

[Labor Relations Agency Stationery]

STATE OF ALASKA ALASKA LABOR RELATIONS AGENCY

In the matter of the)
STATE OF ALASKA,)
Petitioners)
vs.)
PUBLIC EMPLOYEES LOCAL 71,)
Respondent.)
_____)

Unit Clarification 84-1

ORDER AND DECISION NO. 91

GENERAL BACKGROUND

In the spring of 1984 the State of Alaska proposed to move five positions from the Labors, Trades and Crafts Local 71 (LTC) collective bargaining unit to the General Government (GGU) bargaining unit. Local 71 disagreed with the proposed move. The State petitioned the Labor Relations Agency to determine the matter.

The hearing was held in Valdez on September 28, 1984. Testimony was taken at the hearing from Harborview agents and some of the affected employees. The Labor Relations Agency, having fully considered the record presented at the hearing and previously having made

its preliminary Oral Findings of Fact and Conclusions of Law, hereby submits this formal opinion.

FINDINGS OF FACT

1. Harborview facilities depend upon funding from the State of Alaska legislature and matching Federal funds. The matching funds are obtained if the facility meets the standard set forth by the ICF/MR certification process.

2. On February 21, 1983 a Statement of Deficiencies and a Plan of Correction was made by the State of Alaska Health and Human Services. Part of the plan of correction included that more resident aides be established at the facility to bolster the insufficient direct care personnel available for meeting the training needs of the handicapped population. The Harborview management recommended that additional staff positions be added to the existing facility; however, budget constraints did not allow for new staff positions. Therefore, the Harborview management met and determined that the best manner to correct the deficiencies within their budget was to take existing positions from the housekeeping, maintenance and dietary departments and reclassify those positions as residential aides who would be more closely involved in patient rehabilitation and care.

3. The plan was discussed with all affected employees and the union, pursuant to Local 71's collective bargaining contract. All affected employees were notified prior to March 1, 1984 with an explanation of the rationale for the decision.

4. If the deficiencies were not corrected, the Harborview facility could lose up to 50% of its operating budget from Federal funding through Medicare.

5. Local 71 objected to the proposed move. Their members presented testimony that the residential aides were now doing work that was historically done by LTC. The work would be making adjustments to the patients' wheelchairs, serving food to the patients (which work was traditionally done by all LTC personnel), driving a van for the patients' physical, social and job related activities, plus doing some upholstery which was traditionally done by LTC.

6. In essence, the LTC argued that their unit was being eroded by the new classifications and portions of their historical duties were actually being done by the residential aides in the GGU unit.

7. This Agency finds that the allegations of the LTC unit being eroded did not affect the individuals who were subject to this hearing. The Agency would entertain a Petition for Enforcement of Contract, another Unit Clarification Petition with a review of exactly which GGU employees are doing LTC work, or an Unfair Labor Practice. But from a review of the record, we find that there is insufficient evidence to justify the conclusion that the State of Alaska is attempting to use the deletion/establish procedure to erode the LTC unit.

8. One other issue came up at the hearing. It was the appropriate steps to be taken by the State of Alaska in making

these determinations. The evidence presented at the hearing clearly showed that if the deficiencies at Harborview were not corrected, Harborview could possibly lose millions of dollars in the matching Federal funds. The State was very concerned that the petition was filed on or about June 7, 1984 and the hearing did not take place until late September 1984.

9. Order and Decision No. 15A, page 3, sets forth that:
"The Department of Administration should be deemed to have the authority to make determinations, appealable to the Labor Relations Agency, subject to any good faith requirements to first negotiate on the matters with the employee organization concerned, as to the proper unit placement in terms of the regulations and the Orders and Decisions of the Labor Relations Agency of new classifications, changed classification, or misclassifications. Likewise, the Department of Administration should be deemed to have the preliminary authority to make such determinations within a classification as to the actual duties performed by an individual and to make unit placements accordingly."

10. So, clearly, the steps to be followed are:
 - a. That the Department of Administration determines the proposed action.
 - b. The Department notifies all collective bargaining units involved and negotiates on the proposals pursuant to the contracts.
 - c. If any of the parties object to the proposed move, the proposed moves are not to be finalized until the matter is heard by the Labor Relations Agency.
 - d. If there is a problem that would necessitate prompt action, the parties may request an expedited

hearing or move for interim relief pursuant to the
Administrative Procedure Act.

CONCLUSION

11. Therefore, we conclude, as a matter of law, that the
State of Alaska, Department of Administration, properly
determined the actual duties performed by the individuals who
are the subject matter of this petition and the Appeal is
therefore **DENIED**.

DATED and SIGNED on this 30 day of October, 1984.

C. R. "Steve" Hafling, Chairman

Ben Humphries, Member

[Signatures on File]