

# ALASKA LABOR RELATIONS AGENCY

## Minutes of Business Meeting

### Friday, December 8, 2006

**1. Call to order:** Vice Chair Aaron T. Isaacs, Jr. (delegated by resolution to act as Chair in Board Chair Bader's absence), called the meeting to order at 10:07 a.m. Vice Chair Isaacs and Board Members Dennis Niedermeyer, Colleen Scanlon, and Matthew McSorley attended in person. Board Chair Gary Bader and Member Gary Atwood were absent.

Staff members Sherry Ruiz, Margie Yadlosky, Jean Ward, and Mark Torgerson also attended. There were two members of the public in attendance: Dennis Geary from the Alaska Public Employees Association and Stan Hafferman from the Alaska State Employees Association.

**2. Approval of minutes from May 12, 2006, business meeting:** Board Member Scanlon moved to approve the minutes, and Board Member Niedermeyer seconded the motion. By unanimous vote, the motion carried.

**3. Old business:**

**A. Status of Pending Cases.**

1. Case Flow Chart. Mark highlighted the decrease in open UC petitions and asked the Board if there were any questions about the chart. Mark noted that staff further reduced the total caseload since the May 2006 meeting, and it is in "pretty good shape" at this time. Vice Chair Isaacs inquired about unit clarification cases, and Mark gave an example of cases in which the State proposes to move a position from one bargaining unit to another due to change of duties. Board Member Niedermeyer inquired about one of the open cases, APEA v. State, and the time it takes for a decision to be resolved. Jean responded that the case was pending in superior court. Jean updated the Board on cases in abeyance, pursuant to a question from Board Member Niedermeyer.

2. Update on Unit Clarification Petitions and Unfair Labor Practice Charges. Jean and Margie updated the Board on the status of these cases. Jean continued to make progress on the unfair labor practice caseload, which is in good shape. Jean described three unfair labor practice charges she is investigating. The unit clarification caseload is also current. Board Member Scanlon inquired about hearings and the process to appoint members to panels. She wondered why she, and not Board Member Niedermeyer, was appointed to a panel for an Anchorage hearing. Mark explained that Chair Gary Bader appoints board members to panels for hearings, and Chair Bader expressed an interest in selecting members who had not worked with each other previously, to provide more variety to the composition of panel members. Board Member Niedermeyer volunteered to be available if Board Member Scanlon has a scheduling conflict.

3. Update on Election Petitions. Margie reported that there was one election petition filed by IBEW and the City of Wrangell. An election was held and IBEW was certified as representative of the small group. Board Member McSorley inquired about the makeup of the bargaining unit. Margie described it as a mixed group containing a variety of positions, predominantly public works positions. Board Member McSorley inquired about the City of Wrangell and whether they had opted out of the PERA. Margie responded that the City had originally opted out of PERA but recently opted back into jurisdiction under PERA.

4. Summary of Recent Board Decisions. Board members were provided with a copy of this summary, prepared by Mark. Board Member Niedermeyer asked about the status of the 'City of Seldovia' case. Mark reported there was a motion by the appellant City to withdraw and dismiss the appeal. The Agency has not received a record of the disposition of the motion. The Fairbanks Fire Fighters decision is also pending on appeal.

**B. Budget.**

Mark reported that the Agency has spent just under one-half of its budget in just less than the first six months; so, the Agency is on target at this time. Regarding the FY 08 budget, the Agency submitted a maintenance budget. One possible issue concerns a five percent increase to the Public Employees Retirement System (PERS). Former Governor Murkowski included this increase in the FY 08 budget, but we have not received information regarding Governor Palin's position on this issue. Board members discussed this issue and the possible implications for the Agency.

**C. Action Items.**

1. There were no action items.

**4. New Business:**

**A. Board Member Terms.**

Mark reported that Chair Gary Bader and Member Gary Atwood's terms expire in March, 2007. If they are interested in appointment to another three-year term, they must submit a letter of interest to the office of Boards and Commissions.

**B. Annual Report -- Status.**

Margie reported that the draft of the 2005 Annual Report is a work in progress. After she completes a draft, she will have Mark and Jean will review and edit the report before sending it to Gary Bader and Board members.

**C. Regulation Amendments Project.**

Mark updated Board Members on the status of the regulations project. The public comment period has ended and the next step is for the Board to vote on whether or not to adopt each of the proposed regulations. The Board then discussed the proposed regulations and voted for or against adoption. Board Members acknowledged that they received and considered the public comment regarding the regulations. Board Member Scanlon moved to adopt those regulations that did not elicit any public comment: "I move to adopt the following regulations as written in the September 19, 2006, draft regulations." She then specified these regulations: 8 AAC 97.010, 8 AAC 97.050(d)(3) and (d)(4), 8 AAC 97.070(b), 8 AAC 97.080(d) and (g), 8 AAC 97.085(a), 8 AAC 97.190(b), 8 AAC 97.220(b)(1), 8 AAC 97.225(c), 8 AAC 97.390(c), and 8 AAC 97.470(a). Board Member McSorley seconded Colleen's motion to adopt, for the purpose of discussion. Board Member Niedermeyer asked that 8 AAC 97.390(c) be removed from this group as he wanted to suggest a revision to the regulation. Colleen agreed to withdraw 8 AAC 97.390(c). Without objection, Board members agreed to exclude this regulation from the group. Board Member Niedermeyer asked that the record reflect that the Board carefully considered these proposed amendments and all public comments, and all of these proposals are intended to support the work of the Agency. Motion carried unanimously. The Board agreed to take up 8 AAC 97.390(c) after considering the proposed regulations on which the Agency received public comments.

Board Member Niedermeyer moved to adopt 8 AAC 97.050(c). Board Member Scanlon seconded the motion. Board Member Niedermeyer pointed out that the public comment requested that the Agency incorporate a specific deadline. He is not opposed to this suggestion. Public comment also expressed concern that the term "good cause" is not defined. Board Member Niedermeyer finds the term ambiguous and it should be defined or stricken. Board Member Scanlon disagreed and asserted that each case must be considered on its own facts. Board Member McSorley observed he was sensitive to both arguments, and he proposed language that included time frames and mutually agreed deadlines. Jean pointed out that getting the parties to mutually agree on time frames could be difficult. Board members further discussed the regulation and voted 2 - 1 to reject adoption of 8 AAC 97.050(c). Board Member Scanlon moved to have the staff work on the language of this proposal and provide an alternative at a future meeting. Board Member Niedermeyer seconded the motion and motion carried unanimously.

Board Member Niedermeyer moved to adopt 8 AAC 97.050(f), and Board Member Scanlon seconded. Board Member Scanlon agrees strongly that this change is necessary. Board Member Niedermeyer inquired about the procedure involved in unit clarification cases. Mark provided an example of the procedure in unit clarification cases. Jean pointed out that the language in parties' collective bargaining agreements can affect the procedure in cases involving vacant positions. Board Member McSorley proposed that the Board defer action on this proposal until the next meeting when no collective bargaining is occurring. After further discussion, motion to adopt 8 AAC

97.050(f) carried 2-1. Meeting Chair Isaacs pointed out that the Agency follows Roberts Rules of Order and under these Rules, the Chair only votes in the event of a tie vote.

Without objection, Board Member Niedermeyer directed that agency staff look into examining whether the Board should, in the future, adopt a regulation requiring one party to notify the other party (the union from which the position was moved) when a vacant position is filled. Staff should look at the pros and cons of such a proposal.

Board Member Niedermeyer moved to adopt 8 AAC 97.080(a), and Board Member Scanlon seconded the motion. Motion carried unanimously.

Board Member Scanlon moved to adopt 8 AAC 97.270(c) for purposes of discussion. Board Member McSorley seconded the motion. Board Member Scanlon believes this regulation is unnecessary. Member Scanlon agrees with the comments provided by the Alaska State Employees Association. Board Member Niedermeyer agreed that this regulation is unnecessary. He pointed out that the Agency has made impasse determinations in the past. Board Member McSorley also agreed that the proposed regulation would not change anything. Motion to adopt regulation 8 AAC 97.270(c) was defeated unanimously.

Board Member Niedermeyer moved to adopt 8 AAC 97.280(c). Board Member Scanlon seconded the motion. Board Member Niedermeyer does not believe there is any point in defining “last, best offer.” Board Member Scanlon concurred and agreed with the comments provided by the National Education Association – Alaska. Board Member McSorley agreed and called the question. Motion to adopt regulation 8 AAC 97.280(c) was defeated unanimously.

Board Member Scanlon moved to adopt 8 AAC 97.301. Board Member McSorley seconded the motion for purposes of discussion. Board Members Scanlon, Niedermeyer, and McSorley agreed that the proposed regulation does not enhance anything. Board Member McSorley called for the question. Motion to adopt 8 AAC 97.301 defeated unanimously.

Board Member Scanlon moved to adopt 8 AAC 97.510(a)(7). Board Member Niedermeyer seconded the motion. Board Member Scanlon inquired about the process of amending a proposed regulation. Mark explained that process. Board Member Niedermeyer asserted this section was redundant. After discussion, the motion to adopt was defeated unanimously.

Board Member Niedermeyer moved to adopt 8 AAC 97.390(c), with revised language as follows: “A party may respond during a hearing to a motion filed within ten days of a scheduled hearing, unless the agency orders otherwise.” Board Member Niedermeyer described this revision from the original proposed regulation as a syntax change. Board Member Scanlon seconded the motion and called the question. Motion carried unanimously.

**D. Travel Per Diem Update.**

Sherry reported that the State has increased the per diem rates for Board members, effective November 8, 2006. The rate was increased to \$60 per day, an increase of \$18 per day over the previous allowance. Sherry also reported that the travel office is up and running "with a vengeance."

**E. Next Semi-annual Board Meeting and Hearing Week.**

The Board discussed dates for the next semi-annual meeting. They agreed to hold hearings May 29 to the 31<sup>st</sup>, and to hold the Board business meeting on Friday, June 1, 2007.

**F. Hearing Weeks for 2007.**

Board members previously agreed to hold hearings during the first quarter of 2007 from March 5 to March 9. However, they agreed to change the first quarter hearing week to February 12 to February 16, 2007. In addition to the second quarter hearing week of May 29 to the 31<sup>st</sup> (noted in section 4.E. above), the Board discussed and then scheduled hearing weeks for the third quarter (August 20 to 24), and fourth quarter (December 10 to 14), with the winter Board business meeting scheduled for Friday, December 14.

**5. Public Comment**

There was no public comment.

**6. Adjournment of Public Meeting.**

Colleen moved to adjourn, and Matthew seconded. Motion carried for adjournment, which occurred at 12:22 p.m.