

ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 208
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
907-269-4895
FAX 907-269-4898

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION, AFT, AFL-CIO,)
)
PETITIONER,)
)
vs.)
)
STATE OF ALASKA,)
)
RESPONDENT.)
_____)

Case No. 03-1248-CBA

DECISION AND ORDER NO. 267

The board heard this dispute on May 6, 2004. This decision is based on the evidence submitted, pleadings, and the parties' arguments. The parties agreed an oral hearing was unnecessary.

Digest: The State of Alaska did not violate the parties' settlement of a dispute over the employee's pay and benefits. There is no need to proceed to arbitration.

Appearances: Bob Watts, Business Agent for the Alaska Public Employees Association; William Milks, Labor Relations Analyst for the State of Alaska.

Panel: Aaron Isaacs, Vice Chair, Dennis Niedermeyer, and Randall Frank.

DECISION

Statement of the Case

The Alaska Public Employees Association (APEA) filed a petition to enforce its collective bargaining agreement (CBA) with the State of Alaska (State). APEA asks this Agency to enforce a Letter of Grievance Resolution (LGR) the parties reached regarding Sonja McManus Campbell. APEA contends the State has violated the agreement. The State contends it has complied with the terms of the LGR.

Issues

1. Did the State violate the parties' Letter of Grievance Resolution by removing Sonja McManus Campbell¹ from the Supervisory Unit and placing her in the General Government Unit? Should we grant APEA's petition and order the State to comply with the terms of the Letter of Grievance Resolution?

2. Should we order the parties to arbitration?

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The Alaska Public Employees Association (APEA) is recognized as the exclusive bargaining representative for the state supervisory bargaining unit.

2. APEA and the State of Alaska (State) entered into a collective bargaining agreement for the period July 1, 2001, to June 30, 2004.

3. On November 21, 2001, APEA filed a step 3 grievance on behalf of bargaining unit member Sonja McManus.

4. APEA Business Agent Bob Watts began settlement discussions with State Labor Relations Analyst Doug Carson after Carson wrote a March 26, 2002, letter expressing interest in resolving the grievance.

5. On April 15, 2002, Watts sent Carson a letter explaining the reasons for filing the grievance:

This grievance arises because of the retaliatory and discriminatory actions and continual harassment that Ms. McManus has endured from her supervisors (Department of Transportation) since filing two previous grievances and since her supervisor (Mr. Thompson) received a disciplinary action because of his actions

¹ The record also refers to the grievant as Maurine J. McManus. For accuracy, we will use the name that the parties quote in documents in the record.

which was brought to light by Ms. McManus. Although the two previous grievances were resolved the problem of harassment was not, in fact it escalated. The retaliation and harassment took on many forms and was conducted in numerous ways. They were attempting to create an environment and work situation which was so uncomfortable and unacceptable that it would cause Ms. McManus to quit her employment with the DOT.

(APEA Exh. 6 at 1).

6. Over the next several months, the parties worked on resolution. They exchanged a number of emails and discussed settlement. On July 23, 2002, Watts emailed Carson:

As we discussed[,] the problem that Sonja and I have is that we want her to remain in the SU bargaining unit. Ask Art² - he is creative and can figure out a way to make it happen. One thought is that we put language in the LGR that the [filling] out of a [Position Description] by Sonja and the desk audit and review by the "classification folks" will happen in the late spring or summer of 2003. The results/implementation would happen in late summer/fall. Because Sonja is retiring in the fall of 2003 the results will not affect her for any extended period of time. Until then she will still be paid at 16M on the SU salary scale. This was one way I thought of. I'm sure there are others that Art can come up with.

(APEA Exh. 12).

7. The parties agreed to the terms of a Letter of Grievance Resolution. Watts and Campbell signed it on July 26, 2002. Sharon Barton, Director of the Division of Personnel, signed the LGR for the State on August 23, 2002.

8. The LGR settled the parties' grievance. It provides that Campbell will be paid at "Range 16, Step M SU salary schedule beginning July 1, 2001."

(APEA Exh. 17 at 2, number 1).

9. The LGR also states that Campbell:

"shall fill out a position description questionnaire describing the duties and responsibilities of her position. Upon receipt of the completed questionnaire, the Department of Administration, Division of Personnel shall conduct a desk audit of Ms. Campbell's position and, after consultation with the Department and consideration and analysis of the duties of the position including the duties described in the position description questionnaire completed by Ms. Campbell, shall allocate the position to the appropriate classification. The decision of the Department of Administration, Division of Personnel shall be final and binding on

² "Art" is Art Chance from the Division of Labor Relations, Department of Administration.

the parties subject only to the classification review procedures contained in Article 19 of the collective bargaining agreement.

(APEA Exh. 17 at 2, number 2).

10. Finally, the LGR states that if Campbell's position is allocated to the CVEO II job class, her pay shall be frozen at Range 16, Step M SU salary schedule until such time as her step placement as a CVEO II exceeds that rate. APEA also withdrew its grievance with prejudice.

(APEA Exh. 17 at 2, numbers 3 and 4).

11. APEA filed a petition with the Agency on September 26, 2003, after the State moved Campbell from the Supervisory Unit to the General Government Unit on July 1, 2003. In the petition, APEA alleged that the State moved Campbell "from the Supervisory Unit pay scale (6B) to the General Government Unit pay scale (2B) effective 7-1-03." APEA charged that "[t]his is a direct violation of the intent and specific language of the Letter of Grievance Resolution and most specifically items #1 and 3.

(APEA September 26, 2003, petition at 3).

12. The State denied the allegations. In its October 31, 2003, Prehearing Statement, the State contended it has continued to pay Ms. Campbell "at the rate provided for in the Letter of Grievance Resolution, even though Ms. Campbell has failed to provide a position description to the State as required under the agreement." (October 31, 2003, Prehearing Statement at 1) (State's December 1, 2003, Brief at 5). In fact, the State argues that APEA violated the LGR because Campbell has never completed a position description questionnaire. (*Id.* at 6).

ANALYSIS

1. Did the State violate the parties' Letter of Grievance Resolution by removing Sonja Campbell from the Supervisory Unit and placing her in the General Government Unit?

APEA contends that the State violated the parties' Letter of Agreement by moving the employee to the General Government Unit from the supervisory unit. APEA also asserts that, "to let the State unilaterally evade the requirements of the agreement would not be fair to [Maurine McManus]." (APEA September 24, 2003, Petition). The State argues that the terms of the letter of agreement "establish that the parties agreed to freeze Ms. Campbell's pay at a range and step on the supervisory unit salary schedule. It does not state that Ms. Campbell cannot be moved to a different bargaining unit." (State's December 12, 2003, Reply Brief at 1).

AS 23.40.210 provides that "[e]ither party to the [collective bargaining] agreement has a right of action to enforce the agreement by petition to the labor relations agency." This Agency

has jurisdiction under AS 23.40.210 to decide issues of arbitrability. *Fairbanks Fire Fighters Ass'n v. City of Fairbanks*, Opinion No. 5579, 48 P. 3d 1165 (Alaska 2002).

We have reviewed the record and we deny the petition. We agree with the State that it has complied with the terms of the Letter of Grievance Resolution. The State continued to pay the employee, Maurine McManus (also known as Sonja McManus Campbell), the same amount she was due under the Letter of Grievance Resolution, even after the State moved her position from the Supervisory Unit to the General Government Unit.

Further, the Letter of Grievance Resolution clearly does not prohibit the State from moving the employee to another unit. Article 9 of the parties' collective bargaining agreement gives the State authority to make the final decision on classification determinations. The Letter indicates the State may move the employee's position, after it conducts a desk audit. The audit was supposed to occur after the employee submitted a position description questionnaire. However, the employee failed to submit the questionnaire. The State is not required to wait indefinitely for the questionnaire before it conducts an audit. If this were the case, employees could simply refuse to comply with the questionnaire requirement and avoid any action by the State. Here the State waited a considerable period of time before it decided to take action on the employee's classification. In doing so, it did not violate any provision of the Letter of Grievance Resolution.

Finally, APEA argues that contrary to the State's assertion that the State is paying the employee what she is due under the Letter of Grievance Resolution, the employee has suffered monetary losses "due to different health insurance benefits, including medical supplies and prescriptions, increased insurance deductions, loss of personal accrual rates, loss of leave cash out options, loss of seniority which affects her shift differential, etc." (APEA's December 16, 2003, Reply Brief at 3).

These losses of benefits and other issues may well have occurred, but the Letter of Grievance Resolution clearly does not contemplate or consider the affect a change of bargaining unit would have on these benefits. Those items would have to be included in the Letter of Grievance Resolution in order to be a factor for determination. The Letter of Grievance Resolution establishes and settles on a salary for the employee, in the event she moves to another bargaining unit. APEA has failed to prove that the State did not pay the employee what she was due monetarily under the Letter of Grievance Resolution. APEA's petition is denied on this basis, too.

2. Should we order the parties to arbitration?

In its amended petition, APEA requests that we order the parties to arbitration AS 23.40.210 authorizes this agency to enforce collective bargaining agreements. AS 23.40.210(a) provides in part: "The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency."

In *Alaska Public Employees Association (APEA) vs. Alaska State Housing Authority*, Decision and Order No. 133 (May 29, 1991), the Agency heard a dispute that arose when the parties disagreed how to interpret a grievance settlement. They disputed the amount due a bargaining unit employee for back pay. The parties' collective bargaining agreement provided that settlement of a grievance should be given the same effect as an arbitrator's decision. (Decision and Order No. 133 at 6).

The Board panel in Decision and Order No. 133 concluded that "[w]here a contractual grievance procedure culminates in a settlement agreement, breach of the settlement agreement should constitute a breach of the grievance provision in the contract." (Decision and Order No. 133 at 7). If this were so in this case, we would order the parties to arbitration.

We find there is no need to order the parties to arbitration. The settlement here is unambiguous, and the State is complying with the terms of the settlement. APEA does not dispute the specific amount of salary settled under the parties' agreement. APEA complains that the employee's medical benefits are now more costly because she is a member of the general government unit, which has different medical benefits from those provided in APEA's collective bargaining agreement. Nonetheless, there was no settlement of medical benefits in the parties' agreement. Therefore, there is nothing to enforce or interpret regarding medical benefits. There is no need for an arbitrator to interpret what is unambiguously clear.

CONCLUSIONS OF LAW

1. The Alaska Public Employees Association is an organization under AS 23.40.250(5), and the State of Alaska is a public employer under AS 23.40.250(7).
2. This Agency has jurisdiction under AS 23.40.210 to consider this dispute over enforcement of the parties' grievance/arbitration provisions in their collective bargaining agreement.
3. As petitioner, APEA has the burden to prove each element of its case by a preponderance of the evidence.
4. APEA has not proven by a preponderance of the evidence that the State violated the Letter of Grievance Resolution concerning Sonja McManus Campbell (Maurine J. McManus).

ORDER

1. The petition by the Alaska Public Employees Association is denied. The petition is dismissed.

2. The State of Alaska shall post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron Isaacs, Jr., Vice Chair

Randy Frank, Board Member

Dennis Niedermeyer, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of *Alaska Public Employees Association vs. State Of Alaska*, Case No. 03-1248-CBA, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 18th day of June, 2004.

Margie Yadlosky,
Human Resource Specialist I

This is to certify that on the ____ day of June, 2004, a true and correct copy of the foregoing was faxed and mailed, postage prepaid, to
Bob Watts, APEA
William Milks, State of Alaska

Signature