IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff, -vs- ALASKA CORRECTIONAL OFFICERS' ASSOCIATION Defendant.	Case No. 3AN-13-08761CI

DEFENDANT'S CONSOLIDATED:
1) OPPOSITION TO STATE OF ALASKA'S MOTION FOR SUMMARY JUDGMENT, AND
2) MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

I. Introduction.

This case arises out of the State of Alaska, Department of Corrections' unilateral decision to impose a change to a decades-old scheduling regime by transferring correctional officers in security positions from an 84-hour, week on/week off work schedule to the 42-hour, five-day schedule worked by officers in administrative positions. When the officers' union, defendant Alaska Correctional Officers' Association ("ACOA" or "the union"), filed suit to enjoin the change, the State argued that the union was required to arbitrate the issue. Judge Aarseth agreed and the case proceeded to arbitration before Janet L. Gaunt, a nationally-recognized labor arbitrator. The arbitrator conducted a three-day hearing during which she considered documentary and

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testimonial evidence from the State and the ACOA. The arbitrator ruled that the State had violated the terms of the governing collective bargaining agreement and required the State to return the transferred officers to their original, contractually-mandated 84-hour, week on/week off schedule.

The State filed the present suit seeking to vacate the arbitrator's order, and the ACOA counterclaimed seeking enforcement of that order. The State now moves for summary judgment contending that the arbitrator's decision violates public policy and constitutes gross error. As detailed below, the State's claims are meritless. By enforcing the parties' contractual agreement, the arbitrator did not violate public policy by interfering with the commissioner's authority to manage the State's correctional facilities, and re-imposition of the pre-existing work schedule does not require a legislative appropriation. Further, the arbitrator did not commit gross error in construing the collective bargaining agreement. Consistent with the great deference due to arbitral decisions, this Court should deny the State's motion and grant the ACOA's cross-motion for summary judgment on its counterclaims for enforcement of the arbitrator's award.

II. Statement of Facts.

A. The Parties' Dispute.

For over thirty years, beginning in 1981, officers working in security positions in the State's correctional facilities have been on an 84-hour schedule working twelve hours a day on a week on/week off basis. [Arbitrator's Opinion and Award, at 4-5, Ex. 1 to State's Motion.] In January 2012, the State Department of Corrections ("DOC")

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announced its intention to move a number of the officers from that schedule to a 42-hour schedule working on a five days on/two days off basis. [Id., at 7.] As the officers' bargaining representative, the ACOA demanded the right to negotiate the change, but the State rejected that demand, asserting that it had the right to change the schedule under the terms of the collective bargaining agreement. [Id., at 8.]

In March 2012, the ACOA filed a class action grievance challenging the new scheduling plan as a violation of the collective bargaining agreement, and in May 2012, while that grievance was still pending, the DOC began implementing the new schedule. [Id., at 9.]

B. ACOA's Prior Suit for Injunctive Relief.

On May 1, 2012, the ACOA filed suit against the State seeking an injunction against implementation of the new schedule. [Complaint for Injunctive Relief in ACOA v. State of Alaska, Dept. of Corrections, 3AN-12-06968CI.] The State moved for summary judgment, arguing among other things that the ACOA had "failed to exhaust its contractual remedies by failing to wait for the arbitrator to decide ACOA's grievance on interpretation of the collective bargaining agreement." [Memorandum Supporting Motion for Summary Judgment, at 2, filed Aug. 17, 2012.] The State reiterated this point in its reply memorandum, asserting that the arbitrator would apply her "unique expertise" and "determine whether the State had violated [the] collective bargaining agreement." [Reply to Opposition to Motion for Summary Judgment, at 7-8, filed Sept. 20, 2012.] Judge Aarseth granted the State's motion and dismissed the ACOA's lawsuit for failure

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to exhaust its arbitral remedy. [Order Granting the State's Motion for Summary Judgment, at 7-8, entered Jan. 8, 2013.] Judge Aarseth reasoned that the "[p]arties bargained for the arbitration" and concluded that "[i]nterpretation of the contract belongs in the arbitration." [Id., at 7.]

C. The Arbitration and Decision.

The matter proceeded to arbitration before Arbitrator Janet L. Gaunt, and she issued her decision on April 20, 2013. [Arbitrator's Opinion and Award, Ex. 1.] The hearing was recorded with the understanding that the tape was solely for the arbitrator's use and would not be retained. [Id., at 1.] Thus, there is no record of the proceedings for this Court to review. The arbitrator also considered voluminous documentary evidence and allowed the parties to present testimonial evidence and cross-examine witnesses.[1]

At the arbitration, the ACOA argued that the DOC had violated the collective bargaining agreement by transferring officers from the 84-hour schedule to the 42-hour schedule. [Id., at 5.] The State argued that Article 22.2.A of that agreement, which provided that "[s]hift assignments shall be made in accordance with the needs of the Employer," granted the DOC the unambiguous authority to transfer officers from one schedule to the other. [Id., at 5, 18.]

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[1] The State has submitted all of the arbitration exhibits with its summary judgment motion. However, given the deferential standard of review, it is not this Court's role to re-weigh the evidence. For purposes of the parties' motions, the only relevant matter is the arbitrator's Opinion and Award.

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In considering the parties' positions, Arbitrator Gaunt expressed her awareness of (1) the general rule that clear and unambiguous contract language must be given effect and (2) Article 16.6.B of the contract, which provided that she had "no authority to rule contrary to, amend, add to, subtract from, or eliminate any terms" of the contract. [Id., at 18-19.] However, she also recognized that the determination of contractual ambiguity turned on a consideration of all relevant evidence, including the contract as a whole. [Id., at 20-21.] Based on her careful analysis, the arbitrator found that the reference to "shifts" in Article 22.2.A was ambiguous. [Id., at 21-24.] For example, she noted that the contract and the parties "referred to shifts in different ways for different purposes." [Id., at 21.] In contrast to the State's contention that the week on/week off and five-day schedules constituted "shifts" within the meaning of Article 22.2.A, Article 13.2.C used the word "shifts" to refer to the day and night "shifts" for those officers on the week on/week off schedule. [Id., at 21-22.] Reasoning that the DOC "did not just change the twelve (12) hour shift; it changed the workweek associated with that shift and thus changed the entire work schedule," Arbitrator Gaunt concluded that "Article 22 refers to changing 'shifts'; it does not provide **express** authority to change work 'schedules.'" [Id., at 23-24 (emphasis in original).]

Given the ambiguity of Article 22.2.A, the arbitrator found that the ACOA's view of the contract was strongly supported by both the parties' long-standing thirty-year practice and the bargaining history over that same period of time. [Id., at 25-32.] In 1981, the parties signed a letter of understanding establishing a twelve-hour, week

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on/week off schedule specifically tailored for correctional officers assigned to security posts. [Id., at 4.] That schedule was maintained in subsequent letters of understanding, was formally incorporated into the 1990 collective bargaining agreement, and was maintained in all subsequent contracts. [Id., at 4-5.] The State offered no evidence that it had ever involuntarily moved a security officer off the week on/week off schedule until the change currently at issue. [Id., at 26.] Thus, Arbitrator Gaunt found "a consistent, long-standing, unequivocal practice" of keeping security officers on that schedule. [Id.]

The arbitrator also heard testimony from a number of witnesses who had participated in previous bargaining sessions. [Id., at 28-32.] Negotiators from both sides of the table testified that the parties had always treated the 42-hour, five-day schedule as applicable to administrative positions, while the 84-hour, week on/week off schedule was the schedule for officers on security posts. [Id., at 29.]

Considering all the evidence before her, the arbitrator concluded that ACOA had "convincingly established" that the 84-hour, week on/week off schedule of Article 13.2.A of the contract applied to correctional officers in security posts while the 42-hour, five-day schedule set forth in Article 13.1.A was intended for officers assigned to administrative positions. [Id., at 33.] She therefore ruled that the DOC had violated Articles 13.1 and 13.2 when it implemented the disputed schedule change. [Id.] She further found that the State had violated Article 36 of the agreement by refusing to negotiate in good faith over the issue. [Id., at 35-37.]

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In her award, Arbitrator Gaunt directed the State to make the affected correctional officers whole for all wages and benefits lost by virtue of having their work schedules improperly changed, and she reserved jurisdiction to resolve any disputes regarding compliance with the award. [Id., at 38.]

In a subsequent letter, dated May 16, 2013, Arbitrator Gaunt confirmed that her decision required that any correctional officers impacted by the assignment of security officers to a 42-hour schedule be restored to an 84-hour schedule. [Gaunt Letter, Ex. 1 to State's Motion, at 39-40.] The State objected that it could not reassign the officers without hiring 62 additional officers and asserted that it did not have the budgetary authority to do so. [Sheehan Letter, Ex. 2-E to State's Motion.] In response, Arbitrator Gaunt declared that the parties had asked her to fashion an appropriate remedy,[2] and she rejected the State's contention that it could not implement the mandated remedy. [Gaunt Letter, Ex. 1 to State's Motion, at 41-43.] She stated,

> An assertion that the DOC might need to hire additional officers does not excuse compliance with the specified remedy or establish an impossibility defense. The State has an obligation to fund its contractual commitments, one of which was utilization of the work schedule described in Article 13.2.A of the CBA. **It is clearly not impossible to staff the DOC in a way that assigns security officers to an 84 hour schedule, because that is what the DOC did for decades.**

[Id., at 42 (emphasis added).]

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[2] Each party submitted a statement of the issues to be arbitrated, and each asked the arbitrator to decide the appropriate remedy in the event she found a violation of the collective bargaining agreement. [ACOA's Issue Statement, attached as Ex. A; State's Issue Statement, attached as Ex. B.]

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D. The Current Lawsuit.

The State initiated this lawsuit on August 9, 2013, by filing a complaint asking this Court to vacate the Arbitrator Gaunt's award. [Complaint to Vacate Arbitrator's Award, filed Aug. 9, 2013.] The ACOA counterclaimed and requested an injunctive order commanding the State to implement the arbitrator's award and mandated remedies. [Answer and Counterclaims, filed Aug. 23, 2013.] The parties have now cross-moved for summary judgment.

III. Standards Governing Judicial Review of Arbitration Decisions.

Only a few months ago, the Alaska Supreme Court reiterated the standards governing judicial review of arbitration decisions.

> 'An arbitrator's decision is accorded great deference' because '[b]oth the common law and Alaska statutes evince a strong public policy in favor of arbitration.' To effectuate this public policy, we follow an approach of 'minimal court interference with arbitration,' and '[t]his deference extends to both the arbitrator's factual findings and the arbitrator's interpretation and application of the law.' We have remarked that 'as a matter of both policy and law, we are "loath to vacate an award made by an arbitrator,"' and that 'we will interfere with the decision of an arbitrator only in the most egregious instances.'

Johnson v. Aleut Corp., 307 P.3d 942, 947-48 (Alaska 2013)(citations omitted).

Consistent with that deferential approach, a court may vacate an arbitration decision under the Public Employment Relations Act only under very narrow circumstances. A court may refuse to enforce an arbitration decision "where doing so would violate an 'explicit, well defined and dominant' public policy. State v. Public Safety Employees Ass'n, 257 P.3d 151, 158 (Alaska 2011)(citation omitted). A court may also

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review an arbitration decision for "gross error," which is defined to encompass "only mistakes that are both obvious and significant." State v. Public Safety Employees Ass'n, 199 P.3d 1161, 1162-63 (Alaska 2008)(citation omitted).

IV. The Arbitrator's Award Does Not Violate Public Policy.

A. The Award Does Not Violate the DOC Commissioner's Authority.

The State first argues that the arbitrator's decision must be vacated because it impinges on the statutory authority of the DOC Commissioner to control and operate the state correctional system. This argument should be rejected for a number of reasons.

First, by defining the terms and conditions of employment, collective bargaining necessarily imposes restrictions on management rights. Elkouri & Elkouri, How Arbitration Works, at 13-10 (7th ed. 2012). Collective bargaining is "the very mechanism by which organized workers may achieve control and exercise it jointly with management." Id, at 13-28 (citation omitted). In this case, the arbitrator construed the collective bargaining agreement as providing for an 84-hour, week on/week off schedule. By agreeing to that schedule, the State necessarily agreed to a limitation on the commissioner's management authority and control, and it does not violate public policy to enforce that agreement. If the State's logic were followed, an arbitrator could never render a decision regarding any term or condition of employment since all such decisions would impinge on the commissioner's unfettered freedom to make decisions regarding those terms or conditions. Such a result would run contrary to the foundational principles underlying collective bargaining rights.

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Second, neither the generic grant of constitutional authority to the State to maintain a penal system nor the statutory delegation of authority to the DOC commissioner to operate correctional facilities qualifies as the type of "explicit, well defined, and dominant" public policy that would be required to justify invalidation of the arbitrator's decision. Similarly, the State's citation to case law[3] regarding criminal sentencing and the classification and assignment of inmates provides no authority for vacating an arbitral decision in this collective bargaining context. In the absence of an explicit, well-defined, and dominant public policy that runs contrary to Arbitrator Gaunt's decision, there is no reason for this Court to vacate her award.

Third, the State has not identified any public policy against the 84-hour, week on/week off scheduling. It does not violate public policy to mandate the continuation of a scheduling scheme that has been in place for more than three decades.

Fourth, the State's argument overlooks the contrary and well-established public policy that favors collective bargaining and arbitration for public employees. In passing the Public Employment Relations Act, AS 23.40.070, *et seq.*, the Alaska Legislature expressly declared a policy in favor of "joint decision-making," granting public employees "the right to share in the decision-making process affecting wages and working conditions" and "requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms

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[3] State v. Chaney, 477 P.2d 441 (Alaska 1970); Rust v. State, 582 P.2d 134 (Alaska 1978).

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and conditions of employment." AS 23.70.070. The arbitral process in general and Arbitrator Gaunt's decision in this case both serve that public policy. See Johnson, 307 P.3d at 947-48 (both common law and Alaska statutes evince a strong public policy in favor of arbitration). Thus, rather than violating public policy, Arbitrator Gaunt's decision actually vindicates these public policies and should be enforced.

Rather than seeking to uphold public policy, the State seeks to deprive public employees of the protections of collective bargaining and the right to grieve and arbitrate disputes. The State's arguments that Arbitrator Gaunt's decision violates public policy by impinging on the DOC commissioner's authority should be rejected.

B. The Arbitrator's Decision Does Not Violate Public Policy Regarding Legislative Appropriation.

The State also argues that the Arbitrator Gaunt's award violates public policy because it orders immediate implementation without regard to the requirement that the monetary terms of a collective bargaining agreement are subject to legislative appropriation under AS 23.40.215(a). This argument is based on the claim that the State will be required to hire 62 additional officers to implement the award. The State's argument is meritless as a matter of law and fact.

Alaska Statute 23.40.215(a) provides, "The monetary terms of any agreement entered into under AS 23.40.070 - 23.40.260 are subject to funding through legislative appropriation." In turn, AS 23.40.250(4) defines "monetary terms" as "**changes in the terms and conditions of employment** resulting from an agreement that (a) will require an appropriation for their implementation...." (Emphasis added.) In this case, there has

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been no change in the terms and conditions of employment. The week on/week off schedule was the status quo that had been in place for more than thirty years, and Arbitrator Gaunt did not impose a "change" in that schedule. Instead, she mandated the continuation of this long-standing practice. Absent a "change" in the terms of employment, there is no monetary term that requires legislative appropriation. As such, the statutory provisions regarding legislative appropriation are not implicated, and the State may simply continue to operate as it has for the past thirty years.

Additionally, the underlying facts do not support the State's argument on this point. Contrary to the premise of the State's argument, it is not the arbitrator's award that allegedly necessitates the hiring of dozens of additional officers. Rather, the State's claim that it needs to hire more officers arises from a recommendation in a 2010 legislative audit report, which proposed hiring additional officers to raise the Shift Relief Factor from 4.8 to 5. [See State's Memo., at 5.] The State claims that, instead of hiring new officers, it elected to transfer current officers from the week on/week off schedule to meet the recommended Shift Relief Factor and that it will have to hire new officers if they have to reinstate the week on/week off schedule. Thus, the State's claim is based on the cost of hiring more officers to satisfy a legislative audit recommendation, not the cost of reverting to a pre-existing 84-hour, week on/week off schedule to comply with the arbitration award. In this regard, it is further relevant that the State is not required to follow the audit recommendation, and in fact, ignored the recommendation for two years.

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The State's argument is also based on a mischaracterization of the legislative funding requirement. The existence of monetary terms does not render an arbitration decision void as contrary to public policy. Rather, it simply obligates the State to seek a legislative appropriation. Alaska Statute 23.40.215(b) mandatorily directs:

> The Department of Administration **shall** submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. [Emphasis added.]

If the legislature denies funding, the monetary term may be unenforceable, but it is not rendered void on public policy grounds.

Quite simply, the 2010 legislative audit and its recommendation for the hiring of additional officers to raise the Shift Relief Factor is simply not relevant to the matter at hand. The DOC resisted the audit's recommendation for more than two years, and it now seeks to invoke that recommendation as grounds for unilaterally altering the work schedule mandated by the terms of the collective bargaining agreement. The alleged need for a legislative appropriation arises from the State's decision to hire more officers, not from Arbitrator Gaunt's order to continue the pre-existing work schedule.

After breaching the collective bargaining agreement by changing a term of employment, the State should not be heard to argue that an appropriation would now be required to reinstate the pre-existing status quo. The State's argument that Arbitrator Gaunt's decision violates the public policy embodied in the legislative appropriation requirement is meritless and should be rejected.

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V. The Arbitrator Did Not Commit Gross Error.

A. The Arbitrator Did Not Commit Gross Error in Disregarding the Legislative Appropriation Requirement.

In a companion to its public policy argument, the State argues that the arbitrator's disregard of the legislative appropriation requirement constituted gross error. The State's argument should be rejected for the reasons set forth above.

B. The Arbitrator Did Not Misconstrue the Contract.

When the ACOA sought a court injunction against the proposed schedule change, the State objected and insisted that the matter be arbitrated so that the arbitrator could apply her "unique expertise" in interpreting the collective bargaining agreement. Unhappy with the result, the State has now returned to this Court contending that the arbitrator committed gross error in construing the agreement. In making its arguments, however, the State overlooks the well-established principle that a court is to afford great deference to arbitration decisions. Johnson, 307 P.3d at 947. It is not the court's role to second-guess an arbitrator's findings of fact or conclusions of law. Id., at 948. "When parties agree to submit their differences to an arbitrator, they should be bound by his decision." State v. Public Safety Employees Ass'n, 798 P.2d 1281, 1287 (Alaska 1990). "Arbitration should be a final and binding means of dispute resolution, not a mere prelude to litigation." City of Fairbanks Municipal Util. Sys. v. Lees, 705 P.2d 457, 460 (Alaska 1985). Consistent with these principles, this Court should reject the State's claims that Arbitrator Gaunt committed gross error in construing

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the contract in this instance.

The State argues that Arbitrator Gaunt erred in finding the plain language of Article 22.2 (governing shift assignments) to be ambiguous, and it faults her for considering anything other than that specific contract provision. However, the rule of law is well-established that in determining whether contract language is ambiguous, a court – or in this instance, an arbitrator – should view "the contract as a whole and the extrinsic evidence surrounding the disputed terms." Weiner v. Burr, Pease & Kurtz, P.C., 221 P.3d 1, 9 (Alaska 2009). Thus, Arbitrator Gaunt did not err by considering other contract terms and relevant extrinsic evidence to find that the reference to "shifts" in Article 22.2 was subject to more than one reasonable interpretation.

The State further faults Arbitrator Gaunt for considering evidence of the parties' past practices to help determine the contract's meaning. However, "[o]ne of the most important standards used by arbitrators in the interpretation of ambiguous contract language is that of the relevant custom or past practice of the parties." Elkouri & Elkouri, How Arbitration Works, at 9-32. "Indeed, use of past practice to give meaning to ambiguous contract language is so common that no citation of arbitral authority is necessary." Id., at 12-20. Thus, Arbitrator Gaunt committed no error in considering the parties' longstanding and consistent past practice of more than thirty years. Coupling that evidence with the other relevant evidence, including testimony regarding the parties' bargaining history, Arbitrator Gaunt reached a reasonable conclusion regarding the contract's meaning.

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The State also claims that Arbitrator Gaunt ignored Article 16.6.B, which limited her authority "to rule contrary to, amend, add to, subtract from, or eliminate any terms" of the agreement. In fact, the arbitrator expressly declared that she was mindful of that provision and she even quoted it. In a related point, the State cites Classified Employees Ass'n v. Matanuska-Susitna Borough Sch. Dist., 204 P.3d 347 (Alaska 2009), for the proposition that oral contract provisions are void. In that case, the court held that an oral agreement can be used to interpret ambiguous terms of a collective bargaining agreement, but found the rule inapplicable because there were no clauses in the contract that hinted at the issue in dispute. Id., at 355.

In this case, by contrast, the arbitrator hinged her decision on Article 13.2.A, which expressly provided for an 84-hour, week on/week off schedule. Thus, the arbitrator construed the written terms of the contract and neither added to the contract nor relied upon an oral agreement. Contrary to the State's contention, the arbitrator committed no error by giving precedence to Article 13.2.A over other provisions in the contract, such as Article 4 (management rights) and Article 22.2 (shift assignments). The State may disagree with Arbitrator Gaunt's analysis, but there is no basis for claiming gross error.

Taking yet another approach, the State argues that the arbitrator ignored the word "overtime" as used in Article 13 and failed to recognize that the purpose of that provision was to provide the framework for overtime compensation. However, a cursory review of the five pages of Article 13 demonstrates that it was not limited to defining

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overtime rules, but addressed a broad array of issues, including the establishment of two different "schedules" in Article 13.1.A and 13.2.A.

The State also argues that, by referring to "security" and "administrative" positions, the arbitrator improperly brought new terms into the contract. However, the arbitrator's recognition of the two types of positions comported with the fact that the officers worked 84-hour or 42-hour schedules depending on whether they were on security or administrative positions. In this regard, it may be noted that the 2010 legislative audit also distinguished between security posts and administrative positions. [Audit, at 5 & n.12, Ex. 6d to State's Memo.] Arbitrator Gaunt did not rewrite the contract by acknowledging the two types of positions.

Finally, the State argues that the arbitrator ignored Article 22.6, which governs the selection of employees for temporary changes in duty "from an 84-hour assignment to a 42-hour assignment, or vice versa." Significantly, the provision characterizes the 84-hour and 42-hour positions as "assignments," rather than as "shifts" governed by Article 22.2. Moreover, that provision underscores the conclusion that the two schedules applied when duty "assignments" were changed from security to administrative positions, or vice versa.[4] Contrary to the State's contention, the arbitrator committed no

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[4] In a point unrelated to the question of whether the State breached the contract by transferring officers from the 84-hour schedule, the State also argues that the arbitrator committed gross error in requiring that the State notify the ACOA of any changes in schedules simultaneously with notice to the employees. Contrary to the State's argument, Arbitrator Gaunt acted fully within her authority in including this mandate. In submitting the matter to arbitration, both parties expressly authorized the arbitrator to determine the appropriate remedies. [See

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error by giving precedence to that provision over other provisions in the contract, such as Article 4 (management rights) and Article 22.2 (shift assignments).

Each of the State's arguments that Arbitrator Gaunt committed gross error is simply an assertion that she got it wrong. However, as the United States Supreme Court has instructed, courts do not review arbitration awards on that basis. E.g., Eastern Assoc. Coal Corp. v. United Mine Workers of America, 531 U.S. 57, 62 (2000)(even "serious error does not suffice to overturn [an arbitrator's] decision"); United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 37-38 (1987)(courts "do not sit to hear claims of factual or legal error by an arbitrator"). See also Public Safety Employees Ass'n, 257 P.3d at 155. Rather, Alaska courts may vacate an arbitration award in only the most limited of circumstances, none of which appear in this case.

In short, the State asked – indeed, demanded – that an arbitrator determine whether it could unilaterally change the correctional officers' work schedules. When the arbitrator disagreed with the State, it refused to accept the award as final and binding and instead sought to vacate the award. The State's move flies in the face of the well-established Alaska public policy that strongly favors final and binding arbitration in labor disputes.

Footnote 1, above.] Given the ACOA's obvious interest in the issue and the State's delay in notifying the ACOA of the proposed schedule changes in this instance, the arbitrator had good reason for including this directive as part of the required remedy.

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VI. Conclusion.

Consistent with the deference to be afforded arbitration decisions, this Court should affirm the decision in this case and reject the State's allegations of public policy violation and gross error. The State's motion for summary judgment should be denied and the ACOA's cross-motion should be granted. An order should be entered directing the State to implement the remedies mandated by Arbitrator Gaunt in the underlying arbitration by promptly restoring the affected correctional officers to the 84-hour, week on/week off schedule and by making the affected officers whole for those wages and benefits lost as a result of the change in their work schedules. The State of Alaska should further be ordered to notify the ACOA of any future scheduling changes simultaneously with notice to the affected officers.

DATED at Anchorage, Alaska, this 3rd day of January, 2014.

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I hereby certify that on the 3rd day of January, 2014, a true and correct copy of the foregoing was sent to the following via:

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