

[LABOR RELATIONS AGENCY STATIONERY]

MAY 7, 1979

ORDER AND DECISION NO. 47
PERTAINING TO UNFAIR LABOR PRACTICE CHARGE
ULPC79-1

On January 22, 1979, the Alaska Public Employees Association filed an Unfair Labor Practice charge, alleging that the State of Alaska violated procedures established by the Alaska Labor Relations Agency in Order and Decision No. 15 through 15-C by using the so called "deletion/established" procedure to transfer employees between bargaining units without first conferring with the Unions representing employees in the bargaining units. The Unfair Labor Practice charge also alleged that the State of Alaska was attempting to interfere with employee rights protected by the Public Employment Relations Act by threatening employees who sought to qualify for overtime pay with possible downgrading of their positions and by using information gained during the course of the overtime hearings in connection with the "deletion/ established" procedure to remove positions occupied by leaders of the Union from the bargaining unit which was represented by APEA.

In Count I of the Unfair Labor Practice charge, the Union contends that the "deletion/established" procedure resulted in the shift of employees occupying the affected positions between bargaining units. The Union argues therefore, that the procedure is covered by previous Orders and Decisions

of the Alaska Labor Relations Agency. These orders, Order and Decisions 15 through 15-C, require that before transfers are made between bargaining units, representatives of the State notify the affected union so that the parties can meet and confer in an effort to determine whether there is a dispute about the propriety of the proposed transfer, and if so, whether the dispute can be resolved amicably. The Union contends that with regard to the "deletion/established" procedure, the State makes no effort to inform them about the proposed transfers and has refused to confer with respect to them.

The State contends that the "deletion/established" procedure is mandated by the requirements of the Executive Budget Act, 37.07.010 et seq., which gives the Division of Budget and Management the authority to oversee the execution of the State budget and to insure that the functions actually being performed coincide with the functions authorized by the Legislature.

The State argues therefore, that the transactions involved are primarily paper transactions and only indirectly affect the individuals occupying the affected positions. In addition, the State contends that because the transfers are mandated by the Act and the Office of Budget Management, there is no obligation to either inform the Union about the proposed transfers, or to confer with the Union with regard to them.

FINDINGS OF FACT

With respect to this aspect of the Unfair Labor Practice charged filed by the Union, the Alaska Labor Relations Agency finds that the affect of the "deletion/established" procedure is to transfer individuals as well as positions in situations where the affected positions are occupied. The Agency finds that in at least one instance, i.e., the proposed deletion of the Highway Engineering Assistant II position and the establishment of the Materials Lab Technician Wage Group III position, the effect of the proposed transaction was to affect the transfer of employees from one bargaining unit to another.

The Agency further finds, that the State did not notify the Union of the proposed action in advance as required by Order and Decisions 15 through 15-C and Order and Decision 33, and that the State did not confer with the Union in respect to the proposed action. There were no factors pointed out to the Agency which indicate that such actions were impossible under the circumstances.

CONCLUSIONS OF LAW

The Agency concludes as a matter of law, that the Executive Budget Act does not mandate the use of the "deletion/established" procedure as that procedure is utilized by the State of Alaska, Division of Personnel. The Agency concludes that there is nothing in that Act which conflicts with the

policy enunciated in the Order and Decisions 15 through 15-C which requires the State to notify the Union of a proposed transfer between bargaining units and to meet and confer with the Union with respect to the proposed transfer. The failure of the State to notify the Union or to confer with the Union with regard to the proposed deletion of the Highway Engineering Assistant positions and the establishment of the Material Lab Technicians positions was therefore, a violation of the requirements established by the Agency in Order and Decision 15 through 15-C.

In Count II of the Unfair Labor Practice charge, the Union alleged that the State of Alaska attempted to coerce employees by threatening employees who had requested approval of their eligibility of overtime pay with the possible downgrading of their jobs. The Union also contended that the State is using the information obtained during the hearings regarding application for overtime pay eligibility in connection with the "deletion/established" procedure as part of a plan to transfer a significant portion of the leadership of the Union from the bargaining unit represented by the Union to another bargaining unit.

The Union presented testimony which showed that at the time the hearings on overtime eligibility commenced, some employees could very well have been given the impression that if they were successful in obtaining over-time eligibility, the information given in the eligibility hearings would be

used to downgrade their job positions. The State argued that it was not their policy to attempt to downgrade positions based solely upon the information obtained during the course of the overtime eligibility hearings and that, in fact, there had been no efforts to downgrade any positions based on this information. The Union offered the list of employees whose applications for overtime eligibility had been approved. The list appeared to be an indication of administration plans to downgrade positions of these employees. A substantial number of the names of the Union's leadership were contained on this list.

The State presented testimony that the list was prepared by a junior employee and that it was never intended to be used for that purpose.

The State presented testimony indicating that the list was mailed from the Division of Personnel by mistake and that as soon as the Division of Personnel realized that list had been circulated, they attempted to get back all the copies.

The State also presented testimony which showed that the Division of Personnel had taken no adverse action against any of the employees contained on the list except those Highway Engineering Assistant positions which were referred to in Count I of the APEA Unfair Labor Practice charge. With respect to these positions, officials of the Division of Personnel stated that an investigation of the positions had been started long before the list was prepared.

FINDINGS OF FACT

After considering the testimony and exhibits presented by the parties, the Agency finds that the State has not attempted to use evidence gained from the overtime eligibility hearings to downgrade the applicants positions. The State has not threatened to downgrade employees for attempting to exercise their rights by applying for overtime eligibility. The reclassification of the Highway Engineering Assistant positions was being investigated prior to the incumbents being determined to be eligible for overtime pay. Only one Union leader was among the employees affected by the proposed change.

CONCLUSIONS OF LAW

There is insufficient evidence to justify the conclusion that the State of Alaska was attempting to use the "deletion/ established" procedure along with the evidence obtained from the overtime eligibility hearings to remove the Union leadership from a bargaining unit represented by APEA and thus to interfere with the operation of the Union in violation of A.S. 23.40.110(a)(1).

It is therefore, the Order of the Agency that:

1. The State of Alaska shall inform the Union of any proposed use of the "deletion/established" procedure which will have the effect of transferring a position between bargaining units if that position is occupied and the proposed transfer would have the effect of moving the employee from one bargaining unit and placing him in another bargaining unit. The parties

shall meet and confer with regard to the possibility of reaching an agreement on the proposed bargaining unit changed and in the event the parties cannot so agree, the Union may file an appeal to the Agency as provided in Order and Decision 15 through 15-C.

2. Count II of the Union's Unfair Labor Practice charge against the State of Alaska is dismissed.

SIGNED: _____
C.R. "Steve" Hafling, Chairman

SIGNED: _____
Ronald M. Henry, Member

SIGNED: _____
Morgan Reed, Member

[SIGNATURES ON FILE]