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ALASKA VOCATIONAL TECHNICAL EDUCATION CENTER TEACHERS' ASSOCIATION, NEA-ALASKA,	)
Complainant,	)
vs.	)
STATE OF ALASKA,	)
Respondent.	)

CASE NO. 04-1313-ULP

DECISION AND ORDER NO. 274

The ALRA Board heard this unfair labor practice complaint on March 11, 2005, in Anchorage. Hearing Examiner Mark Torgerson presided. The Board based this decision on the documentary record, evidence admitted, and testimony of witnesses. The record closed on March 11, 2005, at the end of the hearing.

Digest: The Preamble and Recognition clauses of the parties' collective bargaining agreement are permissive subjects of bargaining. The State's unilateral change to the job description/position description from "teacher" to "instructor" was not an unfair labor practice under AS 23.40.110. The State did not bargain to impasse over a permissive subject of bargaining, and the State did not implement the change until after expiration of the collective bargaining agreement.

Appearances: Vince Speranza, UniServe Director for Complainant Alaska Vocational Technical Education Center Teachers' Association, NEA-Alaska; Diane Kiesel, Labor Relations Analyst for Respondent State of Alaska.

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

DECISION

Statement of the Case

On August 16, 2004, the Alaska Vocational Technical Education Center Teachers' Association, NEA-Alaska (AVTECTA) filed an unfair labor practice complaint against the State of Alaska (State). AVTECTA alleges that the State violated AS 23.40.110 by placing new hires into classified "instructor" positions instead of exempt "teacher" positions as described in the Preamble and Recognition clauses of the parties' collective bargaining agreement. AVTECTA contends this action constituted a unilateral change to a mandatory subject of bargaining prior to impasse. The State denies the charges and contends the Preamble and Recognition clauses are permissive subjects.

Jean Ward, the Agency's Hearing Officer conducted an investigation and found probable cause that the State committed a violation under AS 23.40.110(a)(2), (a)(5), and (a)(1). She dismissed AVTECTA's charge under AS 23.40.110(a)(3).

The Board heard this charge on March 11, 2005, in Anchorage, Alaska. The panel includes Vice Chair Aaron T. Isaacs, Jr., and Board Members Randall Frank and Dennis Niedermeyer. Hearing Examiner Mark Torgerson presided. The record closed on March 11, 2005.[1]

Issues

1. Are the Preamble and Recognition clauses in the collective bargaining agreement permissive or mandatory subjects of bargaining?

2. Did the State commit an unfair labor practice by bargaining in bad faith when it changed the classification of teachers at the Alaska Vocational Technical Center (AVTEC) from "teachers" to "instructors?"

Findings of Fact

1. The Alaska Vocational Technical Center (AVTEC) is located at Seward and is part of the Department of Labor and Workforce Development. It is a postsecondary institution that offers training in vocational skills. AVTEC programs include Applied Technology-Diesel; Heavy Equipment; Facility Maintenance; Maritime Department; Culinary Arts and Science; IT Computer Skills; Business Office Occupations; and Bulk Fuel Storage. Most of the students receive classroom instruction as well as hands-on experience, which enables them to learn to perform the competency

[1]On March 15, 2005, we issued a bench order notifying the parties of our decision in this case, and informing them we would later issue this formal decision and order.

in their chosen program. The long-term programs range in duration from eight weeks to ten months. Other training in the curriculum includes communication skills, employability skills, resume writing, and first aid training.

2. The Alaska Vocational Technical Education Center Teachers' Association, (AVTECTA) is recognized "as the exclusive representative of all teachers in the AVTECTA for collective bargaining with respect to salaries, wages, hours, and other terms and conditions of employment." (Jt. Exh. K, at 3.)

3. The parties ratified a collective bargaining agreement for the period July 1, 2000 – June 30, 2003.

4. The agreement's Preamble provides:

> This agreement is made and entered into this first day of July, 2000, by and between the State of Alaska and the Alaska Vocational Technical Center Teachers' Association (AVTECTA) covering Teachers of the Alaska Vocational Technical Center (AVTEC) at Seward, Alaska, whose duties require the possession of a valid Alaska teaching certificate. The terms and conditions contained herein are effective this date, except as otherwise agreed and specified in writing.
>
> It is the policy of the Employer and AVTECTA to continue harmonious and cooperative relationships between teachers and the Employer, to insure the orderly and uninterrupted operations of the Alaska Vocational Technical Center and to provide quality educational services to the students served. This Agreement is effectuated by the provisions of the Public Employment Relations Act, AS 23.40, granting public Teachers the rights of organization and collective bargaining concerning the determination of terms and conditions of their employment.

5. Article 1 of the agreement contains the Recognition clause, which defines "teacher" as follows:

> "Teacher" in this Agreement shall mean a person in State service who is paid a salary or wage and who engages in planning and/or instructing in an exempt teaching, counseling, or librarian position at the Alaska Vocational Technical Center that has been agreed to by mutual consent of the parties or which has been certified by the Alaska Labor Relations Agency (ALRA) or a court of competent jurisdiction as an AVTECTA bargaining unit position.

(Exh. K, at 3.)

6. All AVTECTA bargaining unit members are in the exempt service except for one job classification, the training specialist, which was placed into the unit pursuant to *Alaska Vocational*

Technical Education Center Teachers' Association, NEA-Alaska v. State of Alaska and Alaska State Employees Association, AFSCME Local 52, AFL-CIO, Decision and Order No. 262 (February 19, 2003). The training specialist is a classified employee. AVTECTA petitioned to include the training specialist in the unit.

7. AVTEC employees are either exempt, partially exempt, or in one of two units of the classified service: the state's General Government Unit (GGU) or the labor, trades, and crafts unit.

8. On September 1, 2003, Jim Herbert[2], AVTECTA's spokesperson for negotiations, sent an email to Art Chance, Director of Labor Relations for the State, notifying Chance that AVTECTA was ready to begin negotiations for a new collective bargaining agreement. The parties commenced negotiations over two months later, on November 17, 2003.

9. Richard Harrell has been AVTEC's instructional administrator since August of 1998. Previously, Harrell spent 23 years in the United States Air Force. He has a degree in industrial technology.

10. On July 12, 2004, Harrell wrote all AVTECTA staff a memorandum providing:

> This memo is to inform AVTECTA members of a change to duty position requirements for AVTEC instructors hired after July 1, 2004. Effective July 1st, newly hired instructional staff will not be required to have or maintain a valid Alaska Teacher Certification as a condition to teach vocational technical programs offered at AVTEC. The only associated impact of this change to the new hires will be their participation in the Public Employees Retirement System (PERS). I've attached the approved position description for your information.
>
> Staff hired to permanent positions prior to July 1st will be expected to maintain their teacher certification as before and will remain enrolled in the Teacher Retirement System (TRS).

(Jt. Exh. D.)

11. On July 19, 2004, Robert Wilson, AVTECTA Bargaining Spokesperson, wrote Harrell and asserted that the change outlined in Harrell's July 12, 2004, memorandum constituted an unfair labor practice. Wilson demanded that Harrell rescind the memorandum or AVTECTA would file an unfair labor practice complaint. AVTEC did not rescind the memorandum and proceeded to hire employees under the "instructor" position description. AVTECTA consequently filed an unfair labor practice.

[2] Mr. Herbert testified at the hearing. He started working as a marine instructor for AVTEC on December 1, 1987, and retired on June 30, 2004.

12. The parties agreed to the following stipulation at hearing: "The parties will stipulate that the State believes the union refused to allow classified employees into the AVTECTA unit and the union believes that by contract only exempt employees (or non-exempt employees certified by ALRA) can be represented by the [bargaining unit]." The State maintains that instructors hired after July 1, 2004, though in the classified service, should be placed in the AVTECTA unit. AVTEC attempted to provide new employees with the paperwork required to sign up for AVTECTA unit membership, but AVTECTA would not accept the paperwork or sign up the instructors because they are classified employees, not exempt employees.

13. There is no difference between teacher and instructor duties or salaries. The only difference is teachers (those hired prior to July 1, 2004) participate in the Teachers Retirement System (TRS), and instructors (those hired on or after July 1, 2004) participate in the Public Employees Retirement System (PERS).

14. AVTEC management believe that the following are some policy reasons that justify removing the certification requirement: 1) AVTEC would have a broader workforce to draw instructors from; 2) Management needs are evolving and changing; 3) the employee holding a teaching certificate and being an experienced teacher is less important than the employee having actual trade experience; and 4) AVTEC desires to change the program's concept to focus more on actual experience rather than formal instruction.

(State's Exhibit 2, February 6, 2004 memorandum from Melanie Millhorn to Commissioner Greg O'Claray).

15. The parties continue to negotiate for a new collective bargaining agreement but have not reached agreement on all issues yet. The parties agree they are not at impasse.

ANALYSIS

1. Are the Preamble and Recognition clauses in the collective bargaining agreement a permissive or mandatory subject of bargaining?

In this case, the parties disagree whether the Preamble and Recognition clauses to the collective bargaining agreement are mandatory or permissive subjects of bargaining. AVTECTA argues that these clauses are mandatory subjects and therefore the State committed a violation when it unilaterally changed the job description of the school's teaching staff from "teachers" to "instructors" effective July 1, 2004, without first bargaining to impasse. The State disagrees and instead takes the position that the clauses are permissive subjects. The State argues that it therefore did not need to bargain to impasse and could make the unilateral change after the parties' agreement expired.

We have concluded that an employer's unilateral change to terms of employment that are mandatory subjects of bargaining during the course of negotiations is a *per se* violation of the duty to bargain in good faith. *International Brotherhood of Electrical Workers Local Union 1547, AFL-CIO*

v. City of Seldovia, Decision & Order No. 208, at 11 (September 23, 1996); *University of Alaska Classified Employees Association, APEA/AFT, AFT-CIO v. University of Alaska*, Decision & Order No. 185, at 8 (April 13, 1995), *reversed on other grounds*, no. 3AN-95-3909CI (super. ct., July 19, 1996); *see generally* 1 Patrick Hardin and John E. Higgins, Jr., *The Developing Labor Law* 773 - 783 (4th ed. 2001). When this violation occurs during bargaining, "it is often a strong indication that the employer is not bargaining in good faith." 1 Hardin and Higgins at 840.

The phrase "terms and conditions of employment" is defined to mean "the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer." AS 23.40.250(9). Thus, the employer's unilateral change to a police department work schedule was deemed a unilateral change to a mandatory subject of bargaining and a violation of the duty to bargain in good faith under AS 23.40.110(a)(5). (*See* Decision & Order No. 208, *supra*).

With few exceptions, an employer may not make a unilateral change to a mandatory subject of bargaining without first bargaining to impasse. This rule also applies after the contract expires. On the other hand, an employer generally need not bargain to impasse over terms and conditions involving permissive subjects but may alter them upon contract expiration. *Silverman v. Major League Baseball Player Relations Committee, Inc.*, 67 F.3d 1054 (2d. Cir 1995), *citing Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 187-88, 92 S.Ct. 383, 402, 30 L.Ed. 2d 341 (1971).

Wages, hours, and terms and conditions of employment are a mandatory subject of bargaining. *International Organization of Masters, Mates and Pilots vs. State of Alaska*, Decision and Order No. 271 (December 28, 2004), *citing Alaska State Employees Association/AFSCME Local 52, AFL/CIO v. State of Alaska*, Decision and Order No. 158 at 15 (May 14, 1993), *aff'd. Alaska State Employees Association v. State of Alaska*, 3 AN-93-05800 CI. AS 23.40.070(2) and AS 23.40.110(a)(5) obligate an employer to bargain collectively in good faith over these mandatory subjects of bargaining.

In contrast, parties may, but are not required to bargain permissive subjects. *International Brotherhood of Electrical Workers, Local Union 1547 vs. Kodiak Island Borough*, Decision and Order No. 190 at 32 (July 21, 1995), *citing Yukon Flats School District v. State of Alaska, Labor Relations Agency*, Decision on Appeal, Case No. 3 AN-92-3603 Civ. (Super. Ct. Feb. 5, 1993), adopting by reference *Yukon Flats School District v. Yukon Flats Education Ass'n*, proposed decision & order, case no. 91-005-ULP, at 5 (Oct. 30, 1991). Moreover, "insisting on a permissive term to impasse violates [the] prohibition against refusing to bargain in good faith. A corollary of the absence of the duty to bargain about a subject is that a party may not insist on a permissive subject to impasse." Decision and Order No. 190 at 32, *citing NLRB v. Borg Warner Corp.*, 356 U.S. 342, 42 L.R.R.M. (BNA) 2034 (1958).

We agree with the State that both the Preamble and Recognition clauses are permissive

subjects of bargaining. Finding that they are permissive subjects of bargaining is consistent with interpretations by the National Labor Relations Board. According to Patrick Hardin and John E. Higgins, Jr., "[a] union recognition clause is not a mandatory subject of bargaining." I Hardin and Higgins, *The Developing Labor Law, at 1266* (4th Ed. 2001). Most courts have held that recognition clauses are permissive subjects of bargaining. *Id.*, n. 578. *See*, e.g., *National Labor Relations Board v. Greensburg Coca-Cola Bottling Company, Inc.*, 40 F.3d 669, 673 (3d. Cir. 1994; *Borg Warner*, 356 U.S. 342.

We also agree with the (Alaska Supreme) Court when it stated "[i]t is often difficult to characterize an issue as either mandatory or permissive." The Court went on to say that,

> The practical challenges of this process were elucidated in *Alaska Public Employees Ass'n v. State*, a case in which we considered whether job classification and salary range assignments were mandatory subjects of bargaining. Because of the close relationship between the job classification plan and the state merit principle, we held that job classification should be exempt from bargaining. With respect to the assignment of positions to salary ranges, we determined the issue to be a *permissive* subject of bargaining - - one on which state employees could be heard at the State's discretion - - but not a *mandatory* subject of bargaining under existing state salary programs. In reaching this conclusion, we adapted the test for negotiability set out in *Kenai I*, creating instead a "division between mandatory and permissive subjects of bargaining in cases, such as this one, where the government employer's constitutional, statutory, or public policy prerogatives significantly overlap the public employees' collective bargaining prerogatives." Under this modified test, "a matter is more susceptible to categorization as a mandatory subject of bargaining the more it deals with the economic interests of employees and the less it concerns the employer's general policies."

State of Alaska v. Public Safety Employees Association, 93 P.3d 409, at 414-415 (Alaska 2004).

We recognize that in an appendix to one of its cases, the Alaska Supreme Court suggested a recognition clause under Title 14 is a negotiable item of bargaining, which could imply that it is a mandatory subject of bargaining. *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416, 424 (Alaska 1977). We also recognize that the Agency has stated previously in a school district decision that,

> Nothing in PERA's language justifies expanding negotiation rights to require bargaining to impasse over educational policy. However, bargaining on educational policy should not offend public policy where complete discretion whether to bargain rests with the district as it would if the subject were a permissive subject of bargaining. Classification of the subjects listed in Kenai I as nonnegotiable permissive subjects of bargaining under PERA seems the

> appropriate outcome. This gives the employee organizations the opportunity to make proposals and communicate their concerns but leaves discretion to negotiate, and thus responsibility for educational policy, completely with the districts. Those subjects where the primary issue is the economic well being of the employees, which Kenai I lists for the most part as negotiable, would be mandatory subjects of bargaining. With these changes, Kenai I should continue to provide guidance over a subject's negotiability.

Yukon Flats School District v. Yukon Flats Education Association, Decision and Order No. 136, at 11 (Dec. 6, 1991).

However, in the present case, we find that the recognition clause is a permissive subject of bargaining. Unlike teachers analyzed in *Kenai I*, AVTEC's instructors do not teach in a school district. They are employed by the State and teach at AVTEC in Seward. Applying the modified test adopted by the Court originally in *Alaska Public Safety Employees Association v. State*, 831 P.2d 1245, 1251 (Alaska 1992), we find that the State's classification of AVTEC personnel concerns the employer's general policies more than it affects the economic interests of employees. AVTEC management found that the certification required of teachers has nothing to do with their ability to do their job. AVTEC management also felt that no longer requiring the certification was justified because it would have a larger recruitment pool to draw from, management needs were changing, certificated and experienced teachers were less important than a person with actual trade experience, and actual experience was a stronger focus than formal instruction. These policy concerns of the State outweigh any economic interests of the affected employees.

We also recognize that the State's classification of employees can affect the benefits they receive. For example, the retirement system for classified instructors is the PERS system, and the retirement system for teachers whose duties require the possession of a valid teaching certificate is the TRS system. However, as we noted previously, the Court has determined that job classification by the State is exempt from bargaining. Determining the job duties and the minimum qualifications for each classification is also the State's prerogative.

Examining the preamble and the recognition clause before us, we do not find any specific language that relates to wages, hours, or other terms and conditions of employment, which would make those clauses a mandatory subject of bargaining. However, there is some language in the preamble and the recognition clause that could implicate fringe benefits, which are terms or conditions of employment. From the language that discusses "exempt teacher[s]," eligibility to participate in the teachers' retirement system (TRS) can be implied. Whether a person who teaches at AVTEC is eligible to participate in TRS is something that could economically impact those employees. However, we find that those potential economic employee impacts do not outweigh the State's interests in implementing its general policies, including determining the minimum qualifications for positions and classifying positions. To the extent that the Agency's prior decision in Yukon Flats can be read to make a recognition clause a mandatory subject of bargaining, we find

that in the facts before us in this case involving the State of Alaska, it is a permissive, rather than mandatory subject of bargaining.

Additionally, we find that the Preamble is more in the nature of a scope of bargaining unit clause. "Although extensive bargaining about the unit commonly occurs, the scope of the unit is not a mandatory subject of bargaining." 1 Hardin and Higgins at 1258. *See also Borg Warner*, 356 U.S. 342, 349; *Newspaper Printing Corporation v. National Labor Relations Board*, 692 F.2d 615, 619-620 (6th Cir. 1982); *Reichhold Chemicals, Inc. v. National Labor Relations Board*, 953 F.2d 594, 595-96 (11th Cir 1992).

AVTECTA presented testimony and seemingly argued that because the paragraph describing "teachers" and their exempt status was the subject of extensive collective bargaining, and because the clause was historically part of several agreements between the parties, it must be considered a mandatory subject of bargaining. We disagree. We have previously concluded that "[a] history of bargaining a permissive term does not obligate an employer to future bargaining on the term. A subject is not transformed into a mandatory subject by bargaining." Decision and Order No. 170, at 7, *citing Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 78 L.R.R.M. (BNA) 2974 (1971).

We conclude the Preamble and Recognition clauses are permissive subjects of bargaining.

2. Did the State commit an unfair labor practice by bargaining in bad faith when it changed the classification of teachers at the Alaska Vocational Technical Center (AVTEC) from "teachers" to "instructors?"

AVTECTA contends that the State committed an unfair labor practice by making a unilateral change to a mandatory subject of bargaining. Specifically, AVTECTA argues that the State changed the job description classification for teachers from "teacher" to "instructor." AVTECTA asserts that this action relates to the Preamble clause, which is a mandatory subject of bargaining because it touches on economic matters important to the teachers. (AVTECTA November 9, 2004, Prehearing Statement at 5).

The State contends it did not violate AS 23.40.110. The State asserts that the Preamble and Recognition clauses are permissive, not mandatory subjects of bargaining. As such, the State argues that it could legally make the change it made after the parties' collective bargaining agreement expired on June 30, 2003.

AS 23.40.110(5) requires a public employer "to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative." Moreover, "[c]onduct that violates AS 23.40.110(a)(5) can also interfere with rights protected under AS 23.40.110(a)(1)." *Alaska Community Colleges' Federation of Teachers, Local 2402, AFT, AFL-CIO v. University of*

Alaska, Decision and Order No. 191, at 8 (Sept. 26, 1995) *aff'd* 3 AN-95-9083 CI (Alaska Super. Ct. September 26, 1995).

In *Fairbanks Fire Fighters Association, Local 1324, IAFF, vs. City of Fairbanks*, Decision and Order No. 256, at 9-10 (October 17, 2001); reversed 4FA-01-2607; *aff'd*, *Fairbanks Fire Fighters Association v. City of Fairbanks*, 48 P.3d 1165 (Alaska 2002). We stated that, in the context of collective bargaining,

> Good faith has been described as "an open mind and a sincere desire to reach an agreement" and "a sincere effort . . . to reach a common ground." I Patrick Hardin and John E. Higgins, Jr., *The Developing Labor Law*, at 608 (3d ed. 1992), *quoting NLRB v. Montgomery Ward & Co.*, 133 F.2d 676, 12 L.R.R.M.(BNA) 508 (9th Cir. 1943), and *General Elec. Co.*, 150 NLRB 192, 194, 57 L.R.R.M.(BNA) 1491 (1964), *enforced* 418 F.2d 736, 72 L.R.R.M.(BNA) 2530 (2d Cir. 1969), *cert. denied*, 397 U.S. 965, 73 L.R.R.M. (BNA) 2600 (1970). In *Hotel Roanoke*, 293 NLRB 182, 184 (1989), the Board stated: "In determining whether a party has bargained in bad faith, the Board looks to the totality of the circumstances in which the bargaining took place." *Port Plastics*, 279 NLRB 362, 382 (1986); *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984).

In determining whether a violation occurred, we examine both parties' conduct at and away from the negotiating table, not just the conduct of the party charged with a violation. Decision & Order No. 256 at 10. *See also Matanuska-Susitna Education Association, NEA-Alaska vs. Matanuska-Susitna Borough School District*, Decision and Order No. 268 at 6 (August 30, 2004).

We have already determined that the Preamble and Recognition clauses are permissive subjects of bargaining. Since these clauses are permissive, the State was free to make unilateral changes effective July 1, 2004, after contract expiration. That is what the State did, and its action is not a violation of AS 23.40.110(a)(5) because the State did not fail to bargain in good faith. We also find the State did not violate AS 23.40.110(a)(1) because it did not "interfere with, restrain, or coerce and employee in the exercise of the employee's rights guaranteed in AS 23.40.080." Finally, we conclude that the State did not "dominate or interfere with the formation, existence, or administration of an organization." AS 23.40.110(a)(2). The State's action in creating the position description questionnaire for instructors did not affect the formation, existence, or administration of AVTECTA. The State recognized the employee instructors as part of the AVTECTA unit.

Finally, as we have previously noted, "[t]he Alaska Supreme Court has provided broad managerial discretion to the State to create a position classification plan and classify and assign positions to it." *State of Alaska vs. Alaska Vocational Technical Center, Teachers INEA*, Decision and Order No. 168, at 16 (March 14, 1994), *citing Alaska Public Employees Association v. State of Alaska*, 831 P.2d 1245 (1992). Movement of positions between the exempt and classified service is under the jurisdiction of the personnel board and the Agency has no

jurisdiction over the matter. See AS 39.25.070 and 39.25.130; *Alaska Public Employees Ass'n v. State of Alaska v. State*, *supra*.

As we stated in Decision and Order No. 168 at 16, "[t]his discretion gives it some freedom to affect unit boundaries. There are limits on this authority. The State may not violate the provisions of AS 23.40.110, which addresses unfair labor practice charges." As we concluded above, we find the State did not exceed its authority and we find no violation. In fact, we find the unit boundaries have not changed. Instructors are doing the same work as teachers and are paid the same salary.

CONCLUSIONS OF LAW

1. The State is a public employer as defined by AS 23.40.250(7) and the Alaska Vocational Technical Center Teachers' Association, NEA-Alaska (AVTECTA) is a labor organizations under AS 23.40.250(5).

2. The Alaska Labor Relations Agency has jurisdiction to consider and hear unfair labor practice charges under AS 23.40.110.

3. The State's classification plan and assignment of salary ranges are outside the jurisdiction of this Agency. *Alaska Public Employees Ass'n/AFT AFL-CIO v. State of Alaska*, 831 P.2d 1245 (1992); *Henry T. Munson v. State of Alaska & Vernon L. Gilliam v. State of Alaska*, Decision & Order No. 206, at 26-27 (Sept. 20, 1996). Movement of positions between the exempt and classified service is under the jurisdiction of the personnel board and the Agency has no jurisdiction over the matter. See AS 39.25.070 and 39.25.130; *Alaska Public Employees Ass'n v. State of Alaska v. State*, *supra*.

4. The Preamble and Recognition clauses in the parties' expired collective bargaining agreement are permissive subjects of bargaining.

5. The State did not violate AS 23.40.110(a)(5), (a)(1), or (a)(2) when it made personnel hired after July 1, 2004, classified instructors instead of exempt teachers.

6. Complainant AVTECTA has the burden to prove each element necessary to its cause by a preponderance of the evidence.

7. AVTECTA failed to prove its case by a preponderance of the evidence.

ORDER

1. AVTECTA's complaint is denied and dismissed.

2. The State of Alaska is ordered to 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, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

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Aaron T. Isaacs, Jr., Vice Chair

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Randall Frank, Board Member

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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 mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of *Alaska Vocational Technical Education Center Teachers' Association, NEA-Alaska v. State of Alaska*, Case No. 04-1313-ULP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of April, 2005.

_____
Sherry Ruiz
Administrative Clerk III

This is to certify that on the 13th day
of April, 2005, a true and correct
copy of the foregoing was mailed,
postage prepaid to:
Keri Clark & Vince Speranza, AVTECTA
Diane Kiesel & Art Chance, State of Alaska

_____
Signature