

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

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION,)
)
Petitioner/Complainant,)
)
vs.)
)
CITY OF FAIRBANKS,)
)
Respondent.)
_____)

Case No. PET 87-001,
ULP 87-001

DECISION AND ORDER 87-6

The Department of Labor, Labor Relations Agency (the "Agency") considered a petition and one remaining count of an unfair labor practice charge filed by the Alaska Public Employees Association ("APEA") against respondent City of Fairbanks. The parties stipulated that the Agency could and would render its decision based on briefs submitted. Thomas E. Stuart, Jr., Chairman, and members Randy Carr and Dennis Geary, constituting a quorum of the Agency, considered the briefs presented to them, and based upon those briefs make the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Part I - Petition 87-001.

1. The authority and jurisdiction of the Labor Relations Agency is prescribed in AS 23.40. In enforcing the Public Employment Relations Act, the Agency is charged with responsibilities for and given jurisdiction to resolve unfair labor practice charges, determine unit clarifications, administer decertification and certification elections, and review petitions to enforce collective bargaining agreements under AS 23.40.210. APEA's action here is a petition to enforce under AS 23.40.210, which provides:

Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of August 26, 1977, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. [Emphasis added.]

2. Section 2.523(c)(2) of the Fairbanks General Code of Ordinances ("FGC"), a provision in the City's Personnel Code, requires the City to undertake certain salary studies:

The compensation plan is intended to provide fair compensation for all classes in the classification plan with regard to range pay for other classes, general rates of pay for similar employment in private establishments and other public employment in the area, cost-of-living data, the ability of the city to pay and other factors. To this end, the city manager will from time to time make comprehensive studies of all factors affecting the level of salary ranges and will recommend to the council such changes in salary ranges as appear to be pertinent.

3. The Personnel Code applies to City employees without a collective bargaining agreement. APEA organized Fairbanks employees but at the time of filing this petition and at the time of issuance of this decision, APEA had not entered into a contract with the City of Fairbanks as certified collective bargaining representative of employees of the City.

4. Pursuant to the Personnel Code of the City of Fairbanks, issues may be grieved and arbitrated. FGC 2.523(h). APEA, on behalf of all employees of the City of Fairbanks subject to potential APEA collective bargaining representation, grieved a purported failure of the City of Fairbanks to undertake the comprehensive study of all factors affecting the level of salary ranges as required in FGC 2.253(c)(2) noted above. This grievance procedure went through arbitration, and an arbitrator found that the City's last survey ostensibly performed to satisfy FGC 2.253(c)(2) did not constitute the comprehensive study envisioned in the Fairbanks General Code.

5. The record does not indicate whether APEA or any other person has sought judicial enforcement of the arbitrator's decision or exercised any other enforcement remedy including but not limited to application to the Superior Court under AS 09.43.

Part II - Unfair Labor Practice Charge 87-001

1. APEA represented employees of the City of Fairbanks in negotiating a collective bargaining agreement between the City of Fairbanks and those employees. Those negotiations have proceeded for a period of time including 1986 and this year.

2. James Griffin was an employee of the City of Fairbanks and was hired on April 10, 1979 according to submitted payroll records. He was laid off in July 1987. Sometime prior to 1982 Fairbanks enacted a classification program providing for a position entitled Right Of Way Agent, and set the salary for that position under the Fairbanks system of classifications. However, by 1982 the City felt the need to allow employees an opportunity to get increased wages apparently capped by ordinance at a specified salary range. Under Ordinance 4095, enacted in 1982, the City upgraded salary ranges for numerous job classifications but did not print all expressions of intent behind that ordinance in the FGC. For example, the FGC did not contain the statement (reflected in minutes) that the range assigned to a particular position would not create an automatic salary increase but existed as an expression of a range of options and thereby avoided compression of salary ranges .

3. Mr. Griffin, a Right Of Way Agent--a position assigned a range 27, was hired in range 24 and was employed in that position and at that range prior to 1986. Another employee was hired in the same position and at that same range. However, during all or a portion of that time a more senior Right Of Way Agent was placed in range 27, the maximum range allowed under the 1982 classification system.

4. In an apparent attempt to clarify what the salary ranges were, the City adopted Ordinance 4586 in 1986 ratifying the existence of several salary ranges, including ranges for Right Of Way Agents: Right Of Way Agent I at range 24 and Right Of Way Agent II at range 27. The Ordinance was of general application, codified an existing practice, and did not change the pay or wage rate which Mr. Griffin had been receiving as a Right Of Way Agent.

5. At the time of enactment of Ordinance 4585, negotiations between APEA and the City were apparently underway concerning compensation due employees and other issues.

6. The Agency will give great weight, when relevant, to decisions of the National Labor Relations Board. 2 AAC 10.440(b). The United States Supreme Court has enunciated the standards applicable under the National Labor Relations Act in holding that, during the pendency of labor negotiations, a unilateral change in a condition subject to mandatory bargaining and which is being discussed by the employees' representative and employer, constitutes an unfair labor practice regardless of good faith or bad faith. National Labor Relations Board v. Katz, 359 U.S. 736, 746-47, 8 L. Ed. 2d 230, 238 (1962). Katz and other NLRB cases emphasize that a change is a critical ingredient.

DECISION

Based on the foregoing findings of fact and conclusions of law, the Agency unanimously decides that:

1. The Agency is without jurisdiction to entertain the petition for enforcement filed by APEA in this matter, because no collective bargaining agreement exists to enforce. The Agency therefore dismisses petition 87-001. The Agency's determination is not intended to prejudice such rights as APEA may have in seeing enforcement of the arbitrator's award in that matter.

2. There has been no change in the rights of James Griffin, in as much as the 1986 enactment by the Fairbanks assembly codified pre-existing circumstances applicable to Mr. Griffin with no loss in benefits to Mr. Griffin. As such, there has been no unfair labor practice within the meaning of case law exemplified by National Labor Relations Board v. Katz. Therefore, the remaining count in unfair labor practice charge 87-001 is denied.

3. This decision sets forth the rationale for the determination by the Agency following review of materials submitted by the parties.

DATED this 2nd day of November, 1987.

DEPARTMENT OF LABOR/LABOR
RELATIONS AGENCY

By _____
Thomas E. Stuart, Jr., Chairman

By _____
J.R. "Randy" Carr, Member

By _____
Dennis Geary, Member

[Seal Affixed and Signatures On File]

APPEAL PROCEDURES

An Agency order may be appealed through proceedings in Superior Court brought by a party in interest against the Agency and all other parties to the proceedings before the Agency, as provided in the Rules of Appellate Procedure of the State of Alaska.

An Agency order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of Alaska Public Employees Association, Petitioner/Complainant, and City of Fairbanks, Respondent, Case No. PET 87-001 and ULP 87-001, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 6th day of November, 1987

Clerk

[Signature On file]