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PETERSBURG POLICE ASSOCIATION,)
)
Petitioner,)
vs.)
)
CITY OF PETERSBURG,)
)
Respondent,)
)
and)
)
PETERSBURG MUNICIPAL EMPLOYEES)
ASSOCIATION, Local 6132, APEA/AFT,AFL-CIO,)
)
Intervenor.)
)

Case No. 11-1594-RC/RD.

DECISION AND ORDER NO. 297

We heard this petition, by the Petersburg Police Association, to sever the City of Petersburg's police department employees from the wall-to-wall bargaining unit represented by the Alaska Public Employees Association, on June 28, 2011. Hearing Examiner Mark Torgerson presided.

We based this decision on the documentary record, evidence admitted, and the testimony of witnesses.¹ We also considered the parties' arguments, including those presented in post-hearing briefs received on August 8, 2011. The record closed on August 24, 2011, after the Board deliberated following the filing of the post-hearing briefs.

Digest: The petition of the Petersburg Police Association to sever the police department's Class I employees from the wall-to-wall bargaining unit represented by the Petersburg Municipal Employees Association and become their exclusive representative for collective bargaining is denied and dismissed. The employees have a longstanding community of interest with other city employees in the bargaining unit, they have been represented adequately in the bargaining unit, and unnecessary fragmenting would occur if we granted this petition.

¹ All exhibits were admitted without objection.

The motion to preclude David A. Snyder from testifying at hearing is granted, and the appeal from the hearing examiner's order is affirmed.

Appearances: John Hoag, Attorney for Petitioner Petersburg Police Association; William Mede, Attorney for Respondent City of Petersburg; and Pete Ford, Southeast Regional Manager, PMEA, for Intervenor Alaska Public Employees Association.

Board Panel: Aaron T. Isaacs, Jr., Vice Chair; Will Askren, Member; and Daniel Repasky, Member.

DECISION

Statement of the Case

On January 20, 2011, the Petersburg Police Association (Association) filed a petition to sever all Class I (strike ineligible) employees from the wall-to-wall bargaining unit represented by the Alaska Public Employees Association (PMEA), at the City of Petersburg. The City filed a timely objection, asserting that granting the severance would cause unnecessary fragmenting. PMEA also objected to the petition.

Issues

1. Is the proposed unit of Class I police department employees appropriate under AS 23.40.090?
2. Has the Association satisfied the requirements of 8 AAC 97.025(b)?
3. Should we have allowed David A. Snyder, the Association's attorney's law partner, to testify at the hearing?

Findings of Fact

1. The Petersburg Municipal Employees Association (PMEA) is the certified bargaining representative of a bargaining unit of City of Petersburg (City) employees. The bargaining unit is a wall-to-wall unit at the City, representing all non-supervisory and supervisory employees except for elected officials, the city manager, department heads, the city clerk, assistant city clerk, all temporary employees, and all power plant employees represented by the International Brotherhood of Electric Workers. (Exhibit 200).

2. The wall-to-wall unit was certified by the Department of Labor, Labor Relations Agency (DOLLRA)² on November 3, 1987. (Exhibit 200). There are currently 76 employees in

² The Department of Labor, Labor Relations Agency (DOLLRA) was one of this Agency's predecessor agencies.

the bargaining unit. (Scott Hahn testimony).

3. Since its certification on November 3, 1987, the unit has always included all employees of the City's police department. (Scott Hahn testimony).

4. On January 20, 2011, the Petersburg Police Association (Association) filed a petition to sever the Class I (strike ineligible) police department employees from the wall-to-wall unit and to certify the Association as the exclusive representative of those employees. The petition would carve out all police department employees except the police chief and parking attendant. The proposed unit would total 14 or 15 employees. The fire marshal, also a Class I employee, is not included in the proposed unit.

5. The Association filed an amended petition on January 24, 2011. In its amended petition, the Association listed three reasons for its proposal to sever: inadequate representation from PMEA, the tradition of law enforcement employees having their own bargaining units, and that adding a third bargaining unit at the City would not promote excessive fragmentation.

6. The City filed an objection to the appropriateness of the proposed bargaining unit on February 18, 2011. The City based its objection on "the longstanding historic inclusion of police employees in the larger unit," and therefore those employees "do not have a community of interest separate and distinct from the other employees in the existing unit." (City's February 18, 2011, Objection at 1). The City also contended that carving out the police employees would cause unnecessary fragmentation, and PMEA had represented the employees adequately.

7. PMEA, the incumbent bargaining representative for the wall-to-wall unit that includes the police department employees, also objected. It asserted that the proposed police unit would not be an appropriate unit under AS 23.40.090, PMEA had "diligently and effectively represented its members" at the police department for more than 25 years, and there are "as many examples of isolated police bargaining units as there are units which include police personnel among a wall-to-wall unit" (PMEA February 22, 2011, Objection).

8. PMEA is the exclusive bargaining representative for the wall-to-wall unit of non-supervisory employees at the City. PMEA, affiliated with the Alaska Public Employees Association (APEA), has represented the wall-to-wall unit since November 3, 1987. (Exhibit 100). The police department employees have been part of that bargaining unit since its 1987 certification.

9. During the period of time PMEA has represented the municipal employees, PMEA has negotiated seven collective bargaining agreements with the City. (Exhibit 101).

10. The police department employees in the proposed unit are paid on a semi-monthly basis, the same as other employees in the current wall-to-wall unit. (Article 16.3). Police Chief Jim Agner testified that their pay is comparable to the pay of other employees.

11. The police department employees are paid under the same wage schedule as other employees in the bargaining unit. (Joint Exhibit I, Article 18 and Appendix A).

12. In 2004, PMEA successfully negotiated an extra one dollar per hour for police officers, and an extra fifty cents an hour for dispatchers, over and above what other bargaining unit employees received. As a result, some of the other bargaining unit members were upset. (Jim Agner testimony; John Hamilton testimony; Angie Parker testimony).

13. Bargaining unit members elect employees to represent them on the unit's negotiating team. Agner was elected to the bargaining team, and he attended a week-long training. The head dispatcher at the police department was also elected to the team. Agner voiced his opinions and offered suggestions.

14. There are a wide variety of job positions in the wall-to-wall unit. Each position has different job qualifications and duties. (Exhibits 104 and 105).

15. The hours of the police department employees do not distinguish them from other employees in the wall-to-wall bargaining unit. (Joint Exhibit I, Article 14). The normal work day and week, overtime compensation, and work shift pay are similar for all current bargaining unit employees. The only difference noted in the collective bargaining agreement is the scheduling of days off for police officers when holidays fall on the officers' scheduled day off. (Joint Exhibit I, Article 14.10). Police department dispatchers work eight-hour shifts, like many other bargaining unit employees.

16. The working conditions of the police department employees do not distinguish them significantly from other employees in the wall-to-wall bargaining unit to the extent that a separate unit is warranted.

17. All of the City's department heads, including the police chief, report directly to the city manager. (Exhibit 102).

18. City employees have transferred into and out of Class I, II, and III job classifications, including transferring into and out of the City's police department positions. (Exhibits 113 - 115).

19. All City employees, including employees in the wall-to-wall unit, must adhere to the same standards of conduct. (Exhibit 2, Exhibit 106, at 5-6). All City employees are subject to the "City of Petersburg Employee Handbook." (Exhibit 106). Under this Handbook, police department employees are held to the same standards of conduct as other City employees. Police Chief Agner asserted that police department employees are held to a higher standard of ethics than other City employees.

20. The police department has its own Operating Procedures Manual. (Exhibit 3). The manual describes department functions and employee duties, including but not limited to chain of command, conduct, uniforms, use of force, and physical conditioning.

21. The City currently conducts negotiations for two collective bargaining agreements of City employees. It negotiates with PMEA for the wall-to-wall unit, and with IBEW for the City's electrical utility workers.

22. There was considerable testimony about the amount of time that it would take for the City to negotiate a collective bargaining agreement for a third bargaining unit. Police Chief Agner responded to questioning from the City by stating that it would take 100's of hours of time, and tie up two to three police officers (in a nine-person department), to negotiate an agreement. It would be a "significant drain" on department resources. On redirect, Agner testified that he was speculating about the amount of time that would be needed for negotiations.

23. Bob Prunella was previously acting city manager at the City for six months. He negotiated a collective bargaining agreement for the City with the IBEW unit. Prunella testified that it took between 20 and 25 hours to negotiate the agreement, and four to five hours to prepare for negotiations. The negotiators included two city employees on behalf of IBEW, and two or three city employees representing the City.

24. Prunella also negotiated a contract at the City of Wrangell. He estimated that it took no less than 50 to 60 hours to complete negotiations. He has never negotiated a law enforcement agreement.

25. Scott Hahn is the city manager at Petersburg. He testified that in the current negotiations with PMEA for its wall-to-wall bargaining unit, there are eight City employees participating in negotiations. The parties have held approximately twelve negotiating meetings so far. Up to this point, negotiations have taken approximately 400 to 500 hours of his time. He testified that negotiations take up more time than any other task he performs. Negotiations are ongoing.

26. Hahn testified that pre-negotiations preparation takes more time than does the actual negotiations.

27. Hahn believes that there would be a significant impact if he had to negotiate with a third bargaining unit, the proposed police department unit. He estimated it would take 100 to 200 hours. He testified that the IBEW contract negotiations "absolutely" took 100 to 200 hours to negotiate, with additional time required to administer the contract.

28. Bruce Jones was city manager from 2001 to 2007, when he retired. He estimated that the PMEA and IBEW contract negotiations took approximately four months of his time every three years. He does not believe that having a police department unit would be a significant drain on city resources. He estimated it would take a "couple months" to negotiate an initial agreement, and then the ongoing administration of the agreement would not take a lot of time.

29. Kathy O'Rear is the city clerk. She has been the city clerk for approximately eleven years. She administers the City's personnel rules as part of her job duties. She was on the City's negotiating team for the PMEA negotiations. There have been roughly twelve negotiating

sessions, each lasting two to eight hours. O'Rear estimates the PMEAs negotiations take approximately 200 hours.

30. O'Rear testified that the IBEW negotiations take approximately 80 to 100 hours. There are two City employees who negotiate on behalf of IBEW, and three City employees who represent the City.

31. O'Rear testified she has never heard any complaints regarding the adequacy or inadequacy of PMEAs representation of the wall-to-wall bargaining unit employees.

32. Karl Hagerman has been public works director for ten years. He has worked for the City for eighteen years. He oversees five City departments. He has twenty-one employees, and most of them are in the PMEAs bargaining unit.

33. Hagerman bargained for PMEAs when he was in that unit. He said it took approximately two to three weeks to negotiate an agreement, and a total of more than 100 hours. He said he also represented the City in negotiations, and this representation also took more than 100 hours of negotiating time.

34. Angie Parker is APEAs business agent to PMEAs. She has negotiated four collective bargaining agreements for PMEAs.

35. Parker testified that PMEAs gets information for contract negotiations preparation, and then develops draft proposals after surveying bargaining unit employees to determine priorities. Membership meetings were held prior to sending out the survey. PMEAs has several different constituency groups. PMEAs elects its negotiators. There is usually a police department employee on the team "if they put their name in the hat," according to Parker.

36. Parker testified that she met with a police officer several times on a religious discrimination issue, and also on a disciplinary action, for which she "got him off the hook"

37. Police Chief Agner testified that when he participated in negotiations, he requested that the collective bargaining agreement include a police officers' bill of rights. When asked about the bill of rights, Parker only recalled a vague reference to the proposal. Joe Bertagnoli, a city maintenance foreman who has been active in PMEAs since 1993 or 1994 and has been on PMEAs negotiating teams, does not recall mention of a police officer bill of rights proposal. Agner testified in rebuttal that he brought it up on every negotiating team on which he participated, four or five times.

38. All bargaining unit employees receive the same fringe benefits, but the police officers and dispatchers, and the fire marshal (also a Class I employee) are on a 20-year retirement system, while other unit employees participate in a 30-year retirement program.

39. Police Chief Agner testified that PMEAs filed a grievance on behalf of his wife, who is also a police officer. Agner could not recall PMEAs ever refusing to file a grievance on behalf of a police department employee.

40. Steve Scherrer, a sergeant in the police department, testified that police department employees unanimously expressed a desire to form their own separate bargaining unit.

41. City Maintenance Foreman Joe Bertagnoli believes PMEA has represented the wall-to-wall bargaining unit adequately.

42. Police department employees in Bethel, Cordova, Seldovia and the Haines Borough are all included in mixed wall-to-wall bargaining units. (Exhibits 108-111).

43. The Association requested that David A. Snyder be allowed to testify at the hearing. Snyder is an attorney in the firm that represents the Association. (Exhibits 5 – 7). The Association's request was denied.

ANALYSIS

1. Is the proposed unit of Class I police department employees appropriate under AS 23.40.090?

AS 23.40.090 provides:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 – 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

ALRA regulation 8AAC 97.350(f) contains the burden of proof in petitions: "In a hearing, the petitioner . . . bears the burden of proving the truth of each element necessary to that party's cause by a preponderance of the evidence." The burden to prove severance of a group from an existing bargaining unit is the same standard as that of any other petition filed before this Agency. The issues in this case, as in all other cases to sever a group of employees from an existing unit, are whether the proposed unit is appropriate under AS 23.40.090 and whether the petitioner has satisfied the conditions of 8 AAC 97.025(b).

The first question is whether the proposed unit is appropriate under AS 23.40.090. We conclude that the proposed unit of Class I police department employees is not the unit appropriate for the purposes of collective bargaining. The evidence in this case supports the current wall-to-wall unit as the unit appropriate under AS 23.40.090.

Community of interest. While the Class I police department employees may have a community of interest, they also have a continuing community of interest with their fellow City

employees in the wall-to-wall bargaining unit. Although they have distinct law enforcement duties and responsibilities, they have been part of the wall-to-wall bargaining unit since its certification more than 25 years ago. They have participated actively in negotiations through this period, and have worked with other bargaining unit employees to obtain collective bargaining agreements. In our experience with political subdivisions, the police department employees at the City are part of a relatively typical wall-to-wall unit that contains a wide variety of job positions with varying job requirements.

Wages. We find that the evidence on wages supports a wall-to-wall bargaining unit. Like other City employees in the bargaining unit, the Class I police department employees are paid under the same wage schedule as the other employees, and are paid according to their position title. The fact that in 2004, PMEA negotiated an additional one dollar per hour increase for police officers and fifty cents an hour for dispatchers does not significantly change the history of the wage factor analysis for police department employees.

Hours. For the most part, these factors are the substantially similar for bargaining unit employees. The police department employees generally work similar work hours to other employees. In fact, dispatchers work eight-hour shifts like many other city employees, including many of those in the bargaining unit. The fact that police officers have a different schedule for their 'off' day around holidays is not sufficient to create a significant distinction in working conditions. Moreover, in our experience it is not unusual for employees in the same bargaining unit in a small political subdivision like the City of Petersburg to work a variety of work shifts. The evidence on this factor supports the current bargaining unit.

Other working conditions. We find that the other working conditions of the employees in the wall-to-wall unit supports the wall-to-wall unit. City employees have transferred into and out of Class I, II, and III job classifications, including into and out of the City's police department positions. All employees have the same health benefits and fringe benefits, with the exception that the Class I employees participate in a 20-year retirement system, while the Class II and III employees participate in a 30-year retirement system. This latter difference is not significant enough to warrant a separate police department unit.

History of collective bargaining. The history of collective bargaining strongly supports the current wall-to-wall unit. There is a long and relatively stable history of collective bargaining between the City and the PMEA wall-to-wall bargaining unit. As noted, the police department employees have been part of the PMEA bargaining unit since its initial certification in 1987. Police department employees have actively participated on negotiating teams.

Desires of employees. Testimony at the hearing was uncontradicted that the Class I police department employees unanimously support the proposed bargaining unit. This factor favors severance from the wall-to-wall unit.

Fragmentation. AS 23.40.090 mandates that in determining the unit appropriate for collective bargaining, "unnecessary fragmenting shall be avoided." The preponderance of the evidence supports a finding that severing the Class I police department employees from the remainder of the current wall-to-wall unit would cause unnecessary fragmenting. The evidence

shows that if we granted this petition and created a third bargaining unit at the City, the burden of additional time and expense to the City would be substantial. Fragmentation is unnecessary.

The Association argues, among other things, that it should be granted the opportunity to have its own separate unit, because:

[I]t would be grossly unfair to create a rule that stops these police officers from forming their own bargaining unit because twenty-five (25) years ago the employees in the police department at that time did not attempt to form their own bargaining unit. Such a rule flies against the logic of the Board's decisions that police officers traditionally have had their own bargaining units, and the Board has allowed them in the past. Creating the new rule as suggested by the City would negate the very statutory pronouncement of AS 23.40.090 which mandates that "the labor relations agency shall decide in each case, in order to ensure [sic] employees the **fullest freedom** in exercising the rights guaranteed . . ."

(Association's Post Hearing Brief, at 2) (bolding included in the Association's brief).

First, AS 23.40.090 requires, among other factors, that we must determine the unit appropriate based on the history of collective bargaining. It is undisputed that the Class I police department employees have been a part of the wall-to-wall bargaining unit for all of its 25-year existence. The police employees have actively participated in negotiations and in the bargaining process. Whether the Class I police employees may have been granted a separate unit long ago is total speculation.

In the argument noted above, the Association contends that "[s]uch a rule flies against the logic of the Board's decisions that police officers traditionally have had their own bargaining units, and the Board has allowed them in the past." In its argument, the Association did not clarify whether it means this Agency's Board or the National Labor Relations Board. Regardless, police officers at the political subdivision level in Alaska have been included in mixed bargaining units, and in some cases, stand-alone units. However, once a bargaining unit has been certified, a "petitioner seeking to sever a group of employees out of an existing unit has a heavy burden to carry under the factors established by this Agency's predecessor and the National Labor Relations Board and applied by this Agency It is not an easy burden to satisfy" *Public Safety Employees Association v. State of Alaska*, Decision and Order No. 201, at 10 (April 4, 1996) (D&O No. 201).

Finally, the Association argues essentially that it would be unfair to deny the police department employees the right or opportunity to have a separate bargaining unit because they were included in the bargaining unit 25 years ago, when the unit was formed. In the argument quoted above, the Association contended that "[c]reating the new rule as suggested by the City would negate the very statutory pronouncement of AS 23.40.090 which mandates that "the labor relations agency shall decide in each case, in order to [assure] employees the **fullest freedom** in exercising the rights guaranteed" (bolding in the Association's brief).

In *Public Safety Employees Association v. State of Alaska*, Decision and Order No. 201 (April 4, 1996) (D&O No. 201), a panel of this Agency's Board denied the Public Safety Employee's Association's (PSEA) petition to sever commercial vehicle inspectors from the state's general government unit. In that decision, we addressed PSEA's argument, similar to the Association's here, regarding freedom of choice:

PSEA is not persuasive. It confuses the issue of freedom of choice of a bargaining representative with the issue of the appropriateness of the unit. The appropriateness of the unit is a responsibility of the Agency. Employees have an important stake in the outcome of that determination, as do any potential bargaining representatives and the employer. The Agency is charged with taking the employees' preference into account in the initial unit determination. After the determination is made, the employees exercise the right to choose a bargaining representative in an election and the majority of those voting control the outcome.

Unsurprisingly, not being of one mind, all employees will not have chosen the representative certified. The system tolerates this minority and discourages severance of it.

....

The system requires stability, and stability is the reason a petitioner seeking to disrupt the unit must carry a heavy burden to demonstrate a genuine problem with the composition of the unit.

(D&O No. 201, at 10-11) (citations omitted).

We find the Association's argument here similar to PSEA's argument noted in D&O No. 201. For the same reasons analyzed by the panel in D&O No. 201, we reject the Association's argument here. Further, the fact that a group of employees wants to sever and form their own bargaining unit does not, by itself, mean that the proposed unit is appropriate and employees can vote for or against severance. All the factors in AS 23.40.090 must be considered.

For all these reasons, we deny and dismiss the Association's petition for severance and to represent the Class I police department in a separate bargaining unit.

2. Has the Association satisfied the requirements of 8 AAC 97.025(b)?

We must next determine if the Association has satisfied the requirements in 8 AAC 97.025(b) for severance of the Class I police department employees from the wall-to-wall unit at the City.

Because the Association seeks to sever a group of employees from an existing unit, it must satisfy the requirements of 8 AAC 97.025(b). Under this regulation, the Association must establish,

(1) why the employees in the proposed bargaining unit are not receiving adequate representation in the existing unit;

(2) whether the employees in the proposed bargaining unit are employed in jobs that have traditionally been represented in the same unit;

(3) why the employees in the proposed unit have a community of interest that is not identical with that of the employees in the existing unit;

(4) how long the employees in the proposed bargaining unit have been represented as part of the existing unit; and

(5) why the grant of the petition will not result in excessive fragmentation of the existing bargaining unit.

a. *Adequacy of representation.*

We next consider the adequacy of PMEAs representation of the wall-to-wall bargaining unit at the City. In *Alaska Correctional Officers Association v State of Alaska*, Decision and Order No. 284 (February 28, 2008) (D&O 284), we stated:

The system favors stability and continuation of existing bargaining units, but evidence of a bargaining representative's inadequate representation would support disruption of the status quo. For example, the existing unit structure might interfere with the ability of the group seeking severance to be heard on issues of concern. Conflicts between the interests of the other members of the unit and this group could also interfere with a group's receiving adequate representation. See *Public Safety Employees Ass'n (Weigh station operators) v. State of Alaska*, Decision and Order No. 201, at 12; *In re Fraternal Order of Police*, 12 Ohio Pub. Employee Rep. 1546 (Ohio State Employment Relations Board 1995) (applying similar criteria to a severance petition).

(D&O 284, at 29).

The testimony showed that while there have been bumps along the way, PMEAs generally provided adequate representation for the bargaining unit, including police department employees. The Association did not present evidence for a contrary finding. There was conflicting testimony on whether a police officer bill of rights was adequately put forward for negotiations by PMEAs. While Chief Agner said he brought up this proposal several times through the years, Business Agent Parker could only remember a vague reference to it. Moreover, Joe Bertagnoli, a city maintenance foreman who has been active in PMEAs since 1993 or 1994 and has been on PMEAs negotiating teams, does not recall mention of a police officer bill of rights proposal. We find that even if this proposal had been raised over the years, the fact that there was no action on it does not, by itself, show inadequate representation.

The evidence shows that PMEA filed grievances on behalf of police department employees, including one for Police Chief Agner's wife, who is a police officer. Another fact supporting adequate representation is the special raises PMEA negotiated for police department employees in 2004. Although it created distress among some unit employees, this action by PMEA shows it was working on behalf of police department employees.

b. *Tradition of representation.*

The City asserts that in Alaska, there is a "mixed tradition of Class 1 public safety employees being included in broad, wall-to-wall bargaining units as well as in separate units. For example, police department employees in Bethel, Cordova, Seldovia and the Haines Borough are all included in mixed wall-to-wall bargaining units." (Exhibits 108-111). Similarly, Class 1 airport safety officers and airport firefighters have traditionally been represented in wall-to-wall units, and not in separate units.

This factor does not weigh in either party's favor. Appropriateness of proposed bargaining units is determined on a case-by-case basis. In the City's case, based on the evidence presented, we find the wall-to-wall unit of City employees is the appropriate unit under AS 23.40.090.

c. *Community of interest.*

See discussion above at page 7. We find the community of interest favors the current wall-to-wall bargaining unit.

d. *Length of period of representation.*

PMEA has represented the wall-to-wall unit that includes police department employees, since 1987. This factor favors denying the petition to sever these employees and to create a new bargaining unit.

e. *Excessive fragmentation.*

See analysis above at pages 8-9. Excessive fragmentation would occur if we granted the Association's petition.

3. Should we have allowed David A. Snyder, the Association's attorney's law partner, to testify at the hearing?

Prior to the hearing, the parties filed witness lists as part of their prehearing conference statements. In its March 9, 2011, statement, the Association listed David A. Snyder as one of its witnesses. The Association asserted that Snyder would testify "about the experience that Snyder and Hoag, LLC has in representing independent labor organizations, how in his opinion small independent law enforcement labor organizations have been successful in representing their members, and have provided superior representation to their members than was provided by traditional labor unions." (March 9, 2011, prehearing statement at 2-3).

On March 16, 2011, PMEA filed a motion to preclude Snyder's testimony. PMEA contended that,

While an important criterion of the instant dispute includes the qualifications of the union seeking to "carve out" a new bargaining unit ("factor" 6 of the factors delineated in Mallinckrodt Chemical Works, 162 NLRB No. 48, 64 LRRM (BNA) 1011, 1016 (1996) [*Mallinckrodt*], a decision that the ALRA Agency has deemed to be essential to resolving unit severance questions), Mr. Snyder is neither a labor union nor an employee organization, but an attorney in private practice whose firm currently represents Petitioner, but is not, in fact, Petitioner. Neither Mr. Snyder nor Snyder & Hoag, LLC, seek[s] certification (or are qualified) to serve as exclusive representative of the bargaining unit proposed for severance; rather, they are merely the attorney currently hired by that organization, Petersburg Police Association. They are a vendor, providing service to the organization, but they are not, and cannot be, the organization or the exclusive representative, itself.

(PMEA's March 16, 2011, Motion to preclude Testimony, at 1).

The City joined with PMEA in moving to preclude Snyder's testimony. The City stated that it "agrees that it would be inappropriate for Snyder, an attorney with the law firm representing PPA, to testify as a witness at the hearing since he is not a member of a labor union or any other employee organization that serves as the exclusive bargaining agent for the City's police officers." (City's March 18, 2011, Joinder in Motion to Preclude Testimony). The City added that the proposed testimony would be irrelevant to the factual and legal issues before the Agency.

The Association responded that the motion should be denied. The Association cited to *Public Safety Employees Ass'n v. State of Alaska*, Decision and Order No. 201, at 14, for the proposition that among other things, *Mallinckrodt* "tests . . . the qualifications of the union seeking to 'carve out' a separate unit, including that union's experience in representing employees like those involved in the severance action." (Association's March 23, 2011, Response to the Motions to Preclude, at 1). The Association then argued that the "qualifications of the attorneys is just as relevant as would be the qualifications of employees of a Union as it is the attorneys who will be advising the Association, and training its elected representatives, on fulfilling their role as a labor organization." (Association's March 23, 2011, Response to the Motions to Preclude, at 2).

On June 23, 2011, the hearing examiner denied the motion. (Order on Motion to Exclude Witness, June 23, 2011) (Order). The hearing examiner found that the testimony would, "at most, be marginally relevant to the *Mallinckrodt* factor regarding the qualifications of the union seeking to carve out a separate unit." (June 23, 2011, Order, at 2). The Order added:

But evidence on the qualifications of the law firm representing the PPA would not be material to the petition for decertification of PMEA and certification of [the Association]. 8 AAC 97.350(c). I agree with PMEA and the City that the

attorneys are not a union or labor organization, and evidence on their experience *representing* unions is different from the experience or qualification *of a union* seeking to represent a bargaining unit.

(Order, at 2).

Finally, the Order concluded that Mr. Snyder's proposed testimony "would not be relevant in proving or disproving any of the factors" contained in 8 AAC 97.025(b). (Order, at 2).

On June 28, 2011, the Association appealed the hearing examiner's order pursuant to 8 AAC 97.470, and also filed an offer of proof of Snyder's proposed testimony. We denied the appeal. We now affirm that denial. We have reviewed the offer of proof and find that the proposed testimony would be irrelevant to the issues in this petition. The testimony of an attorney who is representing a labor organization, such as the Association, does not provide useful or necessary evidence in the determination of issues related to a representation petition or severance petition. We agree with the arguments made by PMEA and the City, and the findings of the hearing examiner in the June 23, 2011, Order. The appeal is denied.

CONCLUSIONS OF LAW

1. The Petersburg Police Association and the Petersburg Municipal Employees Association Local 6132, APEA/AFT, AFL-CIO are organizations under AS 23.40.250(5).
2. The City of Petersburg is a public employer under AS 23.40.250(7).
3. This Agency has jurisdiction to determine the unit appropriate for collective bargaining purposes under AS 23.40.090.
4. As petitioner, the Petersburg Police Association has the burden to prove, by a preponderance of the evidence, each element of its petition to sever and represent the police department employees. 8 AAC 97.350(f).
5. The Petersburg Police Association failed to prove each of the elements of its petition by a preponderance of the evidence.
6. The factors in AS 23.40.090, including community of interest, history of collective bargaining, wages, hours, and other working conditions, support the appropriateness of the existing wall-to-wall unit of City employees. The desires of the employees factor in AS 23.40.090 is the only factor that supports granting a separate bargaining unit of Class I police department employees in the City of Petersburg. Unnecessary fragmenting would occur if a separate bargaining unit for Class I police department employees was authorized.
7. The Petersburg Police Association failed to show that David A. Snyder's testimony would be relevant and material to the issues in this petition.

ORDER

1. The petition of the Petersburg Police Association to sever Class I employees in the City of Petersburg police department and represent them for collective bargaining is denied and dismissed. The wall-to-wall unit of existing City employees is appropriate under AS 23.40.090.

2. The City of Petersburg is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron T. Isaacs, Jr., Vice Chair

Will Askren, Board Member

Daniel Repasky, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of the order in the matter of *Petersburg Police Association v. City of Petersburg and Petersburg Municipal Employees Association, Local 6132, APEA/AFT, AFL-CIO*, Case No. 11-1594-RC/RD, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this _____ day of January, 2012.

Kathleen Wagar
Office Assistant III

This is to certify that on the _____ day of January, 2012, a true and correct copy of the foregoing was mailed, postage prepaid, to:

John Hoag, Petersburg Police Association
William Mede, City of Petersburg
Pete Ford, PME/APEA/AFT

Signature