

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA CORRECTIONAL)
OFFICERS ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA,)
Department of)
Administration,)
)
Defendant.)

Case No. 3AN-09-_____ Civ./Inj.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Alaska Correctional Officers Association ("ACOA"), by and through Joe P. Josephson, Alaska Bar No. 6102018, its attorney, alleges as follows:

1. The Superior Court is the trial court of general jurisdiction, under AS 22.10.020, and has authority to issue declaratory judgments and injunctive relief if a "case or controversy" exists and the requisite elements of jurisdiction are present.

2. In this case, declaratory relief is appropriate because the requested judgment would clarify and settle the legal relations in issue and afford relief from uncertainty, insecurity, and controversy which give rise to this action. Declaratory relief would terminate the controversy between the plaintiff and the defendant with respect to the issue presented in this complaint.

JOSEPHSON & ASSOCIATES, P.C.
Attorneys at Law
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 276-0151 (Tel) (907) 276-0155 (Fax)

3. ACOA is a bargaining agent representing a substantial number of employees, to wit, correctional officers, who work for the Department of Corrections, State of Alaska, at correctional facilities throughout the State of Alaska.

4. ACOA is a labor organization within the meaning of the Alaska Public Employment Relations Act, AS 23.40.070 - AS 23.40.260 (hereinafter called "the Act").

5. ACOA and the defendant, State of Alaska (hereinafter "the State"), are parties to an existing Collective Bargaining Agreement affecting ACOA's bargaining unit. The existing Collective Bargaining Agreement is due to expire on June 30, 2009.

6. The Act, at AS 23.40.200(a)(1) and (b), provides that correctional officers do not have the right to strike. Employees who are forbidden from striking have the right to compulsory arbitration.

7. The Act, at AS 23.40.200(b), provides that whenever the labor organization representing employees who do not have the right to strike, and the State, as employer, reach impasse in their effort to reach agreement, they must submit their dispute to interest arbitration. ACOA and the State did reach impasse during negotiations over their 2009-2012 Bargaining Agreement.

8. As required by AS 23.40.200(b), ACOA and the State submitted the contested issues to binding interest arbitration.

On March 19, 2009, which was the 59th day of the Legislature's 2009 regular session, the arbitrator issued a decision for a new three-year Agreement, to commence on July 1, 2009.¹

9. On information and belief, the Department of Administration first forwarded certain terms of the resulting Agreement to the Legislature on or about March 31, 2009, the session's 71st day, or more than 10 days after the award and notwithstanding the requirement in AS 23.40.215(b) for the Department to "submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties."

10. The Legislature adjourned, as required by law, on April 19, on the final day of its 90-day session, without taking any action on the Agreement, i.e., without approving or disapproving the monetary terms of the resulting Agreement.

11. The monetary terms of an agreement (including the monetary provisions of an arbitrator's award) are subject, under Article IX, section 13, of the Constitution of Alaska, and AS 23.40.215, to legislative funding through appropriation.

12. If the Legislature disapproves the monetary terms of an agreement (including the monetary provisions of an arbitrator's award), the parties must then immediately reenter

¹ Exhibit 1 attached.

negotiations, to be conducted under the Act.

13. The Legislature did not disapprove the monetary terms of the arbitrator's award in 2009; it did not in any way, e.g., by resolution, or by language included in the operating budget or the capital budget for fiscal year 2010, or in other legislation, express disapproval of the monetary terms of the arbitrator's award.

14. No statute or Alaska court decision provides that, if a session of a legislature which has not adjourned *sine die* fails to approve or disapprove the monetary terms of an agreement, the parties must reenter negotiations.

15. By law and by the Legislature's Uniform Rules, matters not decided in the first regular session of a biennium (i.e., in the regular session conducted in an odd-numbered calendar years) remain available for action in the next regular session (i.e., the regular session conducted in an even-numbered calendar year).

16. Nevertheless, the State contends, and (as shown by Exhibit 2, attached to and incorporated herein by reference) publicly asserts that because the legislature failed either to approve or disapprove the monetary terms of the award in 2009, those terms are now a nullity and the parties must immediately reenter negotiations. This contention is incorrect.

17. To the extent that the State relies or may rely upon

Article 33 of the parties' existing Collective Bargaining Agreement for its position, its reliance is misplaced: as noted above, the monetary terms of the arbitration award for 2009-2012 have never been "rejected by the Legislature", the criterion set forth in Article 33 (Exhibit 3) for re-negotiation.

18. The arbitration award rendered by Arbitrator Greer on March 19, 2009 contained a reopening clause because of a then-pending geographical differential study. That study having been completed, ACOA, as authorized in the reopening clause and consistent with the arbitration award, has given the defendant timely written notification that, in the language of the reopening clause, it "demands to reopen the contract and bargain over the subject of geographic differentials." On Tuesday, May 19' ACOA has no plain, speedy or adequate remedy at law, and for that reason seeks declaratory and injunctive relief.

20. Related Proceeding.

a. Concurrently with the filing of this pleading, ACOA is filing at the Alaska Labor Relations Agency ("ALRA") a related complaint, attached and marked Exhibit 4, alleging that the State has engaged in unfair labor practices because of the timing, manner and content of its handling, treatment and transmission to the Legislature of the monetary terms of the interest arbitration award.

b. The allegations put before the ALRA, an

administrative agency charged with the administration of the Alaska Public Employment Relations Act, and concerning alleged unfair labor practices, are not presented in this court action as a basis for the judicial relief sought in this action.

c. The question of whether the monetary terms of the arbitrator's award remain available for legislative approval or disapproval or, conversely, whether those terms are now null and void and the parties must re-negotiate, is not presented to the ALRA as a basis for the unfair labor practices complained filed there.

21. Unless declaratory and injunctive relief is granted, correctional officers and ACOA confront a long period of uncertainty, and the bargaining unit could be subjected to unnecessary expenses of re-negotiation and, if agreement is not reached, re-arbitration.

22. The position of the State, unless relief is granted, in addition to being contrary to law and to the existing Collective Bargaining Agreement, would undermine the public policy goals and objectives of the Public Employment Relations Act, by:

a. reducing the utility of interest arbitration as a means of resolving disputes, whenever one session of a biennium fails to either approve or disapprove an arbitrator's award because of time limitations, inadvertence, or

miscommunications from the Executive branch to the Legislative branch; and

b. subjecting bargaining units to redundant costs and expenses; and

c. depriving employees of the benefit of fairly negotiated and arbitrated salary adjustments, or at least delaying and deferring their receipt of the benefits of arbitration; and

d. creating employee unrest and distrust of the decades-old Alaska statutory system for resolving impasses affecting employees who are prohibited from work stoppages; and

e. undermining the Legislature's ability to give due and diligent consideration of the monetary aspects of a tentative agreement or arbitration award, when put under time constraints by the circumstances or by dilatory or tardy communications to it from the Executive Branch.

Wherefore, ACOA respectfully requests:

1. a declaration (declaratory judgment) that the parties hereto are not obligated to reenter negotiations;

2. a declaration (declaratory judgment) that the monetary terms of the arbitrator's award remain available for legislative consideration in 2010;

3. an injunction restraining and enjoining the defendant from requiring, or from purporting to require, ACOA to

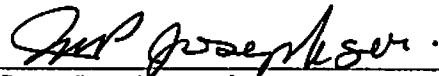
re-enter negotiations, unless and until the Legislature rejects the monetary terms of the arbitrator's award or until the adjournment *sine die* of the Alaska Legislature in 2010;

4. an injunction requiring the defendant to bargain over the subject of geographic differentials, as requested by ACOA, and as contemplated by the arbitrator and the parties;

5. such other, further or different relief as the court may find just and equitable; and

5. recovery of its costs and expenses incurred herein, including reasonable attorney fees.

DATED May 27, 2009, at Anchorage, Alaska.



Joe P. Josephson
Alaska Bar No. 6102018
Attorney for Plaintiff
912 West 6th Avenue
Anchorage, Alaska 99501
Tel. (907) 276-0151
Facsimile (907) 276-0155

JOSEPHSON & ASSOCIATES, P.C.
Attorneys at Law
912 West Sixth Avenue
Anchorage, Alaska 99501
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IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

Alaska Commercial
Union Association
Plaintiff(s),

vs.

State of Alaska
Department of
Administration
Defendant(s).

CASE NO. 3AN-09-75 ⁵⁸ ~~58~~

SUMMONS AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT

To Defendant: State of Alaska Department of Administration

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) _____, whose address is: _____

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

TO: Plaintiff and Defendant

You are hereby given notice that:

- This case has been assigned to Superior Court Judge Ashman and Master _____.
- This case has been assigned to District Court Judge _____.

CLERK OF COURT

5/27/09
Date



By: [Signature]
Deputy Clerk

I certify that on 5/27/09 a copy of this Summons was mailed given to plaintiff plaintiff's counsel along with a copy of the Domestic Relations Procedural Order Civil Pre-Trial Order to serve on the defendant with the summons.
Deputy Clerk [Signature]

* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

State of Alaska, Department of Administration
and
Alaska Corrections Officers Association

Interest Arbitration Opinion for Collective Bargaining Agreement Effective July 1, 2009

William Greer
Arbitrator
PO Box 80847
Portland, Oregon 97280

March 19, 2009

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From: Kreitzer, Annette E (DOA) [mailto:annette.kreitzer@alaska.gov]
Sent: Friday, April 24, 2009 10:52 AM
To: Brad Wilson (ACOA)
Cc: Brooks, Kevin A (DOA); Sheehan, Katherine E (DOA); Neal, Nicki L (DOA)
Subject: RE: clarification ACOA

Brad:

Where we go now is dictated by Article 33 in the contract. I understand that both the State and ACOA tentatively agreed to this Article, which requires us to return to bargaining:

ARTICLE 33 - LEGISLATIVE ACTION

A. The parties acknowledge that implementation of the monetary terms of this Agreement is subject to AS 23.40.215. The Employer shall submit the required legislation at the earliest possible date and both parties shall support its passage. **If the monetary terms of the Agreement are rejected by the Legislature, the parties shall immediately reenter negotiations to be conducted in accordance with AS 23.40.215.**

B. The Employer shall be held free of penalty pay or other punitive action for the ninety (90) day period following the date funds become available subsequent to legislative appropriation for the funding of this Agreement, except those payments which would have been required under the predecessor Agreement.

C. Provisions of this Agreement not requiring legislative funding before they can be put into effect shall be implemented on the effective date of this Agreement or the date otherwise specified in the Agreement.

The non-monetary provisions already tentatively agreed to by us and ACOA, as well as the non-monetary portions of the arbitrator's award will be implemented according to Article 33 (c).

I look forward to commencing bargaining. Kate Sheehan will be contacting you to set dates.

I suggest you ask Senator Stedman what he was referring to in his comments.
ak

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- C. Provisions of this Agreement not requiring legislative funding before they can be put into effect shall be implemented on the effective date of this Agreement or the date otherwise specified in the Agreement.