[Labor Relations Agency Stationery]

MILBURN BRANTLEY and APEA)
Petitioner,)
) Petition 82-2
vs.)
)
STATE OF ALASKA)
Respondent)
_____)

ORDER AND DECISION NO. 73

Milburn Brantley is an airport safety officer and, as a member of the General Government Unit, represented by Alaska Public Employees Associa-tion (APEA). He was terminated by the State on November 2, 1979. This termination was later reversed by arbitrator Arthur J. Hedges in a decision dated July 14, 1980. Hedges clarified the award in a May 4, 1981, letter which provided that Brantley was entitled to back-pay computed as if he had remained at work.

The State paid Brantley an additional $2,572.01 following the May 4 letter. APEA and Brantley allege he is entitled to more back-pay. APEA Exhibit "l" showed Brantley's co-workers worked more overtime than the amount of scheduled overtime the State paid Brantley. On January 25, 1982, APEA filed a Petition for Enforcement requesting the Agency direct the State to comply with the arbitrator's ruling pursuant to AS 23.40.210.

The State argued that this Agency has no jurisdiction because the matter is covered in the parties' collective bargaining agreement. Rather, APEA

should follow the grievance procedure set forth in the agreement. This procedure could result in another arbitration deciding the additional overtime question.

APEA argued the Agency has jurisdiction to enforce the arbitrator's award pursuant to AS 23.40.210. Brantley is clearly entitled to additional overtime and should receive the average of his co-workers' overtime for the period he was off work.

In previous Orders and Decisions concerning pre- and post-arbital deferrals, this Agency has referred to the Spielberg and Collyer doctrines enunciated by the National Labor Relations Board. These and subsequent NLRB decisions reason that the arbitration process promotes an effective resolution of collective bargaining disputes. The Alaska Legislature has openly acknowledged that idea in AS 23.40.210 when it states:

> The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has the right of action to enforce the agreement by petition to the Labor Relations Agency.

This Agency thus takes jurisdiction of the case. The Agency does not find that the above legislative mandate requires a new grievance for non-compliance with an arbitrator's decision. In fact, such a requirement could perpetually prolong the grievance procedure. A party could always find some ambiguity in an award and forever question the arbitrator's meaning. The party could comply only partially with an award and tell opposing counsel to file a grievance. Such actions do not fulfill the purpose of AS 23.40.et. seq.

Furthermore, the Agency is empowered with the responsibility of enforcing the collective bargaining agreement, which requires binding arbitration as the final step of the grievance procedure. In this case, the parties have taken the grievance through arbitration and received a decision. The dispute now centers around what the decision means. The State's demand that the grievance procedure begin again at Step 1 (or even Step 2, 3, or 4) is illogical considering an arbitrator made the original award, wrote the subsequent letter, and is the best person available to determine when he meant. The Agency would hope that parties would agree to recontact the arbitrator in a joint fashion if a dispute as to the intent of an arbitrator's award arises. The Agency is unmoved by State's accusations that Petition wants "two bites of the apple" by recontacting the arbitrator a second time. Moreover, the Agency is critical of a party's refusal to recontact an arbitrator for clarification of an award.

This Agency ORDERS the parties to write a comprehensive letter asking the arbitrator for specific answers to specific questions. They should submit supporting data, including how much overtime Brantley earned for two months before termination, for the arbitrator's consideration.

This Agency also finds both parties have dealt in good faith in attempting to resolve the matter. Therefore neither should be penalized for not following the time requirements of the collective bargaining agreement.

THEREFORE, the Agency finds the following:

1. Arbitrator Arthur J. Hedges' July 14, 1980, award needs clarification as to the amount of back-pay due Brantley.

2. A good faith dispute exists as to whether the State has refused to implement the arbitrator's award.

3. Petitioner and Respondant shall not be penalized by time requirements under the collective bargaining agreement due to recontacting the arbitrator for clarification of the award.

The Agency therefore ORDERS:

1. The parties shall meet no later than September 30, 1982, and shall discuss and attempt to agree on additional materials to be sent Mr. Hedges. If necessary, they shall arrange for exchange of discovery.

2. The parties shall draft a joint letter to Mr. Hedges asking specific questions raised in this case, including but not limited to:

a. The amount of overtime, if any, due Brantley in excess of the $2,572.01 already paid.

b. What, if any, penalties and interest should be added to any additional back-pay Mr. Hedges might order.

c. Who, if anyone, should bear the costs and attorneys' fees associated with any payments not rendered in a timely fashion.

3. If parties cannot agree on a joint letter and underlying documents, each party shall send Mr. Hedges separate letters no later than October 8, 1982.

4. Parties shall supply Mr. Hedges with a copy of this Order and Decision.

5. Parties shall report the progress of this case to the Agency in thirty (30) day intervals starting October 30, 1982, and shall send the Agency a

copy of Mr. Hedges' replies and final award.

6. Each party shall bear its own costs and attorneys' fees in bringing this petition to the Agency.

DATED this 10th day of September, 1982

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C. R. "Steve" Hafling, Chairman

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Morgan Reed, Member

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Ronald M. Henry, Member

[Signatures of Hafling and Henry on File]