STATE OF ALASKA
before, THE DEPARTMENT OF LABOR
LABOR RELATIONS AGENCY

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| APEA | ) | |
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| Petitioner | ) | |
| | ) | |
| and | ) | |
| | ) | ULP 85-005 |
| CITY OF FAIRBANKS, | ) | |
| | ) | |
| Respondent | ) | |
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| _____ | ) | |

DECISION AND ORDER 86-2

The above captioned case charging a violation under AS 23.40.110(a)(5) of PERA has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings are warranted inasmuch as the petitioner has failed to meet its burden of proof as required under 2 AAC 10.430. The charge alleges that the City of Fairbanks (City) agreed to arbitrate the remaining articles of the contract as they applied to all APEA unit members. Subsequently, according to APEA, the City reneged on its agreement to arbitrate the matter for all members of the bargaining unit. The Agency is not convinced that such an "agreement" actually existed.

INVESTIGATIVE FINDINGS

Interviews with the parties and other witnesses indicate that Mr. Droz, the City Manager, referred to arbitration as something he believed to be required by law. APEA did not correct Mr. Droz' perception that the entire unit was manditorily subject to binding arbitration. Further, there appears to have

been no acceptance of the offer to arbitrate on the part of APEA. While accounts differ, the consensus is that APEA's Bruce Ludwig made no affirmative reply to Mr. Droz's statement regarding arbitration.

These circumstances notwithstanding, there was no consumation of a written agreement to arbitrate for the entire unit. AS 23.40.200(e) and AS 09.43 each contemplate written agreements to arbitrate. It appears to this Agency that such a requirement is reasonable. Indeed, APEA drafted a written agreement, but before it was transmitted to the City, Wally Droz contacted APEA and informed them he was mistaken about which employees were subject to binding arbitration and would enter into arbitration only for class 1 and class 2 employees, as required by law.

APEA has failed to show that the City knowingly agreed to arbitrate on employees it was not bound by law to arbitrate upon.

On the contrary, what the facts appear to show is that Wally Droz agreed to arbitrate on those employees which are subject to binding arbitration under AS 23.40.200.

The language in AS 23.40.200(b) referring to employees prohibited from striking is clear and unambiguous. "If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030." (Emphasis added)

A similar reference to "employees in this class" is used in AS 23.40.200(c) in regard to class (2) employees. The statute does not refer to units containing "employees in this class", but specifically to the class of employees.

There is precedent for treating the various classes of employees contained within the same unit differently. Early in the history of PERA, the State Labor Relations Agency found "it is implicit in the State Labor Relations Act that where different categories of employees are members of the same bargaining unit, their relationship to a strike vote and an actual strike shall also be different". Decision and Order No 17A.

This is instructive, particularly since there is no similar language contained within the NLRA. To our knowledge, neither the Federal Courts nor the NLRB have addressed this type of question and therefore cannot be relied upon for precedent under 2 AAC 10.140(b).

Investigation reveals that the City is willing to arbitrate on class 1 and class 2 employees. The City has no statutory obligation to arbitrate for class 3 employees and the petitioner has failed to prove that any voluntary agreement to arbitrate for those employees existed.

ORDER

Therefore, we find that the petition should be DISMISSED, and IT IS SO ORDERED. Signed this 27th day of January 1986

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ROBERT J. BACOLAS, CHAIRMAN

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DONALD R. WILSON, MEMBER

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JR. CARR, MEMBER

[SEAL AFFIXED AND SIGNATURES ON FILE]