

[LABOR RELATIONS AGENCY STATIONERY]

October 9, 1978  
ORDER AND DECISION NO. 37

PERTAINING TO UNFAIR LABOR PRACTICE CHARGES NO. 77-2 FILED  
BY AMERICAN FEDERATION OF TEACHERS, LOCAL UNION  
NO. 2404, REPRESENTING COMMUNITY COLLEGE TEACHERS,  
AGAINST THE UNIVERSITY OF ALASKA.

Findings of Fact:

The following findings of fact were proposed by Mr. Robert Erwin, Attorney for the University of Alaska, and are adopted by us as if they were our own.

1. That the collective bargaining agreement between complainant and respondent was signed on the 23rd day of March, 1977.

2. That in Section 13.2 the agreement provided specifically as follows:

"13.2 Management Rights

The parties agree that all of the rights and responsibilities of the University which have not been specifically provided for in this agreement are retained in the University alone.

The University's responsibility to determine the structure and goals, purposes, functions, and policies of the University shall extend but not be limited to the following:

1. Except as provided elsewhere to the contrary: to classify and reclassify personnel; to direct employees; to determine qualifications, standards for work, and to hire, transfer, shift, allocate and assign work within the bargaining unit, retain employees in positions, evaluate and to reprimand, reprove, suspend, demote or discharge for just cause; to relieve an employee from duty because of lack of work or other legitimate reasons such as illness; to take action necessary to maintain the cost effectiveness of University operations; to determine the means, methods, and personnel by which the University's operations and programs are to be conducted; to take such actions as may be necessary to carry out the missions of the University in case of' emergencies; and to make rules, regulations, and policies not inconsistent with the provisions of this agreement and to require compliance therewith (subject to the right to grieve as provided in this agreement.)

2. Where a goal, purpose, function or policy is provided for expressly elsewhere in this agreement, such provision shall control over the preceding paragraph.

3. No member of the bargaining unit may be assigned work against his/her will which disqualifies him/her from the bargaining unit."

3. Section 13.3 provides specifically as follows:

"13.3 Zipper Clause.

The parties acknowledge that during the negotiations which resulted in this agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the Union and the University, for the life of this agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this agreement and with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject may not have been within the knowledge and contemplation of either or both of the parties at the time they negotiated or signed this agreement."

4. The University of Alaska, Anchorage officials reached a decision to offer courses numbered 00-100 and 200 in the Senior College prior to July 1, 1977.

5. That certain of the courses duplicated courses offered in the Community College.

6. That prior to 1977 the Senior College had offered courses in the 100 and 200 series, but only a small number.

7. That the University of Alaska did not bargain with the union herein concerning the makeup of courses, the assignment of courses to the Senior College, or the Community College and/or the assignment of teachers thereto.

8. That the University published courses schedules in August, 1977 and advertisements in local newspapers concerning the assignment of classes and course offerings in both the Senior College and the Community College.

9. That the University handed out application forms, advised students, and sent out circulars concerning the course schedules and the assignment of courses between the Community College and the Senior College of 1977.

10. That there is no evidence that these activities of the University of Alaska were designed to injure complainant herein.

11. That unfair labor practice charges by the Union were filed on August 13, 1977 herein.

12. That prior to August 13, 1977, there was no activity on behalf of the University which can be construed as undertaking additional bargaining under the Collective Bargaining Agreement.

13. That the letter from President Ferguson, dated August 26, 1977, after the unfair labor practice was filed, was not an agreement to reopen on matters of permissive bargaining.

14. That the University had in force and effect a plan for the creation of a four year Senior College in Anchorage which had been in existence for approximately three years.

15. That there is no evidence presented which indicates that the plan for establishment of a Senior College in Anchorage was designed to affect the complainant.

16. Certain statements were made by members of the University concerning the fact that Community College teachers made more money than University professors and that part-time teaching would be arranged so that there would be no problems of assigning teachers outside the bargaining unit.

Conclusions of Law:

The following conclusions of law were proposed by Mr. Robert Erwin, Attorney for the University of Alaska, and are adopted by us as if they were our own.

1. That the implementation of academic plans concerning the Senior College and that the discussion of assignment of lower division courses at the University of Alaska, the duplication of courses between the Community College and the Senior College and the assignment of teachers thereto are within the management prerogatives of the University under the Collective Bargaining agreement and are not subject to mandatory bargaining.

2. That after the unfair labor practice charges were filed here on August 13, 1977, and at that time there was no course of action by the University which could be construed to undertake permissive bargaining so far as these management issues are concerned.

3. The complainant herein has failed to provide proof that there was any unfair labor practices in failing to bargain by or on behalf of the University herein.

4. That complainant has failed to provide any proof that the statements made by officials of the University were designed to injure the union, and thus, were unfair labor practices.

5. That the complainant has failed to prove that publications, leaflets, or advice given to students concerning course offerings were designed to injure the union and thus, were unfair labor practices.

6. That the unfair labor practices charged in this complaint should be dismissed.

ADDITIONAL CONCLUSIONS:

7. We were unable to find any support in the agreement for the Union's contention that the admissions policy at UAA had been changed unilaterally to the detriment of the union. If there is such a basis in the agreement for such claim, it can be procedessed through the grievance procedure.

DECISION AND ORDER

Unfair Labor Practice Charge Number 77-22 against the University of Alaska  
is dismissed.

SIGNED: \_\_\_\_\_  
C.R. "Steve" Hafling, Chairman

SIGNED: \_\_\_\_\_  
Ronald M. Henry, Member

SIGNED: \_\_\_\_\_  
Morgan Reed, Member

Decision dated 10-9-78  
[SIGNATURES ON FILE]