

ALASKA LABOR RELATIONS AGENCY
Minutes of Business Meeting
Tuesday, May 25, 2004, 10:10 a.m.

1. Call to order: Chair Gary P. Bader called the meeting to order at 10:10 a.m. Board Members Randy Frank, Colleen Scanlon, and Dennis Niedermeyer attended in person.

Staff members Margie Yadlosky, Jean Ward, and Mark Torgerson also attended. James A. Gasper attended as a member of the public.

2. Approval of minutes from December 11, 2003, business meeting: Member Niedermeyer moved to accept the minutes, and Member Scanlon seconded the motion. The motion carried.

3. Old business:

a. Status of pending cases.

1. Member Scanlon inquired about the status of case no. 02-1148-ULP that had been heard in December of 2003. Mark said he was working on a decision, and that it is among a number of decisions he is writing. Member Niedermeyer said it appeared there were at least 8 cases that were over a year old. Member Scanlon then asked about the three cases that were heard in April of 2004, and said she would like to get them closed. Mark said that the prior board's goal was to get decisions issued within 90 days from the date the record closed. Member Scanlon asked what could be done to get the cases decided more quickly, and she wanted to know if a bench decision would be appropriate to let the parties know the outcome sooner. Chair Bader asked what is at risk if bench decisions are issued. Mark indicated that nothing would be at risk. Jean said that on rare occasions there might be a problem. For example, when writing the full decision, if the hearing officer found that the law did not support the board's decision, the board might want to consider the existing law to see if they wanted to depart from it in issuing the decision, or reconsider its decision. However, this happens rarely, and Jean said there were about three times this may have happened since 1991. Chair Bader said it sounded like bench decisions could be issued as a norm. Member Niedermeyer expressed support for bench decisions. Chair Bader said he felt bench decisions could consist of a two or three sentence decision. Member Niedermeyer said that a complete legal analysis would not be required. Mark indicated that under the Administrative Procedure Act, a full decision with findings of fact and conclusions of law is required to dispose of the case. He mentioned the NLRB's backlog, and that when a new person assumed leadership and was facing cases that were several years old, he said that every decision did not have to be a Mona Lisa; they just needed to be done to address the backlog. Chair Bader asked what the effect would be on staff if bench decisions were issued. Mark said that staff could issue bench decisions. Chair Bader wanted to know if a bench decision could be issued on the 02-1148-ULP case, and Mark said that it could be. Member Scanlon said that she had expected a bench decision on that case. Chair Bader wanted to know about how many requests for

reconsideration had been received. Jean indicated there had been six or seven since 1991, and she estimated that fewer than ten percent of the Agency's decisions since 1991 had been appealed. Member Scanlon made a motion concerning bench decisions, which was seconded by Member Frank. This motion was later withdrawn and replaced with another motion on bench decisions.

James Gasper, attorney for PSEA, requested permission to speak. He told the board that he had been a practitioner before the former State Labor Relations Agency. He said that from his perspective the parties would like to know why the board was making the decision. Without that knowledge, it would be difficult for a party to know if it wanted to challenge the decision, and it could result in court remands and in difficulty conducting elections. Due to the length of time that could be involved, it might result in a remand to a panel that had not heard the case originally, and the panel would not know the prior panel's reasons for making the decision. In representation cases, if the Board grants a petition for severance, the next step is to proceed to an election. Based on a bench decision, it would be difficult for the losing party to know if it wanted to challenge the decision. He also noted that the former Agency's decisions had been shorter, and he said that the decisions that are being issued currently are more like a law review. He said that the court's decisions concerning the Agency's decisions generally are much shorter than the Agency's decisions. He asked if there was not some middle ground that could be approached.

Chair Bader said he felt two or three sentences ought to capture the essence of why the decision was issued, and that a bench decision would not be a simple yes or no. Member Scanlon expressed a desire to get a decision out on 02-1129-RC/RD. Jim Gasper said the court remanded the Alaska Housing Finance Corporation case to the Agency because it had not considered all of the factors in AS 23.40.090 when making its decision. Mark told the Board that when he had worked at Worker's Compensation, they were required to issue decisions within 30 days, but they were high volume, less complicated cases, which had shorter decisions. He feels that by reducing the length of the decisions and using bench decisions, the time frames for issuing decisions should be shorter. The board members discussed amending the motion member Scanlon had made concerning bench decisions. Member Scanlon withdrew the motion, and Chair Bader recessed the meeting briefly so the Board could draft a new motion. Presenting the motion was moved to item 4, new business, section (f).

5. Robert Royce, Assistant Attorney General (Ethics Act Presentation)

Because discussion of agenda item three had taken longer than expected, Chair Bader moved to item 5, and permitted Rob Royce, Assistant Attorney General, to proceed with a helpful presentation on the Ethics Act. Mr. Royce also discussed conflicts of interest on cases, and how they differ from violations of the Ethics Act. Chair Bader asked how often this training was provided to board members. Mark said it had not been provided for a number of years. Chair Bader said that each new board member should receive this training. Mr. Royce gave the Agency the video produced by

the attorney general's office to copy, and gave participants a packet of written materials on the Ethics Act.

3. Old business cont.:

a. Status of pending cases.

1. Chair Bader returned to item 3 (a) (1) on the Agenda, and Margie summarized the Agency's current caseload. As of May 17, 2004, the Agency has 95 open cases. Forty-three are unfair labor practice charges, and 43 are unit clarification cases. The remaining nine cases are representation, strike and collective bargaining agreement enforcement petitions.

2. Jean summarized the unfair labor practice caseload. Of the 43 cases, 12 are in abeyance, 2 are being scheduled for hearing, 4 are awaiting decision, and 25 are in the investigative phase. Eleven of these 25 cases have been filed since April 2004. She said 2 cases were filed in 2002, 4 in 2003, and the remaining 19 in 2004. Margie indicated that she has not had much time to work on unit clarification cases due to other duties. She noted that two cases filed recently by the State are not the routine type of unit clarification cases. One seeks to remove about 1600 class I employees from the general government unit, and the other concerns a reorganization of the State's human resource section.

3. Jean reported that there are two representation matters pending. One is an election for a 722-member correction officer unit, and the other is an attempt by PSEA to carve out a unit of probation officers. The correction officer unit ballot tally will take place on June 30, 2004. This is the first time in the Agency's history that a petition to intervene has been filed, and a run-off election is a possibility. The other case concerns a decision pending by the board. Jean noted that the Agency has not seen the school district organizing activity that usually takes place during this time.

b. Budget.

1. Mark and Margie said that there is little money left in the FY04 budget. Due to unknown costs that arise at the end of the budget year, when the Agency is assessed its share of costs for various items, some money has to be left to cover these anticipated costs.

2. Mark said that the Agency was fortunate to have received the governor's requested budget for FY05. This means we will be able to fill the clerical position. Getting it listed on Workplace Alaska is one of the many duties Margie has pending. Member Scanlon expressed her concern that the governor needs to support this agency by providing adequate funding for its needs.

4. New business:

a. **Board member update.**

Chair Bader said all of the new members were present, and resumes were on file.

b. **Annual Report.**

Margie reported that she had hoped to have a preliminary draft of the annual report ready for this meeting, but was unable to do so due to her workload. A board member asked if there was a requirement to have it done by any specific date, and Mark said there was none. Mark also noted that although it goes to the governor and the legislators, none of them have ever inquired about the annual report.

c. **Future Board Meetings: 2nd meeting date?/telephonic to save money?**

Mark said that the board meetings had been reduced from four a year to two, and they are usually held in April and October. Board members were asked to fill out calendars. Chair Bader said that based on input received from the board members about their availability, we would set a tentative date and then poll members closer to that date to see if they felt a meeting was necessary. Chair Bader asked how long it takes staff to prepare for the board meeting. Margie said it was at least a day. The members said that they could get information from the monthly reports. Chair Bader requested that the matter of board packets for the board meetings be put on the next agenda.

d. **Recent superior court proceeding (James Spalding).**

Mark said that, as they knew, Mr. Spalding had withdrawn his name from consideration. Member Scanlon expressed concern about being updated on the status of actions, as she had been expecting to deliberate at once on the matters heard in April. Mark indicated that even the Agency did not know about the lawsuit as early as others in the department did, and that we notified the board after we learned of it.

e. **Summary of recent Board decisions.**

At Chair Bader's request, Mark had prepared a summary of recent board decisions that was a little more extensive than the digests that the Agency publishes. The board members agreed that they could read the summaries without discussing the matter.

f. **Other.**

Member Scanlon moved that "When deliberations on a case are completed and the panel agrees, whenever possible, a bench decision will be issued." Member Frank seconded the motion. The motion carried.

Member Niedermeyer said he was curious as to how the Agency got to where it is on some cases where the parties have not exhausted their contractual remedies. He said the board might want to give the staff some more guidance on this issue. Chair Bader said

he thought it was part of the Agency's process to consider whether the parties had exhausted internal union remedies. Jean said that we are probably talking about two types of cases: unfair labor practice charges and collective bargaining agreement enforcement petitions. Deferral to arbitration is something that is looked at on all unfair labor practice charges. The Agency has adopted the NLRB's deferral doctrine under both *Collyer* and *Spielberg*. One pertains to prearbitration deferral and the other is post arbitration deferral. Under the collective bargaining enforcement regulations, the parties are required to check a box regarding whether they have exhausted their contractual remedies. Mark said that there are times when it is appropriate for the Agency to enforce the parties' collective bargaining agreement. For example, if a union has requested arbitration and the employer has refused to arbitrate, it is appropriate to consider whether the employer should be required to arbitrate the dispute. Additionally, the statute permits the parties to file a petition to enforce the collective bargaining agreement. Member Niedermeyer felt the board should review the sieve, and decide what to do about it. Chair Bader said the Board ought to determine if there is a sieve, and then talk about it. He requested that we put the matter on the next agenda.

5. Public comment:

Jim Gasper addressed some additional matters. He asked the Agency to consider publishing items that are not in decision and order format. For example, when the Agency issues an order, or informally resolves a case, he felt it would be helpful for the practitioners to be able to access this information. He believes it would save the Agency time, and prevent calls to Agency staff that rely on institutional knowledge. Mr. Gasper also asked the Agency to consider going to court for injunctive relief. He had requested that recently in a case he had filed, and Jean responded that we did not have the staff to petition the court for injunctive relief. He pointed out that although the statute authorizes the Agency to seek injunctive relief, there is no provision in the regulations that sets forth how a party goes about asking the Agency to seek injunctive relief. Mr. Gasper expressed his opinion that injunctive relief could be sought after the Agency issues a probable cause determination. There was discussion about whether a board decision, as opposed to a staff decision, would be required.

6. Action Items

a. Chair Bader established a subcommittee, consisting of Mark and himself, to consider whether the Agency should seek injunctive relief.

b. He established another subcommittee, consisting of Member Scanlon and Jean, to address Mr. Gasper's request that the Agency publish additional documents.

At 12:22 p.m., Member Scanlon moved that the meeting be adjourned. Member Neidermeyer seconded the motion. The motion carried.