

July 26, 2019

Kelly Tshibaka
Commissioner
Department of Administration
The State of Alaska
10th Fl. State Office Building
P.O. Box 110200
Juneau, AK 99811-0200

Re: Cease and Desist Notice Regarding AMHS's Unlawful Coercion of IBU Bargaining Unit

Dear Commissioner Tshibaka:

The Inlandboatmen's Union of the Pacific (IBU) has as of this date received a number of communications from you or your office asserting, falsely, that the decision by the IBU and its membership to engage in a lawful primary economic strike of the Alaska Marine Highway System (AMHS) is unlawful and that our members' decision to strike leaves them "unprotected" under Alaska state law against potential retaliation against them by AMHS. Because these statements are not only flagrantly untrue, but also amount to unlawful threats that themselves violate Alaska state law, we are compelled to respond to set the record straight.

As you presumably know, or should be aware, economic strikes by public employees are fully lawful under Alaska law. Under Alaska Statutes Section 23.40.200(d), public employees who do not fall within certain specialized categories, such as police and fire protection, public utility, snow removal, sanitation and education employees, "may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so." There are no preconditions or procedural requirements that limit this right. As you are also aware, not just a majority, but an *overwhelming* majority of the employees represented by the IBU did vote by secret ballot to strike. Thus, the current strike is lawful.

Implicit evidence of your awareness of this reality is illustrated by the fact that your very first communication on this point—your July 24, 2019, letter—while asserting that a strike would be "unlawful and unprotected," (emphasis in original), notably cites *zero legal authority* to support this preposterous assertion. You also assert that employees could be disciplined for engaging in such a strike. Given that this is clearly untrue, your statement is nothing more nor less than an illegal threat intended to coerce IBU-represented employees into not exercising their legal rights.

In other, similar communications, AMHS has repeatedly grasped at straws in an effort to intimidate the IBU's members into not striking. First, AMHS asserted that language that was included in our "Article 5" proposal regarding union membership was unlawful and therefore rendered our strike unlawful, *even*

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though the State of Alaska had previously signed off on this precise language through a “tentative agreement.” Self-evidently absurd as that was, the IBU accommodated your concern by quickly agreeing with you on modified language. Second, AMHS asserted that the IBU’s proposal to have a COLD differential of zero dollars was unlawful, again without any legal authority to support this novel proposition. Notwithstanding the lack of legal support for this claim, the IBU again accommodated your concerns by modifying its COLD proposal to a proposal that even AMHS no longer can assert is unlawful.

Most recently, AMHS has attempted to make up for the fact that the basis for all of its previous objections has disappeared by claiming that that doesn’t matter because the Union’s “last, best and final offer” at the time of the strike vote still contained those proposals. But absolutely no legal authority exists to support that tortured analysis, and—not surprisingly—your communications are therefore wholly devoid of the type of legal authority (statutes, regulations, court decisions, decisions by the Alaska Labor Relation Agency) that one would normally cite to support one’s legal position in a matter like this.

The bottom line, much though you dislike the fact, is that Alaska law gives public employees such as those represented by the IBU an absolute and unlimited right to strike and our members cannot lawfully be retaliated against in any way for exercising that right. They cannot be terminated, suspended, or disciplined in any way; nor can they be interrogated as to whether or not they are choosing to strike on dates that they were not otherwise scheduled to work (I am referring to workers who are not currently “fit for duty,” who have been subjected to such interrogation). Nor, crucially, can they lawfully be *threatened* with any of those things, which is what you have repeatedly done.

Commissioner Tshibaka, this egregious misconduct by AMHS must end immediately. The IBU has repeatedly offered to recommence mediation with the State. Instead of informing the federal mediator of your willingness to do so, you have represented to the federal mediator that there is no point because your position will not change. That intransigence serves no one’s interest. Until it ends, the strike will continue, notwithstanding the State’s increasingly desperate and illegal conduct as described above.

Respectfully,

Dmitri Iglitzin
General Counsel
Inlandboatmen’s Union of the Pacific

Cc: Marina Secchitano, National President, IBU

