Labor Relations Agency]

PERTAINING TO A PETITION BY PROBATION OFFICERS III FOR RETROACTIVE PAY

ORDER AND DECISION NO. 15-C

Findings of Fact:

1. Order and Decision No. 15 was issued in response to various petitions for unit clarification and involved requests that certain positions be reclassified from non-supervisory to supervisory. Date of issue was February 3, 1975.

2. The execution of Order and Decision No. 15 was stayed to allow the introduction of additional evidence and argument with respect to individuals in the classification of Probation Officer III. Based upon the evidence available at that time the Labor Relations Agency concluded that the employees concerned performed no more than three of the six functions set forth in the definition of supervisor in the regulations, whereas the regulations require the performance of at least four.

3. On April 3, 1975, Order and Decision No. 15-A was issued, as follows:

"1. The State shall make first determination of the proper unit placement of individuals according to the regulations and the Orders and Decisions of the Labor Relations Agency and subject to the requirements of collective bargaining agreements between the State and employee organizations.

"2. Such determinations by the State shall be appealable to the Labor Relations Agency by the employee(s) and/or the employee organization(s) concerned, and if such appeal is made the parties will be heard by the Labor Relations Agency on the first available agenda.

"3. The State agrees that those Probation Officers III whose names are listed below should be in the Supervisory Unit, and it is so ordered effective April 1, 1975.

Barton Penny
Daniel Hoy
Artis C. Masingill, Jr.
Richard Illias
Duncan Fowler
Fred Fowler
Frederick Baird

4. The Labor Relations Agency did not base Order and Decision No. 15-A on additional evidence, testimony or argument, but did base its decision solely upon the agreement by the State that the employees listed hereinabove were supervisory.

5. The individuals listed hereinabove petitioned the Labor Relations Agency to change the effective date of Order and Decision No. 15-A from April 1, 1975, to the date of filing of petitions, on the grounds that they had belonged in the supervisory unit all along and should not be penalized by the loss of retroactive pay due to the delay between the date of filing petitions and the date the Agency issued Order and Decision No. 15-A.

6. The petitions were accompanied by letter arguments, organization charts and position descriptions, none of which had any probative value to the Agency with relation to making determinations as to whether or not the individuals concerned fulfilled the criteria set forth in the regulations. At no subsequent time was any such direct evidence presented. It was only in the June 2, 1975, hearing concerning Mr. Robert Stinde that any such evidence was finally produced relating to whether or not the individual actually met the criteria of the regulations. It should be noted that at the June 2, 1975, hearing none of the parties were prepared to present evidence as to actual job performance, although some of the parties were prepared to argue at some length.

7. The Labor Relations Agency has no formal knowledge of the contents of collective bargaining agreements between the State and various employee organizations and has no concern with the contents of such agreements unless and until there are charges that portions of such agreements are violative of the statute or the regulations. The Labor Relations Agency has no authority or responsibility for the administration of collective bargaining agreements.

Conclusions:

1. Since the Alaska Public Employment Relations Act states that all agreements under the Act shall have grievance procedures which shall have binding arbitration as the final

step, it can be assumed that the collective bargaining agreements under which the concerned employees fell or fall contain such provisions. Grievance procedures are the proper forum in which to question the interpretation or application of collective bargaining agreements, including pay provisions and questions of retroactivity, although it must be recognized that there may be threshhold questions as to the arbitrability of certain issues.

2. It is a dubious proposition that the Labor Relations Agency has any authority over the question of retroactivity in the instant case. Should the reverse question come before the Agency, that is to say a case wherein it might be determined that employees were improperly classified as supervisors, it is not likely that the employees concerned or their representatives would argue that the Agency had the authority to order them to refund excess wage payments on a retroactive basis.

3. In Jefferson County Board of Supervisors vs. New York State Public Employment Relations Board and Faculty Association of Jefferson County: New York Court of Appeals, Case No. 172, May 7, 1975, wherein the faculty association sought redress through PERB, arguing that the county had committed unfair labor practices, and wherein PERB upheld the contention and ordered the county to pay the merit increases in question, the Court overruled PERB, saying that although PERB is statutorily empowered to "assist in resolving disputes" there is no legal provision which would uphold PERB's ordering

the county to pay merit increases. The conclusion here is that there is nothing in the statute that would empower the Alaska State Labor Relations Agency to order the State of Alaska to pay retroactive increases.

4. Since the Labor Relations Agency, in its April 3, 1975 decision made no findings of fact as to whether or not the concerned employees actually met the regulatory criteria for supervisors but rather merely gave approval to the agreement by the State that the employees were supervisory, it would in any case by highly improper for the Agency to make the requested ruling. The Agency has no hard facts to indicate that if the question had come before the Agency without agreement by the State, the Agency would have been impelled to rule that the employees in question were supervisors; it is conceivable that the opposite conclusion might have been reached. Furthermore, the Agency has no data as to when, or at what points of time, duties might have changed for different individuals. Assuming, arguendo, that as of April 1, 1975, the individuals concerned were supervisors under the regulations, this is no guarantee that any or all of them were supervisors as of March 31, 1975. There is, in any case, a complete absence of any data to support conclusions by the Agency one way or the other with respect to this question.

5. For the foregoing reasons the petition should be dismissed.

Decision and Order:

The petition is denied.

DATED: July 18, 1975.

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C. R. "Steve" Hafling, Chairman
Labor Relations Agency

/s/ Morgan Reed
Morgan Reed, Member

/s/ Ronald M. Henry
Ronald M. Henry, Member

[Signature On File]