

STATE OF ALASKA  
DEPARTMENT OF LABOR  
LABOR RELATIONS AGENCY

|                          |   |                     |
|--------------------------|---|---------------------|
| FAIRBANKS FIRE FIGHTERS  | ) |                     |
| ASSOCIATION, LOCAL 1324, | ) |                     |
|                          | ) |                     |
| Complainant,             | ) |                     |
| v.                       | ) | Case No. ULP 90-001 |
|                          | ) |                     |
| CITY OF FAIRBANKS,       | ) |                     |
| Respondent.              | ) |                     |
| _____                    | ) |                     |

DECISION AND ORDER 90-4

On January 2, 1990, the Fairbanks Fire Fighters Association, Local 1324 (Association), filed unfair labor practice charges against the City of Fairbanks (City). The Association subsequently filed additional charges against both the City as well as individual City Council members.

In essence, the Association charges that the City and certain City Council members violated the Public Employment Relations Act (PERA) by threatening to lay off a number of fire department personnel if the Association would not waive a 3% wage increase scheduled for January 1, 1990 under the terms of the existing collective bargaining agreement. The Association charges that the City's conduct specifically violates AS 23.40.110(a)(1), (2), (3) and (5) by interfering with the Association's lawful

rights and by refusing to bargain in good faith regarding the impending layoffs.

In addition to the unfair labor practice charges, the Association also filed a grievance under the collective bargaining agreement relating to the layoff of specific members of the Association effective January 1, 1990. The grievance seeks to enforce certain terms of the collective bargaining agreement by requiring the immediate return of the laid off individuals to their positions pending arbitration. Alternatively, the Association demands that the City take whatever fiscal steps are necessary to maintain adequate funding in the event that the affected individuals are ordered to be returned to work following arbitration. On March 12, 1990, the Association filed a petition with this Agency under AS 23.40.210 seeking to enforce the above terms of the collective bargaining agreement by immediately restoring the laid off individuals to work pending the outcome of arbitration.

#### Unfair Labor Practice Charges

It is well established in labor law that the subject of layoffs -- when and in what sequence -- is a "term or condition of employment." Gorman, Basic Text on Labor Law, at 504 (1976), citing United States Gypsum Co., 94 NLRB 112, amended, 97 NLRB 889 (1951), modified on other grounds, 206 F.2d 410 (5th Cir. 1953),

cert. denied, 347 U.S. 912 (1954); see also AS 23.40.250(8). Accordingly, the City of Fairbanks had an obligation to bargain in good faith with the Association regarding the timing and effect of its decision to lay off certain individuals in the fire department.

The Agency's investigation reveals that the City and the Association did in fact exchange proposals regarding the proposed layoffs, but that neither party was willing to yield in its position. There is no evidence that the City's proposal was motivated by any reason other than a desire to respond to budget cutbacks by reducing labor costs. Nor did the City deprive Association members of the 3% wage increase they were entitled to under the collective bargaining agreement. While we may disapprove of the manner used by city officials and council members to implement the layoffs, we find insufficient evidence of bad faith bargaining or interference with lawful Association rights to establish probable cause that AS 23.40.110 has been violated.

#### Petition to Enforce Agreement

The Agency has also reviewed the Association's petition to enforce section 4.10 of the collective bargaining agreement which provides in pertinent part:

When any matter in dispute has been referred to the grievance procedure set forth above, the conditions and provision prevailing prior to the time the dispute arose shall, insofar as it is possible and consistent with normal

operations, not be changed until the decision is rendered.

The Association requests that, pending resolution of the grievance, the Agency require the City to preserve the status quo by immediately returning the laid off employees to work or, alternatively, taking fiscal steps to maintain adequate funding should the remedy demanded by the Association be awarded following arbitration.

The Agency believes that enforcement of the substantive terms of the collective bargaining agreement is unwarranted and would unduly interfere with the operation of the grievance and arbitration process set forth in the agreement. We note that section 4.1 of the agreement states that the grievance procedure is intended to be the "exclusive method" of resolving grievances arising under the agreement. We believe it is the arbitrator's task, not the Agency's, to interpret and apply the substantive terms of the agreement. Further, in the event the Association prevails after grievance arbitration, it is clearly within the arbitrator's power to order retroactive restoration of all rights, back pay and other benefits. There has been no other showing that the City would be financially unable to comply with such a retroactive decision. Accordingly, we believe that the Association is adequately protected by the terms of the existing agreement and we decline to interfere with the grievance and arbitration procedure set forth therein. See Collyer Insulated Wire, 192 NLRB

837 (1971). However, in the event that one of the parties refuses to proceed to arbitration under the terms of the agreement, the Agency would entertain an appropriate petition to compel arbitration.

ORDER

For the foregoing reasons, the Agency decides and orders as follows:

1. There is insufficient probable cause to support the unfair labor practice charges filed by the Association against the City of Fairbanks in this matter, and therefore such charges are hereby DISMISSED.

2. The Agency declines to enforce the substantive terms of the collective bargaining agreement between the parties pending the outcome of grievance arbitration.

DATED this 9th day of April, 1990.

DEPARTMENT OF LABOR,  
LABOR RELATIONS AGENCY

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Jim Sampson, Chairman

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Thomas Stuart Jr., Member

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J. R. Carr, Member

[Department of Labor 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 Fairbanks Fire Fighters Association, Complainant, and City of Fairbanks, Respondent, Case No. ULP 90-001, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 11th day of April, 1990

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Clerk

[Signature on File]