

[Labor Relations Agency Stationery]

ORDER AND DECISION PERTAINING TO OBJECTIONS
FILED TO "GRAY COLLAR" ELECTION OF 4-26-74

ORDER AND DECISION NO. 14

Findings of Fact:

1. An election was held on April 26, 1974 among certain classes of state employees to determine their wishes with respect to affiliating with either a unit of General Government employees represented by the Alaska Public Employees Association or a unit of Labor, Trades and Crafts employees represented by the Tri Trades Public Service Council.

2. The results of the election were 335 to affiliate with the General Government unit and 336 to affiliate with the Labor, Trades and Crafts unit. There were no unresolved challenges. Approximately 80% of those eligible to vote returned valid ballots.

3. The Alaska Public Employees Association alleged that five employees eligible to vote did not receive ballots and that this number was sufficient to have affected the results.

4. The State showed that ballots were mailed to the above-mentioned five employees to the last addresses furnished by the employees to the State.

5. The Alaska Public Employees Association filed the

objection with respect to the above-mentioned five employees after the five days allowed by the regulations for the filing of objections to the conduct of an election had passed.

6. The Alaska Public Employees Association, within the five days provided for such objections, objected to the conduct of the election on the grounds that:

a. The State engaged in unfair labor practices by interfering in the gray collar election and discriminating in favor of Tri Trades;

b. Tri Trades' use of the letter of understanding as a misrepresentation and constituted cause for setting the election aside;

c. The State refused to enter into a letter of understanding proffered by the Alaska Public Employees Association on April 12;

d. There was an unfair and prejudicial delay in the conduct of the election.

Conclusions:

1. The election itself was properly conducted. The State made every effort to ensure that all eligible employees were afforded an opportunity to vote. It is the responsibility of the individual employee to furnish the State with up-to-date address information. An election should not be set aside by reason of failure of employees to furnish correct addresses or by reason of an occasional failure by the postal service to deliver mail. To hold otherwise would be to hold that no closely contested mail-ballot election could be conducted to finality. Having reached this conclusion it is unnecessary to make a finding as to

whether or not the Alaska Public Employees Association is foreclosed from making this objection by failure to file said objection within the five day period provided by regulation.

2. Letter of Understanding Number Two, executed by the Commissioner of Administration and the Tri Trades Public Service Council is a promise to fulfill the statutory obligation to bargain concerning Gray Collar employees if the Gray Collar Employees should vote to affiliate with the Labor, Trades and Crafts unit. The letter sets forth the understanding between the parties that if the results of the election require them to negotiate jointly that "some aspects of the (Labor, Trades and Crafts) contract proposal ... do not meet the circumstances of the employees of the 'Gray Collar Unit.'" The parties further agree that if the pre-condition of winning the election is met they will meet to "amend the existing Labor, Trades and Crafts Bargaining Unit Contract to appropriately cover the classifications added by the Alaska State Labor Relations Agency."

Letter of Understanding Number Two does not, in itself, convey any inducement, unintentional or otherwise, for employees to vote for affiliation with the Labor, Trades and Crafts unit.

3. The Tri Trades News published a facsimile of Letter of Understanding Number 2, and made the following statements about it:

a. "...secured a letter of understanding between the State and Tri Trades Public Service Council, to insure the Gray Collar Unit they will receive the same contract negotiated for the Blue Collar Unit."

b. "As indicated by the above letter, we have set the pattern and cast the die for the 'gray collar' contract. "

The second of the two statements quoted above is no more than an exaggeration; "setting a pattern" is, in a collective bargaining context, a fairly ambiguous phrase . Many collective bargaining disputes in public employment occur when the parties have agreed upon the use of certain patterns but cannot agree upon what the pattern means.

The first of the above two statements is contradicted by the letter of understanding; the letter of understanding does not insure gray collar employees they will receive the same contract negotiated for the Blue Collar unit. If this statement had been made without the accompaniment of the facsimile Letter of Understanding Number 2 and/or had been made so near the date of the election so as to preclude the possibility of rebuttal it arguably might have been cause to set the election aside. However, the fact that the Tri Trades News, by publishing a facsimile thereof, allowed Letter of Understanding No. 2 to speak for itself and to contradict any mis-statements made about it, tends to nullify the allegation of misrepresentation. Furthermore, the opportunity to rebut was amply present; APEA had at least six weeks in which to reply .

In Harlan #4 Coal Co., NLRB RD-1971, 78 LRRM 1717, Regional Director John C. Getreau of the NLRB held that a union did not interfere with an election when it sent employees a letter stating that "your wages are frozen by action of President Nixon" but that, if employees voted for the union, "you can get the union contract wages and other conditions."

There are NLRB precedents for setting aside elections when misrepresentations were made so near to the elections that there was no opportunity for rebuttal; as mentioned above, in this case there was ample opportunity.

4. The allegation that the State's refusal to enter into a letter of understanding with the APEA constituted an unfair practice is wholly without merit. The letter proffered by APEA for the Commissioner of Administration's signature was far more than an agreement to sit down and negotiate in the event APEA won the election; in that event it would have been a binding agreement, contingent only upon ratification by the employees, wherein it states "It is also agreed that the Contract agreed to for the 'Blue Collar Unit' of 6 March, 1974 by the State of Alaska and the Tri Trades Public Service Council, will be extended in its entirety to the 'Gray Collar' employees, with the understanding by the parties that the 'Gray Collar' employees retain the right to final decision of acceptance of aforesaid Contract."

The Commissioner of Administration replied on 17 April 1974, in part as follows: "If the gray collar people vote to go into the Labor, Trades and Crafts Unit a substantial number of provisions in the Tri-Trades contract would be inappropriate, i.e., unworkable and contrary to the best interest of the State of Alaska. Amendments to the existing contract would be necessitated in the following areas: preferential hiring facilities, job classifications, pay ranges, subsistence, premium pay, working rules, purchase of tools, remuneration, and pay day, among others."

The foregoing made it abundantly clear that the State had not agreed to specifics with the Tri Trades. From this point the APEA had more than a week in which it could have used a facsimile of the letter from the Commissioner to APEA to rebut any misconstruction being made of Letter of Understanding No. 2 by the Tri Trades.

5. The alleged "unfair and prejudicial" delay in the election was not caused by either the State Labor Relations Agency or the State Administration. An application by the Tri Trades to delay the election was denied by the SLRA, whereupon the Tri Trades succeeded in obtaining a temporary restraining order. Following the lifting of the TRO the only delay was of procedural necessity, to ensure that all posting requirements had been complied with to the letter of the law, this in turn to safeguard against any subsequent challenge of election results.

6. In sum, although the Tri Trades News may have created some confusion, there is no objective way of measuring the amount of confusion or stating that it affected the outcome of the election. There was ample time for APEA to counteract any confusion created by the Tri Trades News. There is no evidence that the Administration sought to aid either party in the election to the detriment of the other. The election was conducted under the "laboratory conditions" specified by the National Labor Relations Board for its conduct of elections.

DECISION AND ORDER:

1. The objections by the Alaska Public Employees Association to the election of April 26, 1974 are hereby overruled.

2. The Tri Trades Public Service Council is hereby

certified as the duly elected and authorized collective bargaining representative for employees in those classifications eligible to vote in the April 26, 1974 election, said classifications to be a part of the Labor, Trades and Crafts unit, certification to be deemed, for all purposes under the regulations, co-terminous with the certification previously made of the Tri Trades Public Service Council as duly elected and authorized collective bargaining representative of the Labor, Trades and Crafts unit.

Dated: July 30, 1974

C. R. "Steve" Hafling, Chairman
(Dissenting)

/s/ Joe Franich
Joe Franich, Member
(Concurring)

/s/ Morgan Reed
Morgan Reed, Member
(Concurring)