[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

PUBLIC EMPLOYEES LOCAL 71, AFL-CIO;	)
Petitioner,	)
vs.	)
STATE OF ALASKA, DIVISION OF OF LABOR RELATIONS,	)
Respondent.	)

PET 87-8

ORDER AND DECISION NO. 109

SUBJECT: INTEREST ARBITRATION FOR CLASS I EMPLOYEES IN MIXED CLASS BARGAINING UNIT

The State Labor Relations Agency (the "Agency") convened a hearing on August 12, 1987 to consider the petition brought by Public Employees Local 71, AFL-CIO ("Local 71") against the State of Alaska, concerning the appointment of an arbitrator for "Class I" employees in the Local 71 collective bargaining unit. Chairman C. R. "Steve" Hafling and members Ben Humphries and Marlene Johnson were present and so consti-tuted a quorum. Local 71 was represented by Kevin Dougherty, Esq. The State was represented by Kimberly Gerraighty and Bruce Cummings of the Division of Labor Relations. One witness testified for each party, and the State filed a written opposition to the petition. The Agency, having considered the arguments, evidence and the testimony of the parties and

deeming itself sufficiently advised, renders the following order and decision with respect to the petition filed by Local 71.

Findings of Fact

1. Local 71 is collective bargaining representative for "blue collar" workers in the classified service of the State of Alaska. Local 71's collective bargaining agreement with the State would have expired on December 31, 1986, but the State agreed to continue the terms of the collective bargaining agreement until further notice. The State subsequently notified Local 71 that effective June 14, 1987, the terms and conditions of the collective bargaining agreement would no longer remain in effect.

2. Local 71 and the State have engaged in collective bargaining negotiations, including assistance by a mediator appointed by Agency action following a declaration of impasse. As of the date of the hearing, negotiations had not progressed to the point of settlement. Local 71 in anticipation of unsuccessful negotiations filed permission for a strike vote (LRA PET 87-7), and the Agency met on July 22, 1987 with Local 71 and the State for purposes of determining applicable voting members.

3. Within the collective bargaining unit represented by Local 71, less than 25% are Class I employees without the right to strike but whose terms and conditions of employment would be ultimately subject to "interest arbitration" pursuant to binding arbitration. The other employees, that is, over three-quarters of the State employees represented by Local 71, are Class II and Class III employees with either limited rights to strike or rights to strike granted under the Public Employment Relations Act.

4. The precise issue of how Class I employees are to be treated in a collective bargaining unit such as Local 71 comprising a mix of Class I, II, and III employees has not been specifically presented to the Agency. However, the general subject has arisen previously. In 1975, the Agency issued Orders and Decisions 17 and 17A providing that Class I employees who did not have the right to strike could not participate in a strike vote. In 1980, the State and Local 71 agreed to present at least Class I interests to binding arbitration, but the dispute between the State and Local 71 was resolved prior to binding arbitration being entered. Local 71 claimed that, had an arbitrator then determined the collective bargaining rights and terms for Class I employees, those rights and terms would have been applied to Class II and III. The State maintained that the 1980 agreement to submit Class I interests to binding arbitration was a purely voluntary act and that the

action carried no precedential weight with respect to submitting Class I interests to an arbitrator during the pendency of potential strike action by Class II or Class II employees.

5. If an arbitrator were appointed to determine the rights and interests of Class I employees in the Local 71 bargaining unit, the effect of an arbitrator's decision on the rights and interests of Class II and III is unclear. There would, however, be some impact. Local 71 represented at the hearing that production of three bargaining agreements given the three different collective bargaining remedies afforded Class I, II, and III employees would not happen. The State asserted that three collective bargaining agreements could very well issue as a consequence of a binding arbitrator determining Class I employee rights and interests, whereas limited strike and strike action with respect to Class II and III employees could produce different collective bargaining agreements as employer and employee strengths and weaknesses were tested during strike action.

Conclusions of Law

1. The Agency has jurisdiction to hear and consider this petition pursuant to AS 23.40.110 (Petition to Enforce an Agreement), and is authorized and charged with responsibility to make appropriate orders and decisions relating to the same.

2. AS 23.40.200 provides:

(a) For purposes of this section, public employees are employed to perform services in one of the three following classes.

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but nor for an indefinite period time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are

engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(l) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so.

(e) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference.

3. Taken out of context and without regard to other provisions of the Public Employment Relations Act, AS 23.40.200 (b) mandates binding arbitration for Class I employees upon impasse/deadlock and after mediation has been utilized. AS 23.40.200(c) and AS 23.40.200(d) provide substantially different options for resolving disputes of Class II and III employees. However, the Agency has approved mixed class bargaining units given other co-equal provisions of the Public Employment Relations Act such as AS 23.40.070, AS 23.40.080 (where public employees engage in concerted activity) and AS 23.40.090 which provides:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070--23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. The bargaining unit shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

A Fairbanks Superior Court decision cited by Local 71 recognized existence of mixed class units and recognized that the different statutory rights of one class could not wholly displace the different rights and obligations of the other classes. APEA v. City of Fairbanks, 4FA86-0442 (April 10, 1987, Fbx.).

4. it is well established that provisions of law are to be read in pari materia giving equal weight to statutes considering the same subject matter. See for example, Nash v. State, Commercial Fisheries Entry Commission, 679 P.3d 477 (Alaska 1984); Alaska Children's Services, Inc. v. Williamson, 606 P.2d 786 (Alaska 1980). The Agency has read provisions of the Public Employment Relations Act in pari materia in order, for example, to (a) create a history of mixed class collective bargaining units; (b) determine in Order and Decision 17 and 17A that employees without the right to strike are excluded from vote counts in strike votes; and (c) find that all

employees of the Department of Public Safety were Class I employees.

5. In order to foster harmonious relationships and to respect the interests of Class II/III employees and the rights of an employer to utilize the dynamics of a strike/no strike situation, it is not unreasonable to read AS 23.40.200 (b) in such a fashion as to delay the required submission of deadlocked Class I employee interests to binding arbitration until the strike rights of Class II and III employees, in a mixed class collective bargaining unit dominated by Class II/III employees, have been exercised.

Order and Decision

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

1. Class I employees of Local 71, a collective bargaining unit dominated by Class II and III employees who have rights to strike, may and shall have deadlocked collective bargaining interests submitted to binding arbitration. However, the submission to binding arbitration in circumstances such as that of Local 71 shall occur only after a reasonable period of time has elapsed following the exercise of strike activity permitted Class II and III employees of Local 71.

2. The definition of "reasonable period of time" within the meaning of the preceding paragraph shall be determine on a case by case basis, with prompt Agency consideration of a petition to enforce submission to arbitration submitted by the employee or employer. The Agency will consider adopting, pursuant to its rule making authority, regulations relating to "reasonable period of time" under circumstances involving collective bargaining units with mixes of different classes of employees.

3. This written decision sets forth the rationale for a decision reached by the Agency following the hearing described herein.

DATED this 18 day of August, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

By_____
C. R. "Steve" Hafling, Chairman

[Signature on File]