

BEFORE THE STATE OF ALASKA LABOR RELATIONS AGENCY

PUBLIC EMPLOYEES LOCAL 71, AFL-CIO)
Complainant)

vs.)

STATE OF ALASKA, Respondent)

ULPC-80-10

ORDER AND DECISION NO. 68

On December 15, 1980, Petitioner filed Unfair Labor Practice 80-10.

The Labor Relations Agency attempted to resolve the dispute by informal methods pursuant to Alaska Statute 23.40.120. At hearings on March 20, 1981, and July 23, 1981, both sides presented their entire cases before the Agency.

THE ALLEGATIONS

The Petitioner charged three unfair labor practices:

1. The State refused to comply with the arbitrator's award.
2. The State deducted mileage payments from certain employees' checks as a retaliatory action against those employees bringing the grievance.
3. The State refused to contact the arbitrator for clarification of the award.

JURISDICTION

The Labor Relations Agency has jurisdiction as the State's alleged retaliatory and discriminatory action is a clear violation of Alaska Statute 23.40.110 (a)(4) if proven.

THE FACTS

The parties to the grievance could not agree on the original issue. The arbitrator therefore stated the issue as: "Did the State violate the agreement by refusing to pay per diem or travel time to the grievants while they were assigned to work between twenty-five (25) miles and forty (40) miles on the Richardson Highway during the construction season of 1979? If so, what is the appropriate remedy?"

The arbitrator found as follows:

1. Per diem is not required for employees working out of the project office at Mile 39 on the Richardson Highway.
2. Travel time must be allowed the employees involved, at the rate of one hour each way for each day worked.
3. No meal allowance is required for employees working less than fifty miles from their duty station.
4. The State was ordered to pay travel time as noted in Item 2 above to each employee. Such payments were to be made as soon as the proper amounts could reasonably be computed.

Upon receiving the arbitrator's Order and Decision, The State of Alaska paid the travel time as awarded by the arbitrator. However, it deducted the mileage payments it had paid previously. Employees who did not file grievances were unaffected: they were not granted travel time, but were allowed to keep the prior mileage payments. The State's transaction thus penalized those individuals who filed grievances, and,

as a result, had prior mileage payments deducted from their State checks.

THE ISSUES

The Petitioner has brought forth two issues:

1. Are all employees of the State working at the Mile 39 of the Richardson Highway project office covered by the arbitrator's award?

The Labor Relations Agency wrote the arbitrator asking his clarification as to whom was covered in his award. His response, received May 2, 1981, stated:

"After reviewing the award I wish to point out that this matter is discussed on page 6 of the opinion and award. As explained on this page I considered that employees covered by each of the specific grievances were to be covered by my decision. In the award section of the decision I did not again refer to the specific individuals to whom the award applied. I regret that this matter has not been cleared but has instead created a problem for the parties. It was my intent to apply the award to those individuals on the basis of the conclusions reached on page 6 of the award."

The Agency has carefully reviewed page 6 of the award and has concluded that the arbitrator meant to include only those individuals specifically mentioned in the decision: Duane Withorn, Jim Wallen, Clarence Catledge, Harry Billum, Patrick Roundtree, Ron Hollingsworth, David Pintar, Donald King, Charles Zimbicki, and Charles Somerville. There is no evidence that the arbitrator wanted to bind the State to paying travel time to other employees at the project site who did not file specific grievances. The petitioner was responsible for bringing the names of those affected to the arbitrator's attention. The arbitrator understood he only had authority to bind the specific individuals mentioned above. This Agency

cannot perform the petitioner's task of bringing the complainants' names before the arbitrator.

2. Has the State committed an unfair labor practice by deducting the prior mileage payments after granting the arbitrator's travel time award to the employees named in the grievance?

The State held that the Agency should consider "the total compensation of the employees," and argued that mileage payments were not included in the bargaining agreement. Therefore what the State gives, it can take away.

The record is clear that, after the arbitrator issued his decision, the State deducted previously-paid mileage allowances from the paychecks of those employees who brought the grievance; it made no such deductions from the paychecks of the other employees who did not file a grievance. We find this action discriminatory and retaliatory against those employees who filed grievances under Alaska Statute 23.40.

FINDINGS OF FACT

1. The Petitioner did not file valid grievances for all members of its bargaining unit. Only those specific individuals mentioned in the arbitrator's decision are covered by his decision.

2. The State of Alaska was guilty of an unfair labor practice when it discriminated against those employees covered by the arbitrator's decision. Specifically, its deduction of prior mileage payments from the travel time award discriminated between those employees who filed grievances and those who did not.

CONCLUSIONS OF LAW

1. The State of Alaska committed an unfair labor practice by discriminating against Messrs. Hollingsworth, Pintar, King, Zimbicki, Catledge, Billum, Wallen, Withorn, Sommerville, and Roundtree.
2. The State of Alaska owes the above-mentioned individuals the total of: a) travel time; b) previously paid mileage payments that were deducted after the arbitrator's decision; and c) interest on the unpaid sums from 3/31/80 at the rate of 10.5% annually until paid in full.

ORDER

The Agency orders the State to pay Messrs. Hollingsworth, Pintar, King, Zimbicki, Catledge, Billum, Wallen, Withorn, Sommerville, and Roundtree the total of: a) the travel time as set forth on page 13 of the arbitrator's decision (the rate of one hour each way per day worked); b) all previously paid mileage payments prior to the 31st day of March, 1980; and c) interest at 10.5 percent per annum on all unpaid monies until paid in full.

Payments are to be computed and made immediately. If the parties have a dispute regarding the exact amount of payments, they are ordered to contact our legal counsel and hearing officer, William J. Pauzauskie, no later than November 15, 1981, and at a hearing before him resolve the exact amount of the payments.

DATED this 22 day of October, 1981

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

Morgan Reed
Morgan Reed, Member

Ronald M. Henry
Ronald M. Henry, Member