[Labor Relations Agency Stationery]

WESLEY CADE, GEORGE DANNER, III AND PETER TEMPLETON,	)
Petitioners,	)
vs.	)
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC, FACILITIES, DISTRICT NO. 1- PACIFIC COAST DISTRICT, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO,	)
Respondents.	)

Case No. ULPC 85-5

ORDER AND DECISION NO. 99

SUBJECT:WHETHER MEBA-STATE COLLECTIVE BARGAINING AGREEMENTS AND ENFORCEMENT THEREOF CONSTITUTE UNFAIR LABOR PRACTICES AGAINST PETITIONERS; UNION MEMBERSHIP; HIRING HALLS

The State Labor Relations Agency (the "Agency") convened several hearings to consider the unfair labor practice charges brought by petitioners Wesley Cade, George Danner, III, and Peter Templeton against the State of Alaska Department of Transportation and Public Facility ("State") and District No. l-Pacific Coast District, National Marine Engineers Beneficial Association, AFL-CIO ("MEBA"). The petitioners claimed that their ability to obtain work as licensed engineers aboard the State's ferry system had been unlawfully

restricted and interfered with by MEBA and the State through agreements and practices in violation of the Public Employment Relations Act. The Agency convened hearings on February 13 and 14, 1986 in Juneau, Alaska and on March 10, 1986 in Seattle, Washington to take testimony and consider evidence, and convened a third hearing on March 19, 1986 in Juneau for the purpose of production of documents and setting of a post hearing briefing schedule. At each of the hearings, Chairman C. R. "Steve" Hafling and members Marlene Johnson and Ben Humphries were present and so constituted a quorum in each instance. The petitioners appeared and testified on their own behalf and were further represented by Bernice Funk. MEBA was represented by James H. Webster. The State was represented by Webster and, in part, by Assistant Attorney General Jon Rubini. Various witnesses testified for the benefit of each party. The Agency having considered the arguments, the briefs supplied at various points in time including the post hearing briefs, the evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following order and decision denying the relief sought by petitioners.

FINDINGS OF FACT--STATEMENT OF PROCEEDINGS

1. Petitioners Wesley Cade, George Danner, III and Peter Templeton are employees of the Alaska Marine Highway System ("AMHS"), a system of sea going ferry boats owned and operated by the State, and engaged in transportation between Washington and Alaska and within Alaska. Danner and Templeton live in Juneau, Alaska and Cade is considered a resident of Alaska although, at the time of the hearings herein, he resides in Snohomish, Washington due to medical reasons relating to his wife. Each of the petitioners is a participating member of the InlandBoatman's Union ("IBU").

2. Respondent MEBA is a collective bargaining organization representing licensed engineers on AMHS. During all periods pertinent to this complaint MEBA had a collective bargaining agreement with the State. The collective bargaining agreements between MEBA and the State include agreements entered into in 1982 and subsequently renegotiated and reentered into in 1985. During the appropriate periods of time hereto IBU also had collective bargaining agreements with the State.

3. On July 26, 1985, petitioners caused to be lodged with the Agency a complaint alleging unfair labor practices by MEBA and the State and seeking relief from those practices. Copies of this complaint were provided to representatives of the State and MEBA by the Agency or by petitioners. The petitioners verified their complaint of unfair labor practices, which document was also submitted and signed by

Bernice Funk, attorney, and Marcia Fort, legal assistant, persons affiliated with Double L Research Company. The complaint of unfair labor practices was subsequently amended by filing an amended complaint of unfair labor practices, not verified by the petitioners but filed by Bernice Funk, attorney, and Marcia Fort, legal assistant, affiliated with Double L Research Company.

4. Subsequent to the filing of the complaint and amended complaint, Robert M. Johnson, counsel and hearing officer for the Agency was in contact with Ms. Funk and with Allen Brotsky, attorney for MEBA, concerning discovery and other procedural aspects of the case. Ms. Funk requested informal production of documents and responses to certain interrogatories, which informal requests were subsequently reduced to written requests for production of documents. An unsigned opposition to a motion to compel production of documents was submitted for the benefit of MEBA and petitioners filed a response to that opposition. The Agency subsequently issued its Order and Decision No. 96 and specified the limited scope of prehearing production which could be compelled and addressed the jurisdiction of the Agency to order production of documents.

5. On January 10 and 13, 1986, Robert M. Johnson as representative of the Agency met with certain of the petitioners and petitioners' representatives and with representatives of the State and MEBA in Seattle, Washington for purposes of conducting a prehearing conference. At that conference, the parties discussed and to a certain extent narrowed the issues brought before the Agency. Counsel for MEBA and the State filed a prehearing brief in which a number of objections were raised to the proceedings including objections relating to the proper service of the amended complaint in a manner consistent with the Administrative Procedures Act ("APA") and the Public Employment Relations Act. Without specifically responding to or conceding the merit of those objections, a hearing scheduled before the Agency in Juneau, Alaska was postponed in order that an amended complaint could be specifically served and treated as an accusation under the APA with a notice of defense and other procedures requested and alleged to be required by MEBA. A refiled amended complaint of unfair labor practices signed by Bernice Funk as attorney for petitioners and verified by petitioners was filed with the Agency. That amended complaint was served by registered mail on the appropriate representatives of the State and MEBA on January 17, 1986. At the time of service of that amended complaint, which was treated as an accusation within the meaning of AS 23.40.120 and AS 44.62.380, a statement concerning notice of defense and a notice of defense form were provided to MEBA and the State. The hearings held on February

13-14, 1986, were timely within the meaning of the APA, and MEBA and the State filed a Notice of Defense.

6. At the January 10, 1986 pretrial conference, subpoenas were provided at the request of petitioners to petitioners, consistent with Order and Decision No. 96. Petitioners served subpoenas duces tecum on certain witnesses. Documents requested to be produced pursuant to those subpoenas by MEBA and the State were presented to petitioners and counsel at the first Juneau hearing after certain representations were made concerning the documents produced. Petitioners made no specific inquiries into the nature and form of the documents produced. At the subsequent Seattle hearing, counsel for the petitioners claimed that all documents produced pursuant to these subpoenas had not been produced as requested. The Agency ordered that these requested documents be produced or objections to non-production be made at the hearing in Juneau, Alaska on March 13, 1986. On that date additional documents were produced in response to the subpoenas duces tecum. At that hearing petitioner Templeton appeared with authorization to appear on behalf of his co-petitioners. After being advised, Templeton did not seek testimony from any representatives of MEBA or the State concerning the nature, scope and extent of the documents produced. A protective order was orally entered into the record restricting the use of documents produced at that time.

7. As agreed to by the parties on March 13, 1986, either party was permitted to request an additional hearing before the Agency for purposes of presenting further evidence and testimony. The parties agreed that such further evidentiary proceedings were not necessary and as such posthearing briefs including proposed findings of fact and conclusions of law would be submitted by each of the parties by April 23, 1986. The parties filed posthearing briefs and proposed findings of fact and conclusions of law. Those briefs plus the record as presented comprise a complete record for purposes of these proceedings and constitute the basis for the determination and findings of this Agency.

8. Petitioners filed certain supplemental materials subsequent to their posthearing brief, and respondents moved to strike those materials.

FINDINGS OF FACT--STATEMENT OF CASE

1. Since 1963 or earlier, MEBA has represented, for purposes of collective bargaining, the engineer officers employed on the vessels of the AMHS. During this time, MEBA has operated a hiring hall that, by agreement of the parties to the MEBA collective bargaining agreements, is the normal

source for dispatches of engineer officers to employment with AMHS, except if MEBA is unable to do so or in cases of emergency. The hiring hall in Seattle has posting boards listing available jobs, and that hall as well as an "unofficial" hall in Juneau maintains information available to all MEBA registrants on inquiry concerning hiring procedures and their placement on the MEBA out-of-work list.

2. The State and MEBA were parties to a collective bargaining agreement effective by its terms from July 1, 1982, through March 31, 1985. On November 15, 1985, the State of Alaska and MEBA entered into their current collective bargaining agreement, effective by its terms from April 1, 1985, through March 31, 1988.

3. Rule 5 of both the 1982 Agreement and the 1985 Agreement provides as follows:

> Engineer Officers covered by this Agreement shall, within thirty (30) days after employment with the Employer, apply for membership in the Union and shall thereafter as a condition of employment tender dues and initiation fees uniformly required as a condition of membership. [emphasis added.]

4. In Rule 3.01 of the 1982 Agreement, MEBA and the State agreed to a dispatch procedure for AMHS employees meeting certain qualifications to jobs with AMHS, as follows:

> The Employer recognizes that the Union is a normal source of obtaining new Engineer Officers. The Union recognizes the Employer's legitimate interest in employing Alaskans and, accordingly, agrees to continue its practice of not requiring Alaskans to be physically present in the hiring hall to avail themselves of that facility. If called upon to do so, the Union agrees to furnish the Employer qualified and satisfactory personnel for any classification covered by this Agreement.
>
> Recognizing the passenger carrying capacity and the unique operational requirements of the Employer's vessels, it is agreed that members and applicants possessing a lifeboatman's certificate along with the required license and having at least three years experience in the engine rooms of

the Employer's vessels who have been certified by the Chief Engineer as capable of safely taking over a watch, shall be given preference of employment in the order in which they have registered with the Union while possessing such qualifications. [emphasis added.]

5. After the active years of U.S. maritime activities during and immediately after the Vietnam War, the economy for marine engineers slumped badly. In February 1982, because of scarce employment opportunities in the shipping trades, MEBA closed its books to new applicants for use of its hiring hall for dispatch to employment with private and other employers not governed by AS 23.40. Because the Calhoon Maritime Academy, a school for prospective marine engineers, was funded by contributions from maritime employers and MEBA, students at the school at the time of the closure were deemed to be eligible and not foreclosed from applying for and achieving membership if they were in fact students at the time of the closure.

6. As of the end of July 1982, because of the continued scarcity of employment opportunities, MEBA closed its books to new applicants for use of its hiring hall for dispatch to employment with AMHS. Thereafter until August 5, 1985, MEBA dispatched no employee from its shipping list to employment with AMHS whose date of application to use MEBA hiring facilities was later than July 1982.

7. A number of AMHS employees whose date of application preceded July 1982 qualified for and received the benefit of the dispatch preference contained in the 1982 Agreement.

8. Petitioner Peter Templeton has been an employee of AMHS since 1980 and a member of IBU. In November 1983 he obtained his engineer's license and applied for membership in MEBA and for use of its hiring facilities. His application was not considered by MEBA because its books were closed. In July 1984, Mr. Templeton received a letter of competency in accordance with Rule 3 of the 1982 Agreement, and in October 1984 he completed three years of experience in the engine rooms of AMHS vessels. As such, Mr. Templeton did not possess the qualifications set forth in Rule 3 until October 1984.

9. Petitioner George Danner, III has been an employee of AMHS since 1975 and a member of IBU. In June 1984, after more than three years experience in the engine rooms of AMHS vessels, he obtained his engineer's license and letter of competency in accordance with Rule 3 of the 1982 Agreement and applied for membership in MEBA and for use of its hiring facili-

ties. His application was not considered by MEBA because its books were closed.

10. Petitioner Wesley Cade has been an employee of AMHS since 1976 and member of IBU. In July 1984, after more than three years experience in the engine rooms of AMHS vessels, he obtained his engineer's license and applied for membership in MEBA and for use of its hiring facilities. His application was not considered by MEBA because its books were closed.

11. MEBA declined to dispatch the petitioners to employment as engineer officers with AMHS under Rule 3 of the 1982 Agreement because its books were closed and the petitioners therefore could not register as required by the rule.

12. In the months preceding August 1985, representatives of the State and MEBA began negotiations for a new collective bargaining agreement. The evidence indicates that the State stressed both upward mobility within the ranks of AMHS and Alaska preference. MEBA negotiated, among other things, to preserve the hiring hall practice traditionally used by MEBA. Although issues which might have better advantaged the petitioners were sought by the State, the State was not able--in the bargaining process--to achieve all of their goals. The evidence indicated good faith negotiations by the State with MEBA, and further indicated that MEBA was a formidable negotiating force.

13. On or about August 5, 1985, a new Rule 3 and supplementary hiring procedures were agreed upon. Rule 3.01 and 3.02 of the 1985 Agreement provide:

3.01 The Employer recognizes the Union as the normal source of obtaining new Engineer Officers. The Union recognizes the Employer's legitimate interest in local hire. Accordingly, when dispatching Engineers to the Employer, the Union will, in all instances, observe the following order of preference:

1. Group I Alaskan residents
2. Others in Group I
3. Group II Alaskan residents
4. Others in Group II

Within each of the above categories the order of dispatch shall be according to the date that the individual last registered with the Union (i.e., the individual

with the earliest date and time is the first offered the dispatch from the appropriate group.)

3.02 Recognizing the passenger-carrying capacity and unique operational requirements of the Employer's vessels, the Union agrees, at all times, to accept applications and immediately register for work those employees who have at least three (3) years experience in the engine rooms of the Employer's vessels, have the required license, possess a lifeboatman's certification and have been certified by the Port Engineer and a Chief Engineer of the Employer as being capable of safely taking over a watch as a licensed Engineer. Individuals who meet the above criteria and subsequently terminate their employment with the Alaska Marine Highway System, lose all rights in this subsection if such rights were gained solely as a result of Alaska Marine Highway System employment. The Employer will promptly notify the Union of such terminations, and will furnish the Union a copy of the terminating Personnel Action form containing the pertinent information. [emphasis added.]

Group I comprises MEBA members with Group II status for at least 25 months, 200 days of sailing time in the preceding two years, and payment of an initiation fee. Group II comprises MEBA applicants and members who have not yet satisfied the Group I prerequisites. Under the 1985 Agreement, the State bargained for a registration date for each of the petitioners and eight others, which registration date triggered the period from which eligibility and satisfaction of Group I preconditions for dispatch preference would be awarded.

14. After implementation of the 1985 Agreement, petitioners were permitted to apply for MEBA applicant status and to register for dispatch pursuant to the new Rule 3 and the hiring procedures agreement relating specifically to them. Each was permitted to receive a registration date retroactive to his date of licensing upon payment of retroactive service charges, or alternatively to obtain a current registration ate without payment of retroactive service charges. Each chose to pay (or become liable for) the retroactive charges, and each declined the opportunity to reconsider the choice at the hearing. At the time each petitioner was initially

given the option, each petitioner may not have understood all the implications. Each petitioner may have confused membership with registration, registration/service charges with membership dues, and eligibility for membership with eligibility for dispatch preference. Certain State officials also appeared to be confused regarding the differences.

15. When each petitioner applied for use of MEBA hiring hall facilities in August 1985, a MEBA representative requested him to fill out a standard packet of forms for Union membership customarily used by applicants for dispatch to employment not governed by the Alaska Public Employment Relations Act. No petitioner made any objection to applying for membership in MEBA. Each was requested to execute a form letter by which he agreed to relinquish any job received through MEBA if he failed to become an elected member. MEBA has since disavowed the application of this form letter to AMHS employment and has stated that the letter will be treated as ineffective for all AHMS employees registering under Rule 3 and the hiring procedures letter of the 1985 Agreement.

16. Each of petitioners was advised that payments were required retroactive to the registration date set forth in the 1985 Agreement. Templeton paid $3,260 to register, and earned about $12,048 for engineer work in 1985. Danner has paid $580 and is obligated to pay $2,500 as an initiation fee upon eligibility for Group I. Danner earned $4,118 in 1985 for engineer work. Cade has paid $520 with a $2,500 Group I "initiation fee" potentially due. Cade earned $8,071 for engineer work in 1985.

17. Service charges and dues paid by the entire bargaining unit of AMHS employees represented by MEBA amount to approximately $20,000 per year. These service charges and dues, together with any initiation fees, amount to substantially less than the cost to MEBA of representing these employees for purposes of collective bargaining. Operation of the Juneau hall costs MEBA about $46,000 per year. The service charges paid by petitioners and others similarly situated is less than their proportionate share of the cost of operating the hiring hall facilities and of negotiating and policing the collective bargaining agreement.

18. Within the language of Rule 3 of each Agreement, membership in MEBA is not required as a condition of access to its hiring facilities for dispatch to AMHS employment, and dispatches to AMHS employment from the MEBA hiring facilities are not based on MEBA membership. The sequence and preference among persons to be dispatched is governed by the order set forth in 3.01 and, within each category specified in 3.01, by date of last registration.

19. The evidence does not indicate a practice deviating from that specified in the 1985 Agreement, and each of the petitioners has obtained temporary (but not permanent) assignments as engineers on the AHMS in a manner consistent with the 1985 Agreement.

20. The evidence does not indicate that MEBA or the State of Alaska has threatened petitioners with retaliation or treated them adversely because they initiated or participated in this proceeding.

CONCLUSIONS OF LAW

1. The Agency has jurisdiction to hear and consider complaints regarding unfair labor practices described in AS 23.40.110, and is authorized and charged with responsibility to make appropriate orders concerning such complaints pursuant to AS 23.40.140.

2. AS 23.40.110 provides:

(a) A public employer or an agent of a public employer may not:

(1) interfere, restrain or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;

(2) dominate or interfere with the formation, existence or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or given testimony under AS 23.40.070 - 23.40.260;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing or grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agency for the expense of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 23.40.080, or

(B) a public employer in the selection of the employer's representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 - 23.40.260 as the exclusive representative of employees in an appropriate unit.

3. The Agency's regulations specify procedures for unfair labor practice hearings and also provide guidance as to precedent considered. 2 AAC 10.440(b) provides that "Relevant decisions of the National Labor Relations Board and federal courts will be given great weight in determinations made under this chapter and AS 23.40."

4. The complaints of unfair labor practices filed by petitioners have been summarized by petitioners in their post-hearing brief as six general charges:

(a) Respondents committed an unfair labor practice because MEBA discriminatorily favors union members and the

State committed an unfair labor practice by requiring union membership to hire and promote.

(b) Respondents committed unfair labor practices because the hiring hall used by MEBA discriminatorily favors MEBA members including Calhoon School graduates for registration and dispatch to AMHS work.

(c) MEBA's book closure and the State's acquiescence thereto are an arbitrary change of hiring procedure which illegally prohibited petitioners engineer employment.

(d) Respondents committed an unfair labor practice because the Alaska hiring hall requires applications and dues for registration and dispatch.

(e) The 1985 collective bargaining agreement between MEBA and State created disparate union rights and second class status for petitioners.

The following conclusions will address the apparent thrust of these points as they comprise the primary focus of petitioners' amended complaint of unfair labor practice.

5. Union membership as an impermissible precondition. It is well established that compliance with all aspects of union membership cannot be a precondition to employment. Pattern Makers League of North America v. NLRB, U.S., 105 5. Crt. 3064, 3071 (1985). Under the National Labor Relations Act the only aspect of union membership that can be required as a condition of employment pursuant to a union shop agreement is the payment of dues, and "membership" may be maintained as a condition of employment provided that "membership" is "whittled down to its financial core." NLRB v. General Motors Corp., 373 U.S. 734, 742 (1963); Radio Officers v. NLRB, 347 U.S. 17, 41 (1954). AS 23.40.110(b) also provides that membership can only be required to commence 30 days after the beginning of employment. The requirement of membership and the obligation to pay dues is different from and is not to be confused with the issue of paying reasonable registration fees. Nothing in Rule 3 under either Agreement between the State and MEBA violates these provisions.

6. Impermissible hiring hall practices. Hiring halls are not per se illegal even recognizing the fact that the very existence of a hiring hall encourages union membership. Teamsters Local 3570 v. NLRB 365, U.S. 667, 675 (1961). The only encouragement toward membership which may then give rise to an illegal hiring hall is that which is "accomplished by discrimination." Id.; Radio Officers v. NLRB, 347 U.S. at 43. Discrimination which is impermissible

includes discrimination based upon an individual's union activities or lack thereof or discrimination which is based without reference to an objective criteria or standard. Teamsters Local 174 v. Totem Beverages Company, 226 NLRB 690, 94 LRRM 1027 (1976). The types of objective criteria and standards which are acceptable and have been approved by the NLRB include factors such as seniority and length of time out of work, protection of incumbents, qualifications and length of area residence. There appears to be no discrimination directed at petitioners in this case beyond that measured by sufficiently objective criteria. That petitioners might have been more familiar with a vessel than a person bearing preferred credentials is a matter of the petitioners' opinion only.

7. Allegedly illegal book closure. Accessibility to union membership may be limited by closing the books to membership, provided that such book closures bear a justifiable basis. NLRB v. Houston Maritime Association, 426 F.2d 584 (5th Cir. 1970). Only if the motive for closure is discriminatory or otherwise in violation of the law will closures be overturned and constitute an unfair labor practice. Even in instances where a prior history of racial discrimination existed, valid nondiscriminatory motives were demonstrated by a respondent in NLRB v. Houston Maritime. Indeed, work preservation has also been upheld as a basis for refusing new applicants. International Typographical Union Local 5 (Dispatch Printing Company), 177 NLRB 855 (1969); Hayes v. National Electrical Contractors Association, 781 F.2d 1321 (9th Cir. 1986). If a union closes books in violation of a labor agreement where the terms of that labor agreement were clear and unambiguous in specifying employees who would be eligible for dispatch, then the closure of books in violation of that labor agreement would be overturned. NLRB v. IBEW Local 11, 772 F.2d 571 (9th Cir. 1985). By implication, a book closure which was not in violation of a labor agreement and which had valid, legitimate and nondiscriminatory bases would not be illegal. Here, the closure by MEBA did not violate the terms of the 1982 Agreement, was based upon valid economic justifications, and the 1985 Agreement provided an exception to that closure which advantaged petitioners.

8. Allowing Calhoon graduates as an exception to the book closure. As noted above, where a book closure exists, the enforcement of that closure must be valid and nondiscriminatory. Where reasonable basis exists to distinguish between those eligible for exception from the book closure (i.e., those who were eligible for membership before the closure took effect) and those where not, a line of distinction may be supportable. Distinctions between classes must be based upon a reasonable basis and that basis carries a higher standard as the rights cut off approach constitutionally

protected ones. Where, for example, persons enter Calhoon School anticipating eligibility for membership and where the cost of that schooling is borne in part by employers, the entry of those members in the Calhoon School validly constituted a date chosen to transfer eligibility because to do otherwise would be to continue the schooling under false pretenses.

9. Conditioning dispatch upon application and dues for registration. Payment of service charges as a condition of access to a hiring hall and paying dues for membership--subsequent to employment--are supportable requirements, because such obligations do not take "membership" beyond a "financial core" approved by the courts. Further, service or administrative reimbursement for the cost of administering a union's operations are permissible under AS 23.40.110(b)(2). Service fees that are related to the cost of operating a hiring hall as a condition of access to the hall's services have been deemed permissible and indeed charging non-members a fee proportionate to their share of costs even if equivalent to the dues paid by members has been permitted. Hotel Motel Restaurant and High Rise Employment and Bartenders Union, Local 355, 275 NLRB 168, 119 LRRM 1271 (1985) and Operating Engineers Local 825 (H. John Homan Co.), 137 NLRB 1043, 50 LRRM 1310 (1962). The fees charged in this case, although significant, are not unjustifiable. A miscategorization of service fees charged as a condition of access as "dues" may be deemed harmless if in the context a subsequent remedy is provided. Musicians Local 76, 202 NLRB 80, 82 LRRM 1591, 1593 (1973).

10. Disparate union rights under 1985 Agreement. The Agency has jurisdiction to consider and remedy actions by public employers specified in AS 23.40 and has no authority over other employers or the relationships of those other employers and collective bargaining groups. Thus, the Agency might compel a consistency in practice (if it determined that such relief was appropriate) by making AHMS hire practices consistent with non-AHMS hire practices but not by changing the non-AHMS practices. In this case, the inconsistency between AHMS hire of the petitioners and non-AHMS hire was created to the advantage of the petitioners under the 1985 Agreement, in that petitioners are advantaged, in the face of book closures, by their eligibility for dispatch over other persons not specified. In the absence of the 1985 Agreement, petitioners would face the same difficulties in obtaining AHMS employment as any other non-MEBA members given book closures. Moreover, they have been afforded retroactive registration dates in contrast with other MEBA Group II participants. Petitioners' contracted-for advantages do not carry a right to attain national MEBA membership status, but that fact exists because of the unique status of petitioners (and 8 others) in the face

of a closure of MEBA applications. Thus while petitioners do not have all the rights of national-MEBA members, they have certain rights which other MEBA applicants or members do not. Since petitioners' access to the AHMS market-place differs from access to national MEBA status, a difference in dues or service fee obligation would logically follow if the amounts charged to petitioners bore I10 relationship to the services rendered. Hotel Motel Restaurant and High Rise Employment and Bartenders Union, supra; Operating EncJineers Local 825 (H. John Homan Co.), supra. An economic relationship exists here, however, in that services received correspond with the cost of delivering those services.

11. Because of the decision by this Agency in this matter, the Agency does not need to address questions raised by the State and MEBA concerning (a) statutes of limitations concerning the period of coverage and review by this Agency, although the Agency acknowledges that specific attention to the question of statutes of limitation might well be addressed in a future regulation or determination by this Agency; (b) the nature and scope of relief which the Agency can afford in a circumstance such as presented in this instance; (c) whether or not preferences for Alaska hire violate equal protection of law or other provisions of law; (d) whether or not the Agency lacks jurisdiction over the issues specified on the grounds that federal labor law allegedly preempts the subject matter of those claims (despite the fact that the issues involved here relate to public employment as defined in AS 23.40 rather than employment in the private sector); and (e) whether the documents and materials filed by petitioners subsequent to the posthearing briefs should be stricken.

ORDER AND DECISION

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

1. Although the agreements negotiated between MEBA and the State in 1982 and subsequently in 1985 did not fully achieve the asserted policies of the State to encourage upward mobility of unlicensed personnel into licensed positions or to prefer Alaska residents over other residents and although the agreements apparently did not give petitioners everything they wanted, the agreements were negotiated in CJOOd faith and constitute valid collective bragaining agreements consistent with the Public Employment Relations Act.

2. The implementation of the 1982 and 1985 Agreements by MEBA and the State was consistent with the agreements except with respect to particular errors and omissions of a nonsubstative nature (erroneous description of "service fees"

as "dues", certain pier head jumps, and other isolated instances not demonstrating a pattern or practice of violating the collective bargaining agreement or the Public Employment Relations Act). These agreements and the practices thereunder did not illegally discriminate against petitioners. While the petitioners may disagree with the policy and approaches ultimately used as they related to their individual circumstances, the petitioners' disagreements do not establish unfair labor practices under AS 23.40.110.

3. The relief sought by petitioners in their amended complaint for unfair labor practice charges is denied.

4. Petitioners are instructed to return to the State all materials subject to the March 19, 1986 protective order of the Agency.

DATED this 6 day of JUNE, 1986.

STATE OF ALASKA LABOR RELATIONS AGENCY

By _____
C. R. "Steve" Hafling, Chairman

[Signatures on File]