

Attachment for Step II Grievance – Union Case #F16-G-149
Class action grievance on behalf of DOT&PF Design employees

Background:

Facts giving rise to ASEA's grievance:

On Thursday, December 15, 2016 Governor Walker announced his proposed FY 2018 Operating Budget. That same day, in an email to all State of Alaska Employees regarding the budget, Governor Walker described Alaska's fiscal state as "grave to catastrophic" and outlined his and Lt. Governor Mallott's fiscal plan to:

1. reduce State spending through efficiencies and cost-containment;
2. re-plumb the State's wealth through sustainable use of the Permanent Fund Earnings Reserve to ensure the Dividend program continues while providing funding for essential State services; and
3. generate new revenue through broad-based taxes.

The Office of Management and Budget FY 2018 narrative details the actions that the State and its various Departments will take to realize the Governor's fiscal plan. One such action is the decision by the Governor to privatize a number of public services, including the contracting out of entire Departmental functions historically performed in-house. From the Department of Transportation and Public Facilities (DOT) budget narrative:

The Department of Transportation & Public Facilities is embarking on an aggressive plan to get more projects completed from the available federal transportation funding by shifting to private contractors not only for construction but for the design phase as well. The department will increase work to the private sector while shrinking internal design staff. This has the added advantage of bolstering the private sector economy...

Including this budget component, there are 11 Department of Transportation components with design staff. Among the 11 components there are 76 design position eliminations in this budget. These reductions represent the initial phase of the plan to maximize the use of private design contractors while reducing the proportion of design work done in-house to among the lowest in the nation. The department currently contracts over 55% of all design work and will strive to send all design work to contractors by FY2019...During the Governor's FY2018 amended submission, and in subsequent budget cycles, more design positions will be identified for deletion.

An hour after the Governor's budget announcement, the Commissioner of DOT, Marc Luiken, sent an email to his staff summarizing the impacts to the Department and reiterating the Governor's plan to contract out public works:

This narrative reflects the expectation that DOT&PF will transfer a significant portion of our design work to the private sector. As noted above, 55% of our design work is already sent to the private sector. Governor Walker and the Office of Management and Budget staff expect a majority of the remaining work will also be transferred to private sector consultants. This offers a significant challenge for our department and a departure from our current business model. We will work together to make this transition as seamless as possible.

Governor Walker's December 15, 2016 budget release, was the first time the Alaska State Employees Association (ASEA) became aware of any plans to privatize work done by its members. The State provided no warning of the decision contract out, nor did it attempt to engage ASEA in any discussion.

Article 13 – Contracting Out:

Article 13 of the Collective Bargaining Agreement (CBA) between the State of Alaska and ASEA details the agreement between the parties as to the limitations on contracting out of bargaining unit work. The agreement specifies under what circumstances the State can consider contracting out and requires feasibility studies as the first step to any attempt to privatize:

13.01 Feasibility Studies.

- A. The Employer has the right at all times to analyze its operation for the purpose of identifying cost-saving opportunities, or improved services.
- B. Decisions to contract out shall be made only after the affected agency has conducted a written feasibility study determining the potential costs and benefits that would result from contracting out the work in question. The study shall include all costs associated with contracting out the work in question including, but not limited to, wages, benefits, administrative costs, agency overhead, program supervision, and audits
- C.
 - 1. The Employer shall notify the Union of its final decision regarding contracting out. A copy of the study will be provided to the Union.
 - 2. If the Employer decides to contract out and such contracting out will result in the displacement of employees, the Employer shall provide the Union with no less than thirty (30) calendar days notice that it intends to contract out bargaining unit work. The notification by the Employer to ASEA of the results of the feasibility study will include all information upon which the Employer based its decision to contract out the work, including but not limited to the total cost savings the Employer anticipates.
 - 3. The Union may then submit an alternate plan that is to include potential costs and benefits. During this thirty (30) day calendar period the Employer shall not release any bids and ASEA shall have the opportunity to submit an alternate plan that will be given fair consideration by the Employer. During this thirty (30) calendar day period, the Union shall have the opportunity to discuss the placement of affected employees.
- D. No employees shall be laid off and their work contracted out without meeting provision of 13.01.A above.

Nature of the grievance:

ASEA asserts that the Governor, and through him the State, have violated Article 13 of the CBA with the clearly stated decision to privatize bargaining unit work. Due to the potential scope of these actions ASEA brings this grievance under Article 16.07 of the CBA as a Class Action Grievance on behalf of the Department of Transportation and Public Facilities Design Department GGU bargaining unit members. The Governor and his designees have made it clear through multiple public statements that their decision to contract out ASEA members' work is far beyond mere preliminaries, leaving ASEA with no choice but to consider all of its members in the Design Department at risk, not just those directly implicated in the current budget.

ASEA's position:

Governor Walker and the State have violated both the intent and process of Article 13:

Through the collective bargaining process, the State and ASEA agreed upon certain limitations on the State's ability to contract out ASEA member's work. In Section A of 13.01 above the parties agreed that the State may "analyze its operation for the purpose of identifying cost-saving opportunities, or improved services." The parties further agreed that any finalized decision to contract out work will be made only after: 1) a written feasibility

study has been conducted, 2) ASEA has been notified of a final decision, 3) a copy of the study has been provided to ASEA, and 4) ASEA has had the opportunity to respond with alternatives.

By publicly announcing a finalized budget plan to contract out its members work, Governor Walker and the State have blatantly ignored the agreement they entered into with ASEA. First, the intent of Article 13 is to permit contracting out only if it results in cost-savings or improved services to the people of Alaska. The Governor's budget however, makes no reference to either and instead repeatedly touts the benefits of privatization to the private sector.¹ The budget offers no connection, ephemeral or otherwise, between these undefined private-sector benefits and either cost savings or improved services, nor does the budget offer any explanation as to how privatization would support the Governor's overall fiscal plan. Without further justification, the Governor's decision to contract out violates Article 13 and more importantly, the fundamental understanding between ASEA and the State as to when privatization of public services is acceptable.

Second, Article 13 lays out a procedure to be followed before any decision to contract out can be finalized. The Governor and State's actions clearly disregard the terms of the Collective Bargaining Agreement. ASEA was never notified of any plan to contract out its members' work, nor is there any indication that the State performed any type of feasibility studies. In fact, none of the agreed-upon processes outlined in Article 13 were attempted, much less followed.

Governor Walker's actions show a callous disregard for the spirit of Collective Bargaining:

The Preamble of the CBA lays out the fundamental principles underpinning the agreement between the State and ASEA:

...to promote harmonious, cooperative relations; to strengthen the merit principle; to establish a rational method for dealing with disputes; and to determine wages, hours, and other terms and conditions of employment for the General Government Bargaining Unit.

The relationship established by the words above cannot function without the commitment of both parties to uphold not only the intent and meaning of the language, but the spirit and trust that underpins the idea of collective bargaining itself. Indeed, one of the fundamental betrayals of any collective bargaining relationship is, as phrased in Alaska's Public Employment Relations Act:

[to] refuse 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.²

ASEA looks forward to a prompt response to this grievance and trusts that the State will make every effort to resolve this dispute in good faith. However, in the unfortunate event this resolution does not come to pass, ASEA is prepared to take any and all actions necessary to protect the hard-fought and hard-won rights of its membership.

Relief sought:

Article 13 of the CBA clearly outlines when it is appropriate for the State to consider contracting out GGU bargaining unit work, and what process is to be followed in arriving at a finalized decision. The Governor and his State designees have clearly failed to consider the intent behind the agreement regarding privatization, and have taken action without regard to the procedures outlined in the CBA. Therefore, ASEA maintains that the State is in violation of Article 13 of the CBA and demands: 1) that the State immediately cease any attempts to contract out ASEA members work, 2) that the State follows the language of Article 13 with regards to future considerations of privatization; and 3) any and all other remedies that would make the grievants whole.

¹The questionable merits and numerous pitfalls of shifting state functions to private hands is a policy discussion that will undoubtedly be part of future discussions between the parties, but is beyond the scope of the present grievance.

² AS 23.40.110.

Furthermore, the State's actions reflect a blatant and bad faith disregard for its obligations under the agreement between the parties which renders any attempt by the State to now backtrack and conduct a feasibility study suspect and ultimately a sham. Consequently, ASEA requests that the feasibility study required under Article 13 be conducted by a neutral third party to ensure the reliability and objectivity contemplated by the contract that has been so clearly lacking up to this point.

Conclusion:

The State and ASEA have an agreement, outlined in Article 13 of the CBA, that any contracting out of ASEA members' work must be justified by either cost-savings or improved services to the people of Alaska, and can occur only after specific processes have been followed. Governor Walker has done neither, and instead, attempts to justify the privatization of state services to the people of Alaska under the banner of some undefined and unsupported benefit to the private sector.

The Governor made a promise to ASEA members, a promise enshrined in the Collective Bargaining Agreement, that the work they do for the State of Alaska is important, and would only go away if privatization was in the best interests of the people of Alaska. Governor Walker has broken that promise and ASEA will not allow either him or the State to circumvent the provisions of our agreement and threaten the livelihoods of our members under the guise of "bolstering the private sector economy."