

**DEPARTMENT OF LABOR
ALASKA LABOR RELATIONS AGENCY
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
(907) 264-2587
Fax (907) 264-2591**

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION (APEA),)
)
Petitioner,)
)
v.)
)
CITY OF FAIRBANKS,)
)
Respondent.)
And)
)
INTERNATIONAL BROTHERHOOD)
OF TEAMSTERS, CHAUFFEURS,)
WAREHOUSEMEN AND HELPERS OF)
AMERICA, GENERAL TEAMSTERS)
LOCAL 959, AFL-CIO,)
)
Intervenor.)
)

CASE NO. DOLLRA UCF 90-4

DECISION AND ORDER NO. 130

Heard before the Alaska Labor Relations Board, Robert Goldberg, Barbara Huff, and H.O. Williams, with Hearing Examiner Jan Hart DeYoung, on October 10, 1990, in Fairbanks, Alaska, and on October 31, 1990, by telephone. The record closed on November 2, 1990.

Appearances:

Clarence Bolden for Petitioner Alaska Public Employees Association; Deputy City Attorney Charlane Bigelow Stead for Respondent City of Fairbanks; and James A. Witt for Intervenor International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, General Teamsters Local 959.

Digest:

Because the programmer analyst position shares a greater community of interest and working conditions with other Municipal Utility Services (MUS) programmer analysts than it does with the City workers in the APEA unit, the position should be included in the MUS Teamsters bargaining unit rather than in the APEA unit.

DECISION

The Alaska Public Employees Association filed a petition for unit clarification to add a programmer analyst position to its bargaining unit at the City of Fairbanks on May 18, 1990. On May 25, 1990, the Teamsters moved to intervene to object to the petition on grounds that the position lacked a community of interest with the APEA unit. On May 30, 1990, a notice of the petition was posted at Fairbanks City Hall and MUS. On June 13, 1990, the City filed an objection to the petition on the ground that the position belonged to the Teamsters MUS unit and severing the position from that unit and adding it to the APEA unit would unduly fragment both units. The Teamsters' unopposed motion to intervene was granted on August 29, 1990. A hearing was held in Fairbanks on October 9, 1990. The parties presented evidence

in the form of exhibits and testimony. Following the hearing, the parties submitted posthearing briefs.

FINDINGS OF FACT

1. On December 24, 1984 (effective on December 30, 1984), the Department of Labor, Labor Relations Agency, certified the Alaska Public Employees Association as the exclusive bargaining representative for the general unit of City of Fairbanks employees and the Teamsters as the exclusive bargaining representative for the Municipal Utility Services (MUS) unit.
2. Between October 16, 1981, and December 31, 1989, Mary Gatzkiewicz was employed by the City of Fairbanks as the programmer analyst in the City's finance department. Gatzkiewicz was a member of the APEA unit.
3. During this time period, the City employed programmer analysts at Municipal Utility Services who belonged to the Teamsters' MUS bargaining unit.
4. Before January 1, 1990, the finance department programmer analyst position was located at City Hall. The programmer analyst was responsible for programming and operating the City's computer, a Wang, which was also located at City Hall. The position was supervised by the finance director.
5. A consultant to the City issued a report recommending the consolidation of all City computer operations and the purchase of one computer hardware network. The decision was made to transfer the computer operations performed by the Wang computer to the IBM 360 computer that had been purchased by MUS.
6. Between 1986 and October of 1990, the City eliminated approximately one-third of its work force.
7. By mid-October it was clear that the finance department programmer analyst position would be eliminated. At this same time a programmer analyst position at MUS was vacant, and the Teamsters and MUS had been unable to fill the position.
8. On November 27, 1989, Mary Gatzkiewicz was given a memorandum advising her that "due to a reduction in force" she would be laid off from her position effective December 31, 1989. Respondent's Exhibit 13.
9. The City eliminated the finance department programmer analyst position and merged the duties formerly performed by the finance department programmer analyst with the vacant Teamsters programmer analyst position in the MUS data processing department. The duties of the former finance department programmer analyst position were to be performed under the MUS data processing department, and the position would report to the MUS data processing manager. B. Phillips, memorandum (Dec. 12, 1989) (Respondent's Exhibit 14).
10. Mary Gatzkiewicz joined the Teamsters and filed an application for the vacant MUS programmer analyst position. She then was dispatched by the Teamsters to the vacant programmer analyst position at MUS. She began work in this position on January 1, 1990.
11. In the MUS programmer analyst position, Gatzkiewicz' rate of pay was \$.87 per hour less than when she had worked in the finance department. Her Teamsters union dues were higher than her APEA dues had been.
12. Gatzkiewicz' first responsibility in the MUS programmer analyst position was to convert the City's Wang computer software to the MUS IBM-360. While performing the conversion, she has been located in the finance department at City Hall. Her job responsibilities have been substantially the same as they were when she occupied the finance department programmer analyst position.
13. Gatzkiewicz' supervisor is now the data processing manager at MUS, who also supervises the other two MUS programmer analysts, three operators, and one data entry worker. Gatzkiewicz meets with him once per week. In October of 1990, Ken Dorland was the data processing manager.
14. Dorland testified that he intends to move Gatzkiewicz' work station to MUS upon the completion of the conversion

from the Wang to the IBM 360. All of the MUS programmer analysts will be cross-trained in each others' work, including Gatzkiewicz.

15. After the conversion is complete, Dorland estimates that Gatzkiewicz will spend 50 percent of her time supporting City computer services and 50 percent of her time supporting MUS operations.

16. Mary Gatzkiewicz' preference is to belong to the APEA bargaining unit.

DISCUSSION

The APEA brought this petition for unit clarification under 2 AAC 10.050 for a determination that the programmer analyst position held by Mary Gatzkiewicz be added to the APEA bargaining unit. The City of Fairbanks and the Teamsters, which has intervened, oppose the petition on the basis that the position should belong in the Teamsters' MUS bargaining unit.

Bargaining unit determinations under the Public Employment Relations Act (PERA) are addressed in AS 23.40.090, which provides:

Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the right 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, the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

This Agency gives great weight to decisions of the National Labor Relations Board. 2 AAC 10.440. "Community of interest" is the term the National Labor Relations Board uses to describe the test it uses to determine the appropriate bargaining unit. See e.g., Indianapolis Mack Sales, 288 N.L.R.B. 286, 130 L.R.R.M. (BNA) 1240 (1988); C. Morris, *The Developing Labor Law* at 200 (2d ed. 3d Supp. 1982 - 1986). The term is not susceptible of precise definition. 1 C. Morris, *The Developing Labor Law*, at 417 (2d ed. 1983).

In determining whether a community of interest exists, the NLRB considers (1) similarities in skills, interests, duties, and working conditions; (2) the employer's organizational structure; (3) the desires of employees; and (4) bargaining history. J. Abodeely, R. Hammer, & A. Sandler, *The NLRB and the Appropriate Bargaining Unit* at 13 (Wharton School's Industrial Research Unit 1986 ed.).

1. Skills, Interests, Duties, and Working Conditions

The MUS programmer analysts, including Gatzkiewicz, have similar skills, interests, and duties. They share similar professional skills, and they all provide data processing support for different City and MUS departments.

In the past some of the duties and the working conditions of the finance department's programmer analyst and the MUS programmer analysts varied. The City's data processing needs were handled separately from the MUS. The computer systems were independent and in different locations. However, the differences in job duties and working conditions are disappearing. Since January of 1990, the City and MUS have been in the process of consolidating all data processing into one computer at MUS. The programmer analysts will be working in the same location on the same computer.

From the testimony it appears that the only real difference between Gatzkiewicz and the other programmer analysts is that Gatzkiewicz' work with the finance department's program will bring her into some contact with workers at City Hall. The difference is a small one when compared to the differences between the programmer analyst and the workers in the finance department. Comparing skills, interests, duties, and working conditions between the one programmer analyst position and the MUS programmer analyst or the finance department workers supports the conclusion that the programmer analysts share a much stronger community of interest and belong in the same unit.

2. The Employer's Organization

A factor given considerable weight by the National Labor Relations Board is the employer's organizational structure. The NLRB recognizes the importance to the employer of bargaining units that are compatible with the employer's organization. As stated in one treatise, "Similarity of working conditions among employees, lines of supervision, and degree of functional integration in the employer's operations are important factors in unit determinations, and these factors are given considerable weight in the Board's unit determinations." 1 C. Morris, Supra at 421.

When the programmer analyst worked in City Hall and reported to the finance director, the organizational structure supported including the position with other finance employees in the APEA unit. The position, however, has been moved to MUS. Changing the bargaining units to correspond to changes in the employer's organization is appropriate. The programmer analysts now work as a group, and after the transition to the IBM 360 is complete, they will be located together, share a common supervisor, and have interchangeable job duties. The employer's organization supports finding the programmer analyst a member of the Teamsters' unit.

The organizational structure of the City of Fairbanks was a consideration in the decision of the Department of Labor, Labor Relations Agency (DOLLRA), that first determined the appropriate bargaining units for the City of Fairbanks in 1984. The City's organizational structure weighed heavily in DOLLRA's determination that the MUS unit should be separated from the general government unit. In re. City of Fairbanks, Order and Decision DOLLRA No. 84-1, at 17-18 (1984).

In her present position Gatzkiewicz is paid with MUS revenues and on MUS payroll. Her supervisor is at MUS. The organizational structure supports the conclusion that all programmer analysts belong in the Teamsters MUS unit.

3. Bargaining History

The City's data processing work was handled formerly in the City Hall on a Wang computer. At that time the programmer analyst providing support for this computer was a member of the APEA's bargaining unit with other finance department workers. These facts have changed substantially. The work is now performed in a different organizational unit with employees who are represented by the Teamsters. The Teamsters have represented the MUS programmer analysts with the MUS unit since 1985. Because both bargaining units have a longstanding and successful labor relations history with the City, bargaining history would support finding either unit appropriate.

4. Desires of the Employees

In this case the employee whose position is affected, Mary Gatzkiewicz, has stated a preference to be in the APEA unit.

The only factor favoring finding the programmer analyst to be a member of the APEA unit is the preference of the person occupying the position. The other factors favor finding the position a member of the Teamsters' MUS unit. While employee preference is an appropriate consideration, it does not outweigh the other factors. The position's skills, duties, and working conditions and the City's organizational structure strongly favor the Teamsters unit. We believe the community of interest between the programmer analyst and the Teamsters unit is stronger and conclude that the Teamsters unit is the appropriate unit in this case.

ORDER

Because the Teamsters MUS unit is the appropriate unit for the programmer analysts, the APEA's Petition for Unit Clarification to have Mary Gatzkiewicz' programmer analyst position determined a member of the APEA's bargaining unit is DENIED and the petition is DISMISSED.

Dated: March 5, 1991, effective February 5, 1991

THE ALASKA LABOR RELATIONS AGENCY

Robert M. Goldberg, Board Chairman

Barbara Huff, Board Member

H. O. Williams, Board Member

This is to certify that on this day of , 1991 a true and correct copy of the foregoing was mailed, postage prepaid, to

Signature