BEFORE THE STATE OF ALASKA RAILROAD

LABOR RELATIONS AGENCY

UNITED TRANSPORTATION UNION, LOCAL 1626,	)
Petitioner,	)
vs.	)
ALASKA RAILROAD CORPORATION,	)
Respondent.	)

Case No. RR ULPC 86-3

ORDER AND DECISION NO. RR-2

SUBJECT: DEFERENCE TO ARBITRATOR TO RESOLVE QUESTION OF ARBITRABILITY

Petitioner United Transportation Union, Local 1626 ("UTU") filed an unfair labor practice charge on April 18, 1986, alleging that the Alaska Railroad Corporation discharged Michael C. Secrest, a conductor on the Alaska Railroad, without a hearing and in violation of the negotiated agreement between the Railroad Corporation and UTU. The Alaska Railroad Labor Relations Agency (the "Agency") convened a hearing on July 21, 1986 in Anchorage to take testimony and consider evidence. At the hearing, Chairman C. R. "Steve" Hafling and members Jan Steele and Robert Piazza were present and so constituted a quorum. UTU presented its case through Michael W. Olson, general chairman of Local 1626. The Railroad Corporation presented its position through counsel, William F. Mede. In light of the position taken by the Agency, no sworn evidence or testimony was submitted. The Agency having considered the arguments, prehearing briefs filed by each party, and deeming itself sufficiently advised, renders the following order and decision.

FINDINGS OF FACT

1. The UTU represents certain operating employees of the Alaska Railroad Corporation, including Michael C. Secrest. This representation is pursuant to a collective

bargaining agreement with the Railroad Corporation in effect at the time of filing the unfair labor practice charge.

2. In 1985, the Alaska Railroad was transferred from federal ownership to the Alaska Railroad Corporation, an entity owned by the State of Alaska, pursuant to the terms of the Alaska Railroad Transfer Act of 1982 (45 USC 1201 et seq.) and the Alaska Railroad Corporation Act (AS 42.40). As provided in 45 USC 1203(d)(3)(B), the agreements in force and effect at the time of the transfer would remain in effect for a period of up to two years and during that time, the UTU and the Alaska Railroad Corporation have undertaken renegotiation of the collective bargaining agreement governing the affected employees represented by UTU.

3. Michael Secrest was a conductor on the Alaska Railroad. It is undisputed that he was not classified as a permanent employee of the Alaska Railroad Corporation, and that he was classified as a temporary employee. His work history with the Railroad indicates that he was hired as a temporary employee in April, 1982, "RIF'ed" subsequently there- after, hired again in March, 1984, "RIF'ed" later that year, rehired September, 1984, laid off by the Federal Railroad in January, 1985 and rehired by the Railroad Corporation as a temporary employee in January, 1985. In August, 1985, Mr. Secrest was terminated allegedly for abuse of sick leave.

4. UTU and the Railroad Corporation have apparently arbitrated some discharges of permanent employees.

5. It was not controverted that Mr. Secrest's discharge was grieved pursuant through several grievance steps under section 10.1 of the UTU agreement. The Railroad Corporation refused to allow the grievance decision which upheld the discharge to be appealed to an arbitrator. The Railroad Corporation has contended that with respect to temporary employees, arbitration was not available or appropriate. The Railroad Corporation contended that the ability of an employee to challenge discharge was governed by applicable regulations of the Civil Service Commission and the Federal Personnel Manual, and that these provisions were not arbitrable in the event of dispute because they were outside the scope of the four corners of the bargaining agreement.

6. Section 10.4 of the collective bargaining agreement between UTU and the Railroad Corporation provides a means of arbitration of disputes of wage rates or related wage rules. Section 10.3 provides for a Board of Adjustment to review interpretations of "supplementary agreements," the subject matter of which does not necessarily include discharge procedures. There is no general arbitration clause in the

agreement, however a similar effect may (but at this point does not clearly) arise through incorporation of various Federal provisions.

7. Section 2.1 of the agreement between the UTU and the Railroad Corporation provides:

> It is recognized that in labor-agreement negotiations, and in the administering of all matters covered by this agreement, both the Railroad and the employees are governed by the provision of applicable Federal laws and regulations, including the labor relations policies and regulations prescribed in Part 376 of the Department of Transportation Manual, all of which are regarded as paramount. This agreement shall at all times be applied subject to all such Federal laws, Executive Orders, Secretarial instructions or directives, related policies and regulations, and the public interest involved in the orderly, efficient and continuous progress of Department of Transportation operations.

Pursuant to this provision, the collective bargaining agreement makes cross-reference to various provisions of law, and implicitly incorporates them by reference into the collective bargaining agreement.

8. Some of the provisions of law referenced in the collective bargaining unit between UTU and the Railroad Corporation may provide for arbitration or have been applied by the parties so as to provide for arbitration (i.e., arbitration in lieu of the no longer applicable Federal Merit Systems Protection Board).

CONCLUSIONS OF LAW

1. The Agency is constituted pursuant to AS 42.40.730. It is authorized to investigate, conciliate and render orders and decisions concerning unfair labor practice charges (AS 42.40.770-790); eliminate prohibited practices; obtain voluntary compliance with AS 42.40.710-42.40.890; and enforce collective bargaining agreements between the parties (AS 42.40.860(b)).

2. Cases on labor law have long held that grievance procedures and arbitration are parts of the continuous collective bargaining process and should not be interfered

with by reviewing agencies such as the National Labor Relations Agency, and by implication the Railroad Labor Relations Agency. See for example Steel Workers v. Warrior & Gulf Navigation Company, 363 U.S. 574, 581 (1960); Collyer Insulated Wire, 192 NLRB 837, 77 LRRM 1931 (1971); Local 959 v. King, 572 P.2d 1168 (Alaska 1977).

3. In its Order and Decision No. RR-1, this Agency deferred to arbitration in the resolution of a dispute subject to arbitration under section 10.4 of the UTU-Railroad Corporation collective bargaining agreement.

4. Arbitrability questions are to be initially determined by arbitrators. See for example Gold Coast Mall v. Larmar Corporation, 468 A.2d 91, 96 [including the numerous citations therein] (Md 1983)- University of Hawaii Professional Assembly v. University of Hawaii, 659 P.2d 717, 718 (Hawaii 1983); Youmans v. District Court in and for Denver County, 589 P.2d 487, 489 (Colo. 1979); University of Alaska v. Modern Construction, Inc., 522 P.2d 1132, 1137 (Alaska 1974).

5. There is no evidence of bad faith on the part of the Railroad Corporation in refusing to arbitrate Mr. Secrest's dismissal, but rather there appears to be a legitimate dispute as to the arbitrability of that decision.

ORDER AND DECISION

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

1. The collective bargaining agreement between UTU and the Alaska Railroad Corporation, when read together with federal statutes, regulations, and personnel manuals, particu- larly as applied by the parties since the date of transfer, does not absolutely preclude arbitrability of questions such as the discharge of an employee in Mr. Secrest's position.

2. UTU has failed to prove at this point in time facts justifying an unfair labor practice charge or, by impli- cation, a petition to enforce an agreement in that the issue presented is a dispute between the employer and the Union concerning arbitrability of certain actions taken pursuant to the terms of the parties' collective bargaining agreement.

3. The parties are directed to submit the question of whether the discharge of Mr. Secrest is arbitrable to an arbitrator. If the arbitrator decides the question is arbitrable, arbitration of Mr. Secrest's discharge will follow. If the arbitrator decides the discharge of Mr. Secrest is not

arbitrable, the Agency will further consider the matter only if UTU can demonstrate the Railroad Corporation refused to resolve the question of Mr. Secrest's discharge in a manner specifically constituting an unfair labor practice as defined in AS 42.40.770-790 or in breach of the collective bargaining agreement as prescribed in AS 42.40.860(b).

4. The Agency will retain jurisdiction over this dispute for purposes of insuring timely submission and compliance with the foregoing dispute resolution procedure.

5. UTU's unfair labor practice charge is dismissed subject to the foregoing retention of jurisdiction.

DATED this 30 day of July, 1986.

RAILROAD LABOR RELATIONS AGENCY

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

[Signature On File]