

anc.law.ecf@alaska.gov

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

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THIRD JUDICIAL DISTRICT

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STATE OF ALASKA,)

Plaintiff/Counterclaim Defendant,)

v.)

ALASKA STATE EMPLOYEES)

ASSOCIATION/AMERICAN)

FEDERATION OF STATE, COUNTY)

AND MUNICIPAL EMPLOYEES)

LOCAL 52, AFL-CIO,)

Defendant/Counterclaimant.)

Case No. 3AN-19-09971 CI

ALASKA STATE EMPLOYEES)

ASSOCIATION/AMERICAN)

FEDERATION OF STATE, COUNTY)

AND MUNICIPAL EMPLOYEES)

LOCAL 52, AFL-CIO,)

Third-Party Plaintiff,)

v.)

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.)

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

ANSWER TO ASEA'S SECOND AMENDED COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Counterclaim defendant State of Alaska and third-party defendants

Michael J. Dunleavy, Kevin G. Clarkson, Kelly Tshibaka, and the State of Alaska, Department of Administration (when referenced collectively, the "State") answer the second amended counterclaims and third-party complaint of Alaska State Employees Association/American Federation of State, County and Municipal Employees Local 52, AFL-CIO ("ASEA") as follows:

INTRODUCTION

1. This paragraph states ASEA's intention in bringing the second amended counterclaims and third-party complaint, to which no response is required. To the extent a response is required, the State denies the allegations.

2. The State admits that on August 27, 2019, Attorney General Clarkson issued a legal opinion in which he concluded that "the State's payroll deduction process is constitutionally untenable under *Janus*." The State denies all other allegations in the paragraph.

3. The State admits that its implementation of the Attorney General's Opinion is necessary to comply with the First Amendment and the Supreme Court's June 27, 2018 decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

PARTIES

4. The State admits that ASEA is a labor organization and a collective bargaining representative of the State of Alaska "General Government Bargaining Unit" ("GGU") consisting of approximately 8,000 state employees. The State is without sufficient knowledge or information to admit or deny the remaining allegations in the paragraph. To the extent a response is required, the State denies the allegations.

5. Admit.

6. Admit.

7. Admit.

8. Admit.

9. The State admits that the State of Alaska, Department of Administration ("Department") is the agency responsible for administering payroll for the State of Alaska and that the State of Alaska has entered into a collective bargaining agreement with ASEA. The remaining allegations reference terms of the agreement, and because those terms speak for themselves, no response is required.

JURISDICTION AND VENUE

10. This paragraph states a legal conclusion to which no response is required.

11. This paragraph states a legal conclusion to which no response is required.

BACKGROUND

I. Alaska's Public Employment Relations Act.

12. The State admits that the Alaska Legislature enacted the Public Employment Relations Act ("PERA"), AS 23.40.070-.260. To the extent that this

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paragraph purports to quote from, describe, characterize, or draw legal conclusions from various provisions contained in PERA, those provisions exist in statute and speak for themselves. Therefore, no response is required. To the extent a response is required, the State denies the allegations.

13. This paragraph purports to quote from, describe, characterize, and/or draw legal conclusions from various provisions contained in PERA. Those provisions exist in statute and speak for themselves. Therefore, no response is required. To the extent a response is required, the State denies the allegations.

14. This paragraph purports to quote from, describe, characterize, and/or draw legal conclusions from various provisions contained in PERA and interpreting case law. Those provisions and interpretations exist in statute and written court decisions and speak for themselves. Therefore, no response is required. To the extent a response is required, the State denies the allegations.

15. This paragraph purports to quote from, describe, characterize, and/or draw legal conclusions from various provisions contained in PERA and interpreting case law. Those provisions and interpretations exist in statute and written court decisions and speak for themselves. Therefore, no response is required.

II. ASEA and its members.

16. The State admits that ASEA is the collective bargaining representative of approximately 8,000 "General Government Bargaining Unit" employees, the largest bargaining unit of state employees. The State is without sufficient knowledge or information to admit or deny the remaining allegations in the paragraph. To the extent a

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response is required, the State denies the allegations.

17. This paragraph states a legal conclusion to which no response is required. To the extent that the paragraph states factual allegations, the State is without sufficient knowledge or information to admit or deny the allegations in the paragraph. To the extent a response is required, the State denies the allegations.

18. Upon information and belief, approximately 6,360 employees in the GGU are members of ASEA.

19. The State is without sufficient knowledge or information to admit or deny the allegation in this paragraph. To the extent a response is required, the State denies the allegations.

20. The State does not have sufficient knowledge or information to admit or deny the accuracy of the quotation. The language in ASEA's current membership and dues authorization agreement speaks for itself.

21. The State does not have sufficient knowledge or information to admit or deny the accuracy of the quotation. The language in ASEA's current membership and dues authorization card speaks for itself.

22. The State is without sufficient knowledge or information to admit or deny the allegations in this paragraph. To the extent a response is required, the State denies the allegations.

III. ASEA's Collective Bargaining Agreement with the State.

23. The State admits that the State of Alaska and ASEA are parties to a Collective Bargaining Agreement ("CBA") that sets forth effective dates of

July 1, 2019 to June 30, 2022. To the extent that the paragraph states or implies other or different allegations, the State denies the allegations.

24. The State admits that the CBA is a contract between ASEA and the State of Alaska. Whether and to what extent the CBA is “binding” on the parties asks for legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

25. The paragraph quotes from the CBA, a written document, and the State admits that the quotation is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required. To the extent a response is required, the State denies the allegations.

26. The paragraph quotes from Article 3.04.C of the CBA (not Article 3.04.A, as alleged in the paragraph), a written document, and the State admits that the quotation is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required.

27. The paragraph quotes from the CBA, a written document, and the State admits that the quotation is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required.

IV. The *Janus* decision and nonmember agency fees.

28. The paragraph purports to describe the provisions, conclusions, and holdings of various legal authorities. Those authorities speak for themselves, and therefore no response is necessary. To the extent a response is required, the State denies

the allegations.

29. The paragraph purports to describe and quote from the *Janus* decision. The State admits that the Supreme Court issued *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) on June 27, 2018. The Supreme Court's written decision speaks for itself, and therefore no response is required. To the extent a response is required, the State denies the allegations.

30. Admit.

V. Alaska's Attorney General recognizes that *Janus* does not affect public employer's obligation to deduct authorized union dues.

31. The State admits that former Attorney General Jahna Lindemuth wrote a "guidance" memorandum to two former Commissioners serving under Governor Bill Walker, and that her memorandum was written after the *Janus* decision was issued. The State denies any implication that this memorandum was a published "Attorney General Opinion." To the extent the paragraph states or implies a legal conclusion, the document speaks for itself, and no further response is required. To the extent a response is required, the State denies the allegations.

32. The State denies that the paragraph's quotation from former Attorney General Lindemuth's September 7, 2018 memorandum is accurately transcribed. To the extent the paragraph describes the document or implies a legal conclusion, the document speaks for itself, and no further response is required. To the extent the paragraph suggests that former Attorney General Lindemuth's opinion was a full and correct reading of *Janus*, or that any further response is required, the State

denies the allegations.

33. The State denies that the documents referenced in the paragraph are all “Attorney General Opinions,” as that term is used in the State of Alaska. To the extent that the paragraph states legal conclusions purported to be contained in—or otherwise characterizes the contents of—written documents, those documents speak for themselves and no further response is required. To the extent a response is required, the State denies the allegations.

34. The paragraph states legal conclusions purported to be contained in—or otherwise characterizes the contents of—written documents. Those documents speak for themselves and no further response is required. To the extent a response is required, the State denies the allegations.

35. The paragraph states legal conclusions purported to be contained in—or otherwise characterizes the contents of—written documents. Those documents speak for themselves and so no response is required. To the extent a response is required, the State denies the allegations.

36. The paragraph states legal conclusions purported to be contained in—or otherwise characterizes the contents of—written documents. Those documents speak for themselves and so no response is required. To the extent a response is required, the State denies the allegations.

VI. The State’s re-affirmation of its obligation to process authorized dues deductions.

37. The State admits that the CBA with ASEA “cover[s] the largest

bargaining unit of State employees (the General Government Bargaining Unit).” The State admits that there were negotiations between the State and ASEA over the CBA after *Janus* was issued and that Commissioner Tshibaka signed the CBA, following legislative appropriation of funding for the contract’s monetary terms, on August 8, 2019. The State admits that the CBA is effective for the period July 1, 2019 to June 30, 2022. The State denies any remaining allegations in the paragraph.

38. The paragraph states legal conclusions regarding contractual obligations, and so no response is required. To the extent a response is required, the State denies the allegations.

39. The paragraph quotes from the CBA, a written document, and the State admits that the quotations (but not all of the citations) are accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required.

40. The paragraph accurately quotes a document located on the Department webpage. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required. To the extent a response is required, the State denies the allegations.

VII. The State’s new and erroneous reading of *Janus*.

41. The State admits that on August 27, 2019 Alaska Attorney General Kevin G. Clarkson issued an Attorney General Opinion (the “Opinion”) concerning the *Janus* decision. The State denies that this Opinion was “new” in the sense that it superseded an existing Attorney General Opinion, because no other Attorney General

Opinion concerning *Janus* had been issued. The remainder of the paragraph states legal conclusions, and therefore no further response is required. To the extent a response is required, the State denies the allegations.

42. The paragraph accurately quotes the Opinion. To the extent the remainder of the paragraph seeks to characterize the Opinion, the written document speaks for itself, and no further response is required. To the extent a response is required, the State denies the allegations.

43. The State denies that the Opinion is an "opinion letter." To the extent the paragraph seeks to describe and characterize the Opinion, the written document speaks for itself, and thus no further response is required. To the extent a response is required, the State denies the allegations.

44. The State denies that the Opinion is an "opinion letter." The State admits that it did not receive "legal briefing" from public employee unions prior to issuance of the Opinion. The State denies any suggestion that it was obligated to elicit or receive "legal briefing" from third parties prior to the Attorney General's issuance of the August 27, 2019 Attorney General Opinion. To the extent the remainder of the paragraph seeks to characterize the Opinion or the decisions of other courts and entities, the paragraph states legal conclusions to which no further response is required. To the extent a response is required, the State denies the allegations.

VIII. The State and Third-Party Defendants' violation of the CBA and state law.

45. The State denies that the Opinion is an "opinion letter." The State admits that Commissioner Tshibaka notified state employees by email of the Opinion and its

conclusions and that the email included attachments. The State denies that the Opinion is "erroneous" or that the "frequently asked questions" document included "multiple factually and legally inaccurate statements." The State admits that Commissioner Tshibaka did not consult with ASEA before sending the email. The State denies the remaining allegations in the paragraph.

46. Deny.

47. The State admits that it began implementing the Attorney General's Opinion. The remaining allegations contain legal conclusions to which no response is required. To the extent this paragraph claims that the State acted unlawfully or that any further response is required, the State denies the allegations.

48. The State admits that on September 13, 2019 the Department did not deduct dues for some state employees who had contacted the Department and asked that their dues to ASEA no longer be deducted. The remaining allegations contain legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

49. The State admits that, on September 26, 2019, Governor Dunleavy issued Administrative Order No. 312 implementing the Opinion. The State denies that the Opinion is an "opinion letter." The State admits that, on September 26, 2019,

Commissioner Tshibaka emailed state employees a letter announcing the release of Administrative Order No. 312 and included attachments entitled "Janus AO Press Release" and "Frequently Asked Questions." The State admits that, on September 26, 2019, the Governor, Attorney General, and Commissioner held a press

conference regarding Administrative Order No. 312. The State admits that the Department of Administration, on September 26, 2019, communicated with ASEA, including emailing it a copy of Administrative Order No. 312 along with a cover letter. To the extent the paragraph quotes from documents and a recording of a press conference, those speak for themselves and thus no further response is required. The State denies the remaining allegations.

IX. ASEA's grievance.

50. The State admits that after Commissioner Tshibaka's August 27, 2019 email to all state employees, ASEA filed a grievance under the CBA. The State denies the remaining factual allegations and characterizations of the Opinion contained in the paragraph.

51. The State admits that on October 16, 2019, Commissioner Tshibaka denied ASEA's grievance, that ASEA submitted the grievance to arbitration, and that the State informed ASEA that its claims were not arbitrable. All other factual assertions in the paragraph are denied.

X. Irreparable harm caused by the Third-Party Defendants' actions.

52. Deny.

53. Deny.

54. Deny.

55. The State denies that ASEA has suffered harm as a result of the issuance of the Opinion and the State of Alaska's subsequent actions. The State denies the paragraph's characterizations of the Opinion, the Commissioner's email, and the State

of Alaska's subsequent actions. The State is without sufficient knowledge or information to admit or deny the paragraph's remaining allegations. To the extent a further response is required, the State denies the allegations.

56. Deny.

57. Deny.

COUNT I Breach of Contract

58. No response is required.

59. The paragraph states a legal conclusion to which no further response is required. To the extent that this paragraph suggests or implies that the State acted unlawfully, the State denies the allegation.

60. The paragraph quotes from the CBA, a written document, and the State admits that the quotation is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required.

61. The paragraph quotes from the CBA, a written document, and the State admits that the quotation (but not the citation) is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response is required.

62. The paragraph quotes from the CBA, a written document, and the State admits that the quotation is accurate. To the extent that the paragraph purports to imply or suggest a particular meaning, the document speaks for itself and no further response

is required.

63. Deny.

64. Deny.

65. The State admits that the CBA contains an arbitration clause and that the Union's grievance is not arbitrable. To the extent that the paragraph purports to imply or suggest a particular meaning of the CBA, the document speaks for itself and no further response is required. The paragraph also states legal conclusions to which no further response is required. To the extent that a response is required, the State denies the allegations.

66. The State admits that its implementation of the Attorney General's Opinion and Administrative Order No. 312 are necessary to comply with the First Amendment. The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

67. Deny.

COUNT II
Breach of Implied Covenant of Good Faith and Fair Dealing

68. No response is required.

69. The paragraph states legal conclusions to which no further response is required. To the extent that a response is required, the State denies the allegations.

70. Deny.

71. Deny.

72. The State admits that the CBA contains an arbitration clause and that the Union's grievance is not arbitrable. To the extent that the paragraph purports to imply or suggest a particular meaning of the CBA, the document speaks for itself and no further response is required. The paragraph also states legal conclusions to which no further response is required. To the extent that a response is required, or that this paragraph suggests that the State has acted unlawfully or in violation of the CBA, the State denies the allegations.

73. The State admits that its implementation of the Attorney General's Opinion and Administrative Order No. 312 are necessary to comply with the First Amendment. The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, or that this paragraph suggests that the State has acted unlawfully or in violation of the CBA, the State denies the allegations.

74. Deny.

COUNT III

Violation of Separation of Powers and Public Employment Relations Act (Alaska Const. art. II, §§ 1, 16, art. XII; AS 23.40.070-.230)

75. No response is required.

76. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, or that this paragraph suggests the State has acted unlawfully, the State denies the allegations.

77. The paragraph quotes from a state statute, which speaks for itself. Therefore, no further response is required. This paragraph contains legal conclusions to *State of Alaska, et al. v. ASEA, et al.*

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which no response is required. To the extent a response is required, the State denies the allegations.

78. This paragraph contains legal conclusions to which no response is required. The paragraph also quotes from a state statute, which speaks for itself. To the extent a response is required, the State denies the allegations.

79. The paragraph states legal conclusions to which no further response is required. To the extent a response is required, the State denies the allegations.

80. The paragraph quotes from a state statute, which speaks for itself. Therefore, no further response is required. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

81. The State denies that the August 27, 2019 Attorney General Opinion is an "opinion letter." This paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

82. The State admits that its implementation of the Attorney General's Opinion and Administrative Order No. 312 are necessary to comply with the First Amendment. The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

83. Deny.

COUNT IV
Violation of Administrative Procedure Act
(AS 44.62.010-.950)

84. No response is required.

85. Deny.

86. The paragraph states legal conclusions and quotes state statutes, which speak for themselves. Therefore, no further response is required. To the extent a response is required, the State denies the allegations.

87. The paragraph states legal conclusions and quotes state statutes, which speak for themselves. Therefore, no further response is required. To the extent a response is required, the State denies the allegations.

88. The quotation in the paragraph is from a legal document and speaks for itself. The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

89. The State denies that the Attorney General Opinion is an "opinion letter." This paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

90. The State denies that the Attorney General Opinion is an "opinion letter." The State admits that its implementation of the Attorney General's Opinion is necessary to comply with the First Amendment. The remainder of the paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

91. Deny.

COUNT V
Declaratory Judgment Pursuant to the Declaratory Judgment Act
(AS 22.10.020(g))

92. No response is required.

93. The paragraph quotes a state statute, which speaks for itself. Therefore, no further response is required.

94. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, the State denies the allegations.

95. Deny.

96. The State admits that ASEA has notified the State of ASEA's belief that the State's actions violate state law and the CBA.

97. The paragraph states a legal conclusion to which no further response is necessary.

98. This paragraph contains legal conclusions to which no response is required.

99. Deny.

100. Deny.

101. Deny.

102. Deny.

103. ASEA's request for relief does not require a response. To the extent the request for relief, including each and all of its subparagraphs, states any allegations, the State denies ASEA is entitled to relief.

104. Except as expressly admitted above, all of ASEA's allegations are denied.

AFFIRMATIVE DEFENSES

1. The amended counterclaims and third-party complaint fail to state a claim upon which relief can be granted.
2. The amended counterclaims and the claims stated in the third-party complaint are preempted by federal law, including the First Amendment to the United States Constitution.
3. The amended counterclaims and the claims stated in the third-party complaint fail to the extent they are based on a contract whose terms contravene federal law and are therefore illegal or unenforceable.
4. The amended counterclaims and the claims stated in the third-party complaint fail to the extent they are barred by one or more doctrines of immunity, including but not limited to AS 09.50.250 and sovereign immunity.
5. Counterclaim and third-party defendants reserve the right to assert additional affirmative defenses as inquiry, discovery, and investigation of this matter continue.

PRAYER FOR RELIEF

The State respectfully asks that the court:

1. Dismiss ASEA's amended counterclaims and third-party complaint with prejudice;
2. Award the State its attorney's fees and costs;
3. Grant such other relief that is just and proper.

DATED March 17, 2020.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By:



Jeffrey G. Pickett
Assistant Attorney General
Alaska Bar No. 9906022

William S. Consovoy (*pro hac vice*)
J. Michael Connolly (*pro hac vice*)
CONSOVOY MCCARTHY, PLLC

*Counsel for Plaintiff State of Alaska
and the Third-Party Defendants*

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100