

STATE OF ALASKA

LABOR RELATIONS AGENCY

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BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES)
ASSOCIATION,)
)
Objecting Party,)
)
vs.)
)
STATE OF ALASKA AND)
CONFIDENTIAL EMPLOYEES)
ASSOCIATION,)
)
Respondents.)
)

UC 89-1 (partial)

ORDER AND DECISION NO. 122

SUBJECT: INTERPRETATION OF "CONFIDENTIAL EMPLOYEE"; UNIT
CLARIFICATION

The Alaska State Labor Relations Agency (the "Agency") convened a hearing on August 3, 1989, in Anchorage to consider the matter of the unit placement of a Personnel Assistant I in the Marine Highways System. The Personnel Assistant I is presently in the general government unit represented by Alaska State Employees Association ("ASEA"), but her duties are arguably those of an employee in the confidential unit represented by the Confidential Employees Association ("CEA"). All members of the Agency were present at the hearing and so constituted a quorum. ASEA was represented by counsel Fred Dichter, CEA was represented by Greg O'Claray, and the State was represented by Kimberly Geariety. The parties presented oral arguments and witnesses. The Agency having considered the arguments and evidence, renders the following order and decision placing the position of Personnel Assistant I in the confidential unit represented by CEA.

Findings of Fact

1. Della Oldaker is the incumbent Personnel Assistant I (PCN 253338) in the Alaska Marine Highway System of the Department of Transportation and Public Facilities. Her position is presently in the general government unit.

2. The State petitioned the Agency to transfer the position held by Della Oldaker into the confidential unit on the grounds of changed circumstances and reporting responsibilities due to a reorganization within the Alaska Marine Highway System. ASEA, representing the general government unit, initially opposed that motion, and CEA supported the effort.

3. The position held by Ms. Oldaker is involved in analysis, computation and advice respecting two marine union contracts with the State and Marine Engineers Beneficial Association ("MEBA") and Master Mates and Pilots ("MM&P"). She is not involved in any analysis, research, or other activities respecting collective bargaining between the State and the general government unit.

4. While integrity is presumed on the part of all employees, there is an expectation of very specific confidentiality regarding employees entrusted with collective bargaining information. Having a secure source of information of a very specific confidential nature is critical to the negotiating and bargaining process and to the State's ability to effectively negotiate collective bargaining contracts and administer grievances thereunder.

5. At the hearing, ASEA conceded that the position held by Ms. Oldaker should appropriately be in the confidential unit if the Agency concludes that the fact that Ms. Oldaker deals with maritime unions rather than the union representing her current unit placement is an irrelevant distinction.

Conclusions of Law

1. The Agency has jurisdiction to hear and consider requests for unit clarification pursuant to AS 23.40.090 and AS 23.40.160.

2. 2 AAC 10.220(b)(1) defines a "confidential employee" as:

An employee who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the area of collective bargaining. The term "confidential employee" shall be narrowly construed.

This regulation makes no distinction between which union relationships are necessarily involved respecting "the area of collective bargaining" referenced. ASEA maintains that this regulation should be read such that a position should not be transferred into the confidential unit unless that position is factually involved with collective bargaining with the same bargaining unit as that held by the incumbent. ASEA suggests NLRB precedent stands for this proposition, although such precedent was not cited.

3. The literal language of 2 AAC 10.220(b)(1) does not distinguish between collective bargaining entities. The lack of distinction is appropriate because the State of Alaska is the sole employer of members of a variety of bargaining units and the State often maintains constant themes and directions in its collective bargaining relationships with disparate unions. Thus, confidential information respecting the discussions with maritime unions could be just as sensitive respecting negotiations with the general government unit representative or an MEBA or an MM&P representative.

Order and Decision

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

1. The Personnel Assistant I position held by Della Oldaker, PCN 253338, is appropriately placed in the confidential unit represented by CEA, and the transfer from the general government unit to that unit is authorized.

2. ASEA's objections are denied.

3. This written decision sets forth the rationale for the decision reached by the Agency following the August 3, 1989 hearing.

DATED this 28 day of August, 1989.

STATE OF ALASKA
LABOR RELATIONS AGENCY

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

THIS IS TO CERTIFY THAT ON THIS 29th DAY
OF MAY, 1989, A TRUE AND CORRECT
COPY OF THE FOREGOING WAS ~~HAND DELIVERED~~
~~MAILED, POSTAGE PREPAID, TO~~
D. L. Dyer (A SEA); O'Clary (CEA);
K. Gearity (State)
WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT
[Signature]
ORDER AND DECISION NO. 122
Page 4

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