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ORDER AND DECISION CONCERNING CHALLENGES TO CERTAIN  
CLASSIFICATIONS IN THE CONFIDENTIAL UNIT

ORDER AND DECISION NO. 13

Findings of Fact:

(1) The State Labor Relations Agency's Order and Decision No. 1 authorized the establishment of a unit of confidential employees as petitioned for by the Alaska Public Employees Association.

(2) Prior to the conduct of an election a stipulation was entered into by and between the Commissioner of Administration and the then Executive Director of the Alaska Public Employees Association. This stipulation would have excluded the subject classifications on the grounds that they are "managerial" classifications. This stipulation was subsequently disavowed by the officers of the Alaska Public Employees Association on the grounds that the then Executive Director was not authorized to enter into such a stipulation; that he had exceeded his authority.

(3) On December 7, 1973, the State Labor Relations Agency issued Order and Decision No. 6 in an attempt to obtain agreement between the parties and to move forward with an election. Order and Decision No. 6 was based in part upon a proposed revision in the definition of "appointed official" in the regulations.

(4) Order and Decision No. 6 having failed to

move the parties toward agreement, and an intervention having been made by the Confidential Employees Association, Order and Decision No. 9 was issued on January 17, 1974, providing for an election to be held under the following provisions:

"(3) Employees who are currently a part of the State's negotiating team are not eligible to vote.

"(4) With the above exception, all employees in those classifications originally contained in the confidential unit delineated in Order and Decision No. 1, including those employees in the confidential unit designated managerial employees in a June 15, 1973 stipulation between the State of Alaska and the Alaska Public Employees Association, shall be permitted to vote in the mail ballot election. A copy of the June 15, 1973 stipulation is attached to this Order as Exhibit "A" and by this reference herein incorporated.

"(5) In addition to the challenge procedures set forth in the Handbook for Election Supervisors, it is hereby ordered that no challenges based on the managerial exception of the June 15, 1973 stipulation may be summarily over-ruled by the election supervisor. If there are such challenges and regardless of whether or not they are sufficient in number to affect the outcome of the election, these challenges will be resolved by the Labor Relations Agency in a hearing. However, if the challenges are insufficient in number to affect the outcome, and if either employee organization has in the unchallenged ballots a majority of the ballots cast, the organization may be duly certified by the Agency."

(5) These challenges were made by the State. The number of challenged ballots is sufficient to be determinative of the outcome of the election; consequently no organization has as yet been certified.

(6) A quorum of the Labor Relations Agency, Messrs. Hafling and Reed, conducted hearing on the challenges on April 1, 1974, in Juneau, Alaska.

(7) The State of Alaska, represented by Commissioner Joseph R. Henri of the Department of Administration and Assistant Attorney General James Douglas of the Department of Law, relied in part on a previously submitted brief which argued that certain classifications should be excluded from the unit as being managerial, citing various NLRB rulings as a precedent for such an exclusion.

(8) The Labor Relations Agency's position was that there is no grounds under the Alaska Public Employment Relations Act to exclude managerial positions per se, since the APERA, unlike the National Labor Management Relations Act, does not exclude supervisory employees from the definition of "employee", whereas the NLRB extended the supervisory exclusion of the National Labor Management Relations Act to managerial employees. However, the Labor Relations Agency stated its recognition of the possibility of conflicts of interest arising out of the inclusion of certain classifications with other classifications in the same bargaining unit, particularly as such conflicts of interest might pertain to the formulation and implementation of collective bargaining policy, which might lead to the conclusion that collective

bargaining units as originally authorized might not be appropriate. The Alaska Public Employment Relations Act enumerates certain criteria for the establishment of appropriate bargaining units, one of them being "community of interest".

(9) The State contended that certain employees in certain classifications, as listed below, have substantial responsibilities in the area of policy formulation and implementation with respect to collective bargaining; further, that these employees are privy to a wide range of information that is partially determinative of collective bargaining policy, strategy and tactics. These employees are listed as follows:

| <u>JOB CLASS</u>                       | <u>PRESENT OCCUPANTS</u>                                                                     | <u>DEPARTMENT</u>                                                                                        |
|----------------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Personnel Officer II                   | D. J. Levy                                                                                   | Administration                                                                                           |
| Personnel Officer III                  | R. A. Thayer                                                                                 | Public Works                                                                                             |
| Personnel Analyst II                   | B. Cummings<br>L. K. Larsen                                                                  | Administration<br>Administration                                                                         |
| Personnel Analyst III                  | L. L. Antrim<br>K. N. Lafavour                                                               | Administration<br>Administration                                                                         |
| Personnel Analyst IV                   | K. Cates<br>R. L. Stewart<br>K. L. Kareen<br>D. H. Morrissey                                 | Administration<br>Administration<br>Administration<br>Administration                                     |
| Director of Personnel                  | P. L. Hunt                                                                                   | Administration                                                                                           |
| Program Budget Analyst II              | J. B. Crondahl                                                                               | Administration                                                                                           |
| Program Budget Analyst III             | M. J. Clemens<br>J. J. Morrison<br>M. Orelove<br>W. E. Weeks<br>C. M. Gonder<br>D. M. Dooley | Administration<br>Administration<br>Administration<br>Administration<br>Administration<br>Administration |
| Program Budget Analyst IV              | R. E. Jacobs                                                                                 | Administration                                                                                           |
| Deputy Director, Budget and Management | R. Lind<br>E. A. Smith                                                                       | Administration<br>Administration (Health and Social Services)                                            |

Assistant to the  
Commissioner of Public  
Works

E. S. Bowersox

Public Works

The State contended with respect to certain of the named individuals the following:

(a) Larsen is depended on to provide statistical information for use in collective bargaining.

(b) Antrim is depended on to provide cost-of-living information for use in collective bargaining.

(c) Lafavour is depended on to provide data on comparability of pay schedules.

(d) McMullen was slightly involved in collective bargaining.

(e) Morrissey is depended on to train supervisors in contract administration.

The State conceded that internal auditors did not formulate policy with respect to collective bargaining but that they are depended on to audit contract administration and compliance and therefore play a role in the collective bargaining process.

An objection was heard from R. A. Thayer to the effect that he played no role whatsoever in the formulation and implementation of policies with respect to collective bargaining; that at most he had been drawn upon as a resource person for information.

During the period the record was kept open following the April 1, 1974 hearing (until April 8) a number of objections to the State's position were received. These can be summarized as follows:

(a) The belief was stated that all State employees other than elected or appointed officials have certain rights under the law, and to uphold the State's position would be to abrogate these rights.

(b) Some individuals objected to the State's position on the grounds that they are not involved with policy determination.

(c) The belief was expressed that if the State's position was to be upheld the remainder of the confidential unit would be too fragmented and weak to bargain effectively.

(d) The proposed re-definition of appointed official does not find a basis in law.

(e) The role of employees in some of the classifications concerned is more closely identified with supervisors than with "management."

(f) The Confidential Employees Association and the Alaska Public Employees Association both maintain the rights of the employees concerned under the law would be violated by an acceptance of the State's position.

(g) The Alaska Public Employees Association makes the complaint that not all affected employees were given notice of the hearing. APEA further alleges that some of the classifications in question were previously designated as being in either the general government or the supervisory units.

(10) The State argued that, by virtue of their relationship to the collective bargaining process, the employees in question would be placed in an intolerable conflict-of-interest situation. Human nature being what it is it would be unrealistic

to expect personnel who are privy to confidential data and the use of such data not to use this information to attempt to secure the best of everything for themselves.

(11) The Commissioner of Administration was directly charged with responsibility for representing the State-as-employer in collective bargaining. The Director of Personnel was on the collective bargaining team representing the State.

(12) The available legislative history of the Alaska Public Employment Relations Act sheds no light on the issues in question.

(13) The Alaska Public Employment Relations Act excludes only "elected and appointed officials" from the rights granted by the Act.

(14) The Alaska Public Employment Relations Act contains the following: "Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by Secs. 70-260 of this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided." [Emphasis added.]

(15) The regulations are in the process of being revised, following the hearings which were held, and one of the proposed revisions would change the definition of appointed

official to read: "... a person who exercises significant responsibilities for the public employer in the area of collective bargaining policy formulation and implementation."

Conclusions:

1. The Alaska Public Employment Relations Act clearly intends all state employees, except elected and appointed officials, to have the right to organize for collective bargaining purposes.

2. The Administration makes a compelling case that certain conflicts of interest are inherent in a situation where the administration is compelled to bargain with its own bargainers. Where the potential for a conflict of interest exists the community of interest which is one of the criteria for judging the appropriateness of bargaining units is seriously in question.

3. The crucial question is this: Is any collective bargaining unit appropriate if it contains employees who are collective bargainers on behalf of the State as employer? Because of the conflicts of interest potential to such a situation the conclusion is that such a unit is not appropriate.

4. The foregoing conclusion poses a second crucial question: If certain employees are excluded from the unit on these grounds, how can the labor relations agency "...assure to employees the fullest freedom in exercising the rights guaranteed ..."? The conclusion is that the labor relations agency can only do this by taking appropriate action to help to assure that such employees suffer no loss by virtue of being excluded from the unit. Such appropriate action will be incorporated in the order.

5. In deciding which employees should be excluded from the confidential employees unit the labor relations agency concludes that the only proper way to do this is on the basis of whether or not a majority of the employees in each job class in question exercise significant responsibility for the public employer in the area of collective bargaining policy formulation and implementation.

6. The revised regulations to be forthcoming in the immediate future contain the following:

'2 AAC 10.220. DEFINITIONS.

(1) "appointed official", as used in AS 23.40.250 (5), includes a person who exercises significant responsibilities for the public employer in the area of collective bargaining policy formulation and implementation.'

This revised definition can be used as a basis for an order excluding persons who meet such a definition, narrowly construed, from the confidential employees unit. It should be noted, however, that this definition is intended only for the purposes of implementing the Alaska Public Employment Relations Act and is not intended to contain any implication that persons meeting this definition are by virtue of that fact in an exempt or partially-exempt category.

7. For the guidance of the parties in their future relationships it should be noted that the status of certain excluded classifications, based on the preceding definition of "appointed official", may change from time to time and that nothing in this Order and Decision should be construed to mean that the unit hereby set forth is permanently immutable; further, that

there is nothing to prevent the parties from negotiating, by mutual agreement, for a unit that either includes or excludes classifications set forth herein, provided that no classification may be included that has been certified as being part of another collective bargaining unit.

Order:

(1) It is hereby ordered that the State's challenges to the votes of employees in job classes listed in this paragraph are overruled, that the Deputy Commissioner of Labor will, in the presence of observers, count these ballots and certify the results to the labor relations agency. The job classes for which challenges are overruled are:

Personnel Officer I

Personnel Officer II

Personnel Officer III

Personnel Analyst I

Personnel Analyst II

Personnel Analyst III

Central Personnel Services Supervisor

Equal Employment Coordinator

Program Budget Analyst I

Internal Auditor I

Internal Auditor II

Internal Auditor III

Internal Auditor IV

Highway Administrative Review Specialist

Passenger Services Inspector

Assistant to the Commissioner of Public Works

(2) The State's challenges are upheld for the job classes listed below:

Director of Personnel

Personnel Analyst IV

Program Budget Analyst II

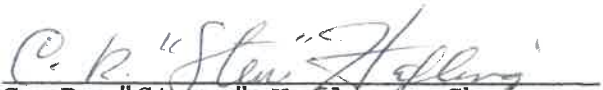
Program Budget Analyst III

Program Budget Analyst IV

Deputy Director, Budget and Management

(3) It is hereby recommended that employees in the job classes listed in (2), above, shall not receive increases in salaries and fringe benefits any less than they would have received had they not been excluded from the confidential unit.

Dated: May 4, 1974

  
C. R. "Steve" Hafling, Chairman

  
Joe Franich, Member