

2. James Tapley and Michael Chapman previously worked in Alaska as union members of The International Union of Operating Engineers, Local 302.
3. Michael Chapman was dispatched and worked as an Oiler (mechanic) in Alaska from or about 1984 to May of 2001.
4. James Tapley was dispatched and worked as a heavy duty mechanic and welder in Alaska from 1980 to May of 2001.
5. As Union members, contributions were made by their union employers, to whom Chapman and Tapley were dispatched by the Local 302 of the International Union of Operating Engineers, to the “Locals 302 and 612 of the International Union of Operating Engineers- Employers Construction Industry Retirement Plan. (hereinafter “The Plan”).
6. Under the terms of the Plan, vested Union members could apply for retirement and pension.
7. Chapman and Tapley were vested union members, duly qualified to receive pensions
8. Tapley applied for retirement and pension on July 1, 2007, effective 1/1/2008.
9. Chapman applied for retirement and pension on December 7, 2007, effective 4/13/08.
10. Under the terms of “The Plan”, in order to qualify for pension benefits, participants had to discontinue any work that:
 - A. Was “within the geographic area covered by the Plan” (Alaska & Washington);
 - B. Was “in a job classification in which the participant was employed while in ‘covered’ employment’ ...; and
 - C. “in the industry in which the ‘Individual Employers’ participate.”
 [Section of 6.06 of the Pension Plan][Exhibit 1].

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11. The obvious intent of the provisions were to prevent retired union members from working in the same positions they did as union members, for non-union employers, competing for the same jobs members of the Operators Union, Local 302 & 612, and their employers were attempting to get.

ALLEGATIONS IN REGARD TO TAPLEY'S CLAIM

12. After obtaining retirement status and his pension, Tapley requested the Plan Trustees determine whether he could work as a "flagger" for the State of Alaska and not violate the terms of Section 6.06 recited above.

13. Tapley, a union mechanic for Local 302, had never been dispatched or worked as a "flagger" while an Operator's Union Member.

14. The job description of a "flagger" is not the same job description as a mechanic.

15. Nor were the duties of a "flagger" materially the same as "mechanic"; a job to which Tapley had been dispatched as a Local 302 Member.

16. Nevertheless the Plan trustees denied Tapley's request that he be allowed to work as a "flagger" for the State of Alaska and still draw his pension.

17. The trustees position was based on its determination that a "Flagger" was an equipment operator, based on a State of Alaska Job classification, even though the duties for the position were listed as "grounds maintenance, brush cutting, flagging, raking, shoveling, and general labor", with routine tasks listed as "maintenance with hand and power tools, drives a 1 ton truck, sets up signs for traffic control and prepares equipment for crew".

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[Exhibit 2]. Preparing equipment for crew referred to “the pre-inspection check of oil, tires, lights” before driving. [Exhibit 3]. A “flagger” could also be called upon to do crack seal repair, with a tar pot, on the highway. [Exhibit 3].

18. No reasonable person would consider a “flagger” to be within the same “job description” as a “heavy duty mechanic” or “welder”, which work Tapley had performed while a union member.

19. The employees engaged in the job of “flagger” for State of Alaska are represented by the Laborer’s Union, further indicating that the Craft Unions, consider the job a “laborer’s rather than an “Operating Engineer’s job.

20. Nevertheless, the Plan trustees, decided the two types of jobs were in the same “job classification”

21. The Plan’s trustees’ decision was arbitrary and capricious and an abuse of their discretion.

ALLEGATIONS IN REGARD TO CHAPMAN’S CLAIMS

22. After obtaining retirement status and his pension, Chapman requested the Plan Trustees determine whether he could work as a “snowplow driver” and “laborer” (traffic control, crack sealing, pot hole repair, unblocking water channels in culverts and under bridges)(also referred to as a “Flagger”) for the State of Alaska and not violate the terms of Section 6.06 recited above. (Exhibit 1)

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23. Chapman had never been dispatched or worked as a “truck driver” or “laborer” while a member of the Local 302.
24. The job description of a “Snow Plow Driver” and laborer” is not the same job description as an “oiler” (mechanic).
25. Nor were the duties of a “Snowplow Driver” or “Laborer” materially the same as an “oiler” (mechanic), to which Chapman had dispatched as a member of Local 302.
26. Nevertheless the Plan trustees denied Chapman’s request that he be allowed to work as a “Snow plow Driver” / “laborer” for the State of Alaska and still draw his pension.
27. The trustees position was based on their determination that a “Snow Plow Driver / Laborer” was the same job classification as an “oiler” (mechanic), based on a State of Alaska Job classification, listing a portion of a snow plow driver’s duties as checking equipment before driving it, even though the duties for the State of Alaska position were clearly not that of a mechanic.
28. The trustees position was also based on their determination that since a mechanic had to drive vehicles as part of his work, his job classification should be considered the same as a driver.
29. No reasonable person would consider a “snow plow operator” to be within the same “job description” as an “oiler” (mechanic), which work Chapman had performed while a union member.

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30. Nevertheless, the Plan trustees, decided the two types of jobs were in the same “job classification”

31. The Plan’s trustees’ decision was arbitrary and capricious.

JOINT ALLEGATIONS AND PRAYER FOR RELIEF

32. The trustees of the Pension Plan of the International Operators Union Locals 302 & 612 are arbitrarily and capriciously abusing their discretion, by denying participants of the Pension Plan of the International Operators Union Locals 302 & 612, their right to draw their pensions, they earned through their own hard work, by arbitrarily and capriciously expanding the probation against working in the same job classification to include any post retirement job that shares any duties of the previously covered employment, to the point of absurdity.

33. Under the trustee’s definition of “job classification” for example, a union mechanic, could not work, post retirement as a city electric meter reader, in Anchorage, since he would be in the same geographic area, in the same industry (since the Operator’s Union represents members working for municipal governments), and in the same job classification, since the meter reader also has to check the oil, tires, and gas, before going out on his route.

34. Such a broad definition is contrary to the commonly understood meaning of “job classification” and does not serve any legitimate interests of the Pension Plan.

WHEREFORE, Plaintiffs pray for a Judgment from this Court:

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1. Ruling that Plaintiff's proposed employment as State of Alaska road maintenance workers were not within the definition of disqualifying post retirement work.
2. Enjoining the Trustees from Pension Plan of the International Operators Union Locals 302 & 612, from broadening the definition of "job classification" to include occupations that would not commonly be understood to be the same jobs as the participants performed while in "covered" employment as union members or using incidental duties of post retirement occupations (such as checking the tires, oil, and gas of a company vehicle) to place them under the same job classification as covered employment.
3. For Attorneys Fees and Costs incurred by Plaintiffs in prosecuting this action.
4. For other equitable relief as the court deems just.

DATED THIS 20th DAY OF FEBRUARY, 2010.

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