations he was not sure whether the pay hike was part of APEA's official bargaining position. He declined to comment any further on the status of negotiations.

6. The record is not clear as to whether the Governor was specifically briefed by negotiators concerning the APEA position or whether his recollection at the Daily News interview of the 7.5% pay hike proposal arose from prior publication of the information in the Juneau Empire.

7. The Governor's comments to the Daily News, which were published by the Daily News on April 9, 1987, constituted an apparent isolated incident in that no other indications were presented by the parties that the Governor divulged other subjects of the negotiations between APEA and the State.

8. Subsequent to the Governor's release of information, APEA received negative publicity and commentary. However also subsequent to the April 9, 1987 publication of the Governor's comments, the State and APEA continued to engage in negotiations. Any impact on the ability of APEA to negotiate is unclear given that negotiations have continued. To the extent that adverse publicity was generated by publication in an Anchorage newspaper of the Governor's comments, the fact remains that the same information had been disseminated earlier by a Juneau newspaper.

Conclusions of Law

1. The Agency has jurisdiction to hear and consider complaints regarding unfair labor practice charges 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. AS 23.40.110(a) provides in pertinent part:

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. The Ground Rules entered into between APEA and the State did not specifically apply to the Governor and disclosure of information to principals of each party was not even addressed in the Ground Rules. Only disclosures in the form of press releases were prohibited. Technically the Governor did not breach the Ground Rules.

4. The Governor's comments which were reported in the press were isolated and did not carry indicators of bad motive or intent. The context of the circumstances demonstrate no pattern of action designed to chill, hamper, or directly impact the negotiation process. Unfair labor practice charges, which assert bad faith, must generally be ascertained from the "totality of the circumstances." NLRB v. Truitt Manufacturing Company, 351 U.S. 149, 153-155 (1956); NLRB v. American Insurance Company, 343 U.S. 395, 409-410 (1952); Order & Decision No. 107 (1987).

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 by commenting on a direct question posed by the Anchorage Daily News editorial staff. The Governor's comment was not made in bad faith and was at most an inadvertent violation of the spirit (but not the letter) of Ground Rules. The totality of the circumstances do not indicate bargaining in bad faith or to otherwise chill, coerce or prevent APEA from representing its constituent members.

2. To the extent that the State's negotiating team discloses negotiation-related information to principals, the State might be more careful in noting to its principals whether

information is or is not covered by ground rules or understandings in order to avoid similar circumstances in the future.

3. APEA's unfair labor practice charge is dismissed.

4. This written decision sets forth the rationale for a decision announced orally to the parties on May 27, 1987 following the earlier hearing.

DATED this 1 day of June, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

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

[Signature on File]