

[Labor Relations Agency Stationery]

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA COMMUNITY COLLEGE)
 FEDERATION OF TEACHERS,)
 LOCAL NO. 2404,)
)
 Complainant,)
)
 vs.)
)
 UNIVERSITY OF ALASKA,)
)
 Respondent.)
 _____)

ULPC 83-2

ORDER AND DECISION NO. 82

BACKGROUND FACTS

Ralph McGrath, John Nelson and Don Mohr are faculty members of the University's Social Sciences Department and at all times were members of the Union negotiating team. All three were denied summer teaching assignments from the University and have filed an unfair labor practice pursuant to Alaska Statute 23.40.110(a)(1) and .110(a)(3). Those provisions involve the interference, restraint and coercion of an employee exercising his rights guaranteed in 23.40.080, and discrimination in regard to hire, where tenure of employment or term of condition of employment is to encourage or discourage membership in an organization.

In a recent Alaska Supreme Court Opinion of the Alaska Community College Federation of Teachers, Local 2404 vs. University of Alaska, (hereinafter referred to as "Peterson"), Opinion No. 2729, September 16, 1983, provides a synopsis of the majority of the applicable law. The facts of this present case are different from the Peterson case because in Peterson a more qualified person was available and because the course was subsequently canceled. In the instant case equally qualified persons were available and the courses were held. Peterson held that to constitute discrimination, the employer's action generally must have been based on an anti-union motive, and only where an employer's conduct is "inherently destructive" of important employee interest is the proof of the anti-union motive necessary.

Peterson also acknowledged the exception to the general rule of the advancement of a substantial legitimate business interest (see Peterson footnote 8, page 19, of the Slip Opinion).

The issues of offering summer employment to bargaining union members has been litigated before in front of this Agency. It has also been the subject of several grievances between the parties. The Agency does not hold that such prior grievance settlements are controlling, but they do offer some guidance and precedence for the present issues.

The past settlement involved University's Exhibit 5, a document dated June 27, 1980, in which the University and Union settled grievances concerning overload courses. In the settlement,

the parties agreed that the collective bargaining agreement does not require that bargaining unit members be offered assignments beyond their regularly contracted for full time duties. Subsequently, an arbitration was held in which Eaton H. Conant decided a separate dispute concerning whether the University was obligated under the terms of the collective bargaining agreement to offer bargaining unit members overload teaching assignments. Arbitrator Conant found for the University and held that "the clear language of the Agreement of June 27, 1980, and in review of the evidence and the nature of the parties' objectives in this dispute, leads this neutral arbitrator to the conclusion that the parties agreed on June 27, 1980, that the employer could refuse to consider bargaining unit members for overload teaching on grounds that they were members. It is impossible to read that clear and emphatic agreement language and come to any other conclusion."

The importance of the prior decisions, in comparing time with the present contract, is to show that the University is clearly not contractually required to offer summer teaching assignments to bargaining unit members. The facts also show that the University has assigned summer courses in the past to bargaining unit members who were on the Union negotiating team during the summer. However, the prior arbitrator's decision and the settlement of the grievances is not controlling because the University may not violate the terms of Alaska Statute Sec.23.40.110

by discriminating against the bargaining unit members.

In mid-February of 1983, the Social Sciences Department Director, Ed Cordova, called a faculty meeting to discuss plans and ideas for the future and direction of the history and geography disciplines. Only McGrath and Nelson attended the meeting. They discussed, in general terms, courses. Possible summer assignments were discussed but not made. No promises for summer teaching assignments were made during this meeting.

In April, 1983, McGrath went to Cordova's office and expressed an interest in teaching the first half of the summer as Ralph McGrath was going to be gone the second half of the summer. During that meeting Cordova asked McGrath if McGrath thought contract negotiations between the University and the Union would be completed by the time summer school began. McGrath indicated that they would probably not. Cordova then advised McGrath that he did not want to assign McGrath to teach summer classes as McGrath was not likely to show up. Cordova did not want to go through another session with the legislative auditors questioning him on how many times McGrath missed summer classes as well as McGrath being paid and not teaching because of his involvement with contract negotiations. (Sec. 1.5 of the contract allows teachers to be excused from teaching duties, as necessary, during contract negotiations.)

In mid-April, 1983, Cordova determined which faculty members were to receive summer teaching assignments. Mohr, McGrath

and Nelson were not assigned summer courses. Cordova based his decision on the fact that Mohr did not apply for a summer assignment pursuant to the University's summer assignment procedures and that McGrath and Nelson (Nelson is Chief Negotiator for the Union) would be in negotiations and probably not available for class assignments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ralph McGrath and John Nelson properly applied for a summer 1983 teaching assignment.

2. Don Mohr did not follow the University's procedure to properly file for a summer 1983 teaching assignment.

3. The University's reliance on the 1980 settlement and 1981 award of arbitrator Conant are not controlling in this case.

4. Ed Cordova had a good faith belief that McGrath and Nelson would not be available to teach summer classes on a continual basis due to their involvement with negotiating a successful collective bargaining agreement, and McGrath's plans to be out of the state for part of the summer of 1983.

5. The same good faith belief would apply to Don Mohr, even if he did apply for a summer teaching course, as he is also on the negotiating team.

6. University has valid business reasons for requiring faculty members to be available to teach assigned summer courses.

7. The totality of the circumstances does not show that

the University had an anti-union animus in denying McGrath, Mohr and Nelson summer teaching assignments. The negotiators were relieved from all teaching assignments in the spring semester by the University.

The negotiators of the ACCFT cannot claim any anti-union animus based upon the fact that the University is following the same process and procedure that they did during the spring of 1983 by allowing the ACCFT negotiators the opportunity to negotiate full time.

8. The University of Alaska showed valid business reasons as to why the faculty members were denied summer teaching assignments. The evidence showed that other well qualified faculty members were allowed to teach summer assignments.

9. The University is under no obligation to offer union bargaining members summer teaching assignments. Any qualified applicant who properly applied is eligible. However, when the University has an application process to determine who will be available for summer teaching assignments, they should follow that process. Of, if they do not follow the process, they should have a valid business justification for not doing so. The University did follow the process in this case.

10. The faculty members had a protected interest to have their summer school applications processed by the University, which did occur in this case.

11. The original allegations of the unfair labor practice in regards to the University not hiring Sylvia Orr to teach during

the summer of 1983 was dismissed by the Petitioner during the hearing.

12. The ULPC allegation that the University made unilateral changes in the terms and conditions of employment for the faculty at ACC was dismissed by Petitioner during the hearing.

ORDER

Based upon the following findings of fact, we make the following conclusions of law:

1. That an unfair labor practice did not occur; therefore, the unfair labor practices alleged in ULPC 83-2 are DISMISSED.

DATED: October 31, 1983

C. R. "Steve" Hafling,

DATED: October 31, 1983

Morgan Reed, Member

[Signatures on File]