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

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 *Haggblom v. City of Dillingham*, 191 P.3d 991 (Alaska 2008). In *Haggblom*, Ms. Haggblom 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. Haggblom testified. The hearing officer granted the City's motion to euthanize the dog. Ms. Haggblom 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.
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> . . . .
>
> 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.[1]

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

[1] *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 25th 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