

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff/Counterclaim Defendant,

vs.

ALASKA STATE EMPLOYEES  
ASSOCIATION/AMERICAN FEDERATION  
OF STATE, COUNTY AND MUNICIPAL  
EMPLOYEES LOCAL 53, AFL-CIO,

Defendant/Counterclaimant.

ALASKA STATE EMPLOYEES  
ASSOCIATION/AMERICAN FEDERATION  
OF STATE, COUNTY AND MUNICIPAL  
EMPLOYEES LOCAL 53, AFL-CIO,

Third-Party Plaintiff,

vs.

MICHAEL J. DUNLEAVY, in his official  
capacity as Governor of Alaska; KEVIN G.  
CLARKSON, in his official capacity as  
Attorney General of Alaska; KELLY  
TSHIBAKA, in her official capacity as  
Commissioner of the Alaska Department of  
Administration; and STATE OF ALASKA,  
DEPARTMENT OF ADMINISTRATION,

Third-Party Defendants.

Case No. 3AN-19-09971CI

**PRELIMINARY INJUNCTION**

On October 3, this court granted ASEA's September 25, 2019 motion for a temporary restraining order. At the State's request, this court gave the State until October 7 to file whatever additional briefing it desired as to whether the TRO should become a preliminary injunction. The State timely filed its additional briefing, more

PRELIMINARY INJUNCTION

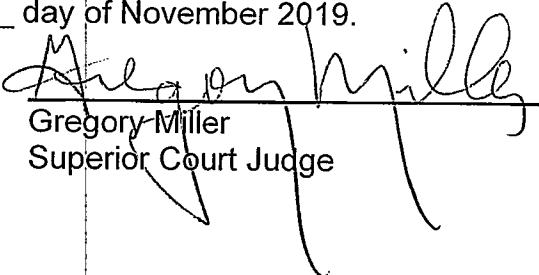
*State of Alaska v. ASEA/AFSCME Local 52, AFL-CIO, 3AN-19-09971CI*

briefing from ASEA and the State followed, and the issue became ripe on October 25. But notwithstanding the State's request to have until October 7 to file its additional briefing, ultimately the State's briefing just attached and relied upon a copy of its October 1 TRO opposition brief. For the reasons stated in this court's October 3 Temporary Restraining Order, this court hereby **GRANTS** ASEA's motion for a preliminary injunction. All of the terms of this court's October 3 TRO now become this preliminary injunction order, and this injunction shall remain in force until further order of this court.<sup>1</sup>

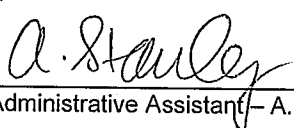
Two last points. The State writes at page 2 of its October 7 opposition that this court granted the TRO "in part." This implies that this court simultaneously "denied" part of the TRO ASEA was seeking. The State is mistaken. This court granted the TRO in full, and similarly is granting this preliminary injunction in full.

The last point is that it appears that two more courts have recently entered orders that essentially reject how AG Clarkson urges this court to interpret *Janus*. ASEA attached those decisions to its recent filings.<sup>2</sup>

DATED at Anchorage, Alaska this 25<sup>th</sup> day of November 2019.

  
Gregory Miller  
Superior Court Judge

I certify that on November 5, 2019  
a copy of the above was emailed to:  
J. Pickett  
M. Brown  
T. Taylor

  
Judicial Administrative Assistant—A. Stanley

<sup>1</sup> In that same October 7 filing the State moved to "consolidate" the preliminary injunction into a final judgment, and that issue is what dominated almost all of the parties' recent briefing. This court will address that motion in a separate order.

<sup>2</sup> *O'Callaghan, et al. v. Regents of the University of California, et al.*, No. CV 19-2289 JVS (US District Court Central District of California, September 30, 2019), and *City of Rio Rancho v. AFSCME, Council 18, Local 3277, et al.*, No. CV-2019-1398 (New Mexico District Court, Bernalillo County, October 28, 2019).

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Case No. 3AN-19-09971CI

**ORDER RE: STATE'S OCTOBER 7, 2019 MOTION FOR CONSOLIDATION  
OF PRELIMINARY INJUNCTION PROCEEDINGS AND  
FOR ENTRY OF FINAL JUDGMENT**

On October 7, 2019, the State filed its opposition to ASEA's motion for a preliminary injunction. The State did not file any new briefing as to the preliminary

injunction, and instead just attached and relied upon a copy of its October 1 TRO briefing. Given the State's lack of any new arguments, today this court issued a short order that granted the preliminary injunction for the same reasons this court granted the TRO. But within the State's short October 7 briefing, the State also moved to "consolidate" the preliminary injunction with a merits adjudication, and moved for entry of a final judgment. The State argues that no discovery is needed and that ASEA is not entitled to be heard on any of its other counterclaims. ASEA opposes. For the reasons stated below, this court **DENIES** the State's motion. The State, having chosen to file this lawsuit, cannot now unilaterally decide what counterclaims ASEA is entitled to pursue to final judgment.

The State cites to Alaska Rule of Civil Procedure 65(a)(2). That rule states in full as follows:

2) *Consolidation of Hearing with Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

The State also cites *Haggbloom v. City of Dillingham*, 191 P.3d 991 (Alaska 2008). In *Haggbloom*, Ms. Haggbloom brought her dog to work, and the dog bit a co-worker. The City invoked a local ordinance to obtain an order to euthanize the dog. The City held an administrative hearing, at which Ms. Haggbloom testified. The hearing officer granted the City's motion to euthanize the dog. Ms. Haggbloom then filed a complaint in superior

court, and sought a TRO and preliminary injunction to stop the euthanization. The court granted the TRO. The court thereafter held an evidentiary hearing on the preliminary injunction. Ms. Haggblom testified again, and she also presented a dog behavior expert. The trial court found in favor of the City, and on motion by the City also held that because all material evidence had been presented at the evidentiary hearing, a trial was not necessary and consolidation was appropriate, i.e., that the City was entitled to a judgment on the merits. Ms. Haggblom then appealed to the Alaska Supreme Court.

The Supreme Court stated that:

[I]f it is clear that consolidation did not detrimentally affect the litigants, as, for example, when the parties in fact presented their entire cases and no evidence of significance would be forthcoming at trial, then the trial court's consolidation will not be considered to have been improper.

....

Courts will uphold consolidation of proceedings when the preliminary injunction hearing was sufficiently thorough to remove any risk of prejudice. The sufficiency of the proceedings is determined on a case by case basis.<sup>1</sup>

In this instant case, ASEA argues that yes, this court held in its TRO that AG Clarkson was misinterpreting the U.S. Supreme Court's holding of *Janus* and that this court's order prevents the State from taking action based on the AG's misinterpretation of that holding. But ASEA argues that its five counterclaims go further than that, and that ASEA is entitled to a determination of all its claims. For instance, ASEA's counterclaims allege that the State violated state statutes (A.S. 23.40.070-.230) and the collective bargaining agreement. This court mentioned those counterclaims in its TRO, but expressly did not resolve those specific claims. ASEA also seeks discovery to

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<sup>1</sup> *Id.* at 999-1000 (citations and quotation marks omitted).

determine at least the truthfulness of the State's representations in its complaint and TRO opposition as to whether union members actually approached the State to "help" them with this dues issue. The State argues that having prevailed at the TRO stage, ASEA is not entitled to this or any other discovery. The State also argues that ASEA is just trying to run up attorney fees. ASEA in turn argues that it was the State that made these representations in its filings to this court, that the State will no doubt continue making these representations in any appeal briefing or oral arguments, and that if these representations are false, that the State's misrepresentations will prejudice ASEA. ASEA also argues that as to attorney fees, it was the State that filed this case, not ASEA.

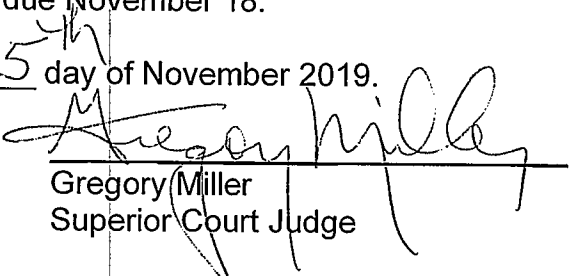
The State's arguments are not well founded. This court finds that neither Rule 65(a)(2), *Haggblom*, nor any other case supports preventing ASEA from pursuing judgment on all of its claims. In *Haggblom*, the court held an evidentiary hearing, heard from witnesses, and determined that there were no other issues. That has not happened here. The State is correct that as to the TRO briefing the parties presented only a pure question of law that did not require an evidentiary hearing, and that both parties' briefing on the TRO was quite thorough. But that TRO did not reach all of ASEA's counterclaims, nor whether the State's representations were truthful. The State has declared that it intends to pursue this matter on appeal. If so, ASEA, like any other party in any case, is entitled to have a final determination on all its claims. *Haggblom* held that consolidation is appropriate "if it is clear that consolidation did not detrimentally affect the litigants, as, for example, when the parties in fact presented their entire cases

and no evidence of significance would be forthcoming at trial.” That is not the situation here.

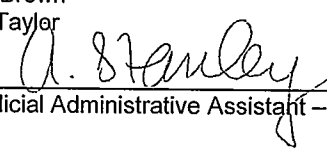
Finally, the State, in its October 7 motion at page 6, does not just seek “consolidation,” but moves for “final judgment in favor of the State and the Third-Party Defendants on the Union’s counterclaims and claims raised in the Union’s third-party complaint.” The State offers no legal authority for this novel argument – that having lost at the TRO stage and offering no new arguments at the preliminary injunction stage -- that the preliminary injunction should now be denied, that final judgment should be entered in favor of *the State*, and that ASEA should not be permitted to pursue discovery or a determination on the merits of all five of its counterclaims.

For the above reasons, the State’s October 7, 2019 “Motion for Consolidation of Preliminary Injunction Proceedings and For Entry of Final Judgment” is **DENIED**. The answers of all the defendants-in-counterclaim and third-party defendants to ASEA’s counterclaims and third-party complaint are due November 18.

DATED at Anchorage, Alaska this 05<sup>th</sup> day of November 2019.

  
\_\_\_\_\_  
Gregory Miller  
Superior Court Judge

I certify that on November 5, 2019  
a copy of the above was emailed to:  
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T. Taylor

  
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