

**DEPARTMENT OF LABOR  
ALASKA LABOR RELATIONS AGENCY  
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ALASKA PUBLIC EMPLOYEES )  
ASSOCIATION, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
CITY OF CORDOVA, )  
 )  
Respondent. )  
\_\_\_\_\_ )  
CASE NO. DOLLRA-RCO690-004

**DECISION AND ORDER NO. 137**

This matter was heard on February 5, 1991, in Cordova, Alaska, with Hearing Examiner Jan Hart DeYoung presiding. The record closed on March 27, 1991. In issuing this decision and order, the Alaska Labor Relations Board considered the record and transcript of the hearing.

Appearances:

Wayne B. Giampietro, Witwer, Burlage, Poltrock & Giampietro, and David Kaiser for petitioner Alaska Public Employees Association; and William F. Mede and Paul D. Seyferth, Owens & Turner, for respondent City of Cordova.

Digest:

Applying such factors as community of interest, wages, hours, and other working conditions, we find the hospital building service manager, chief dispatcher, and captain of police to be appropriate members of a general bargaining unit of city employees. Applying these same factors we conclude that the fire chief should be excluded from the unit.

**DECISION**

The Alaska Public Employees Association filed a petition with the Department of Labor, Labor Relations Agency (DOLLRA) for certification as the bargaining representative of employees of the City of Cordova under the Public Employment Relations Act. At the time of filing, DOLLRA administered the Act for municipalities and their employees. Effective July 1, 1990, Executive Order 77 transferred those duties to the Alaska Labor Relations Agency, which issues this opinion.

**Findings of Fact**

1. On June 27, 1990, Alaska Public Employees Association (APEA) filed a petition for certification as public employee representative of the City of Cordova employees.
2. On September 20, 1990, the Agency found the APEA had met the threshold requirement of a 30 percent showing of interest under AS 23.40.100.

3. On September 24, 1990, Alaska State Trooper Rodney Pucat posted the petition and notice of petition on the employee bulletin boards located in the Cordova City Hospital, fire chief's office, city hall, and police department.
4. On October 8, 1990, the City of Cordova objected to the petition, claiming that the designation of the bargaining unit was "overbroad, inaccurate, and inappropriate" and that the Agency lacked jurisdiction under Ordinance No. 478, which rejected application of the Public Employment Relations Act to the City.
5. On October 16, 1991, the City Council of the City of Cordova adopted Ordinance No. 686, which repealed Ordinance No. 478 and provided for PERA to apply to the City, mooting the issue of the Agency's jurisdiction.
6. The APEA in its petition described the unit it seeks to represent as all employees of the City of Cordova except elected officials and employees under contract -- the city manager, city clerk, assistant city manager, hospital administrator, finance director, police chief, and water and sewer superintendent.
7. APEA and the City stipulated that the bargaining unit include all job classifications (with the exception of four disputed positions named in paragraph 8) except the following:
  1. city manager, city
  2. city clerk, city
  3. assistant city manager, city
  4. police chief, city
  5. administrative assistant to city manager, city
  6. director of public works, city
  7. harbor master, city
  8. city planner, city
  9. city librarian, city
  10. finance director, city
  11. all fire department volunteers, city
  12. SWEP employees of the fire department, city
  13. hospital administrator, Cordova Community Hospital
  14. administrative assistant, hospital
  15. senior citizen adjutant, hospital
  16. medical director, hospital
  17. medical staff, hospital
  18. anesthesiology staff, hospital
  19. dental staff, hospital
  20. dietary supervisor, hospital

21. director of nursing, hospital
22. assistant director of nursing, hospital
23. staff accountant, hospital
24. mental health director, hospital
25. SWEP employee in building services management, hospital

8. Four job classifications remain at issue. The APEA seeks, and the City objects, to the inclusion of the hospital building services manager, fire chief, chief dispatcher, and captain of police, in the bargaining unit.

9. The duties of the building services manager are:

1. maintains and performs preventive maintenance on hospital equipment and facilities;
2. supervises housekeeping and laundry personnel;
3. performs basic maintenance on hospital building interior and exterior;
4. prepares and administers annual budget for building services department;
5. occasionally develops disaster plans and conducts drills and inspection tours.

10. The building services manager since April of 1986 is Michael Pershall. He operates the snow plow, performs preventive maintenance on equipment, works in the boiler room, and performs a "to do list" provided by nursing staff. He estimates that he spends 95 percent of his time in physical labor. He attends staff meetings where budget development, costs of wages and benefits, and management personnel policy are addressed and is involved in budget preparation. He supervises six employees, including hospital housekeeping staff, with responsibility for step discipline and authority to recommend hiring and firing. He is paid on an hourly basis and is eligible for overtime. His supervisor is the hospital administrator.

11. Michael Pershall was elected by the employees in his department to act as their representative at an employee committee, which reviewed revisions to the personnel code.

12. The chief of the fire department has the following job duties:

1. oversees volunteer fire department activities in accordance with municipal ordinances and state and federal regulations;
2. supervises volunteer staff up to 40 individuals;
3. responds to calls for assistance, including structure fires, harbor-boat-ship fires, vehicle fires, aircraft fires, ambulance services, and rescue services;
4. maintains records of daily activities to include equipment and vehicle maintenance, inspections, emergency responses, public education;
5. monitors radio communications network;
6. trains volunteer staff in fire and rescue services;
7. maintains training hour records;
8. schedules, oversees or performs maintenance on vehicles, pumpers, ambulances and other rescue

equipment;

9. administers fire prevention and public education programs.

13. The fire chief is the only full time fire department employee. His position is salaried and is not overtime eligible. He is responsible for fire fighting, search and rescue, and emergency medical services in the City. He prepares and administers the budget for these services. He trains and supervises 40 volunteers who perform the actual duties. He oversees equipment maintenance. [Tr. 61.] He attends staff meetings with the city manager along with the police chief, public works superintendent, water and sewer superintendent, bailiff foreman, harbormaster, librarian, museum director, finance director, planner, administrative assistant, receptionist, and assistant to the city manager. [Tr. 64]. He reports directly to the city manager.

14. The positions in the City that are not overtime eligible are the city manager, city clerk, chief of police, fire chief, public works director, finance director, planner, harbormaster, librarian, and museum director. [Tr. 63-64.]

15. The chief dispatcher is responsible for dispatching for both the fire and police departments and schedules, trains, and supervises up to five dispatchers. The chief duties of the dispatcher are:

1. manages the daily activities of the dispatch/communication section;
2. supervises the activities and duties of all dispatch personnel and performs as line dispatcher;
3. provides administrative, clerical, and computer support for public safety departments;
4. assists in the budget development and problem solving in dispatch;
5. serves as a full-time dispatcher;
6. assists in screening, interviewing, and hiring dispatch personnel;
7. schedules training of dispatch personnel;
8. disciplines dispatch personnel when necessary;
9. monitors and maintains security of prisoners;
10. insures security of records;
11. provides secretarial support, including ordering supplies, maintains files, handles travel arrangements, and manages computer system;
12. and provides assistance in development of yearly department budget and performs day-to-day accounting functions.

16. The chief dispatcher usually does not attend staff meetings. The chief dispatcher reports to the chief of police and serves as an administrative assistant, maintaining and typing all administrative and personnel files in the department. [Tr. 107 & 117.] The chief dispatcher recommends personnel action to the chief and maintains the budget. She rarely performs dispatch duties except from time to time to cover for dispatchers' sick leave and vacation. [Tr. 119.]

17. The duties of the captain of police in the Department of Public Safety are as follows:

1. manages and directs law enforcement officers;
2. under direction of chief of police, administers, coordinates, directs police functions, including, patrol, traffic investigations, property/evidence, animal control and jail facility operations;

3. supervises and schedules all patrol officers, dispatch personnel, and community service officers;
4. insures that all personnel receive adequate training to perform assigned duties;
5. evaluates and disciplines personnel;
6. enforces all department policies and procedures;
7. performs the duties of a commissioned police officer;
8. manages, reviews, and approves all criminal cases, investigations, and complaints;
9. conducts internal investigations concerning complaints against members of the department; and
10. ensures department equipment is maintained.

18. The captain of police does not attend the weekly staff meeting and works under the supervision of the chief of police. The captain of police is in charge of daily patrol operations and supervises the patrol officers and community services officer. He schedules officers, coordinates and administers training, makes recommendations for personnel action to the chief, formulates operating procedures, and makes recommendations for expenditures.

19. The police chief has sole authority to spend funds in his department. The captain and chief dispatcher do not have spending authority.

## **DISCUSSION**

As the petitioner, the APEA has the burden to prove "the truth of each element necessary to his cause by a preponderance of

the evidence." 2 AAC 10.430. The APEA must establish the appropriateness of the unit it has proposed for the City of Cordova.

PERA describes the factors used to determine whether a unit is appropriate in AS 23.40.090:

Collective bargaining unit. The Labor Relations Agency shall decide in each case, in order to assure to employees the fullest freedom in exercising their 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.

The question is whether the members of the proposed unit share enough of these factors to be represented together appropriately. In support of its argument that the four employees at issue here are not appropriate members of the unit, the City argues that supervisors may not be combined with rank and file employees under 2 AAC 10.110. 2 AAC 10.110 does provide that supervisors may not be combined with nonsupervisory employees. However, this regulation applies only to the state and its bargaining units. It has no application to municipalities. Whether a supervisor can be a member of the same unit as nonsupervisory employees will depend on the application of the factors in AS 23.40.090.

The proposed unit encompasses nearly all of the employees at the City. Whether nonsupervisory personnel can share a community of interest with supervisory personnel has been addressed in the past. Both the State Labor Relations Agency and the Department of Labor, Labor Relations Agency have held that units combining supervisory and nonsupervisory personnel are appropriate. See Alaska Public Employees Ass'n v. Fairbanks North Star Borough, SLRA Order & Decision No. 79 (May 19, 1983); Alaska Public Employees Ass'n and City of Fairbanks, DOLLRA Decision & Order No. 88-1 (Mar. 23, 1988); IBEW Local 1547 v. City of Fairbanks, DOLLRA Decision & Order No. 86-8 at 3 (Sept. 16, 1986); Pertaining to RC-A83-1, DOLLRA Decision & Order No. 84-1 (Aug. 29, 1984). A requirement that

supervisors be separated from nonsupervisors in political subdivisions could result in unnecessary fragmentation. True authority in city government generally rests at the uppermost levels. The interests of middle level supervisors can be consistent with and not conflict with those supervised. Alaska Public Employees Ass'n and City of Fairbanks, DOLLRA Decision & Order No. 88-1 at 4. If the record does not reveal any conflicts and other factors support the conclusion that the unit is appropriate, grouping supervisors with nonsupervisors in the same unit can be appropriate.

The evidence in this case establishes the existence of a small group of high level managers that report directly to the city manager, attend key meetings, make policy, and direct operations in the various departments at the city and hospital. These managers are not eligible for overtime and are the key members of the city manager's management team. They do not share a community of interest with the stipulated unit. Of the four positions in dispute, only the fire chief falls in this category and therefore is not an appropriate member of the unit.

#### A. Fire Chief

The fire chief is responsible for public protection in the City of Cordova in three areas -- fire fighting, search and rescue, and emergency medicine. He has substantial budget responsibility. He attends staff meetings and meets frequently with the city manager. He trains and supervises 40 volunteer fire fighters. His participation at the highest level of management is an important factor establishing that the fire chief's interests are not in community with the general rank and file of City employees. In addition, as with other key managers, he is not eligible for overtime.

#### B. Building Services Manager

The hospital building services manager supervises six employees, but the overwhelming majority of the manager's time is spent in the actual work of maintaining the building and its machinery. He is paid on an hourly basis and is eligible for overtime. He does make recommendations regarding promotion, termination, and hiring, but ultimate authority rests with the hospital administrator who exercises independent judgment. The current manager was chosen by his group to represent them in an employee committee. His community of interest appears to be with the stipulated unit rather than the excluded managers. The building services manager is an example of a middle level manager who can appropriately belong to the same bargaining unit as nonsupervisory employees.

#### C. Police Captain

The position of captain of police currently is vacant and is being covered by the police chief. The position is responsible to implement rather than make policy on public safety. The captain supervises the patrol officers and the community safety officer. Ultimate authority rests with the city manager and the police chief has intervening authority. The captain does not attend staff meetings or meet with the city manager on a regular basis. In addition, the captain is eligible for overtime. Accordingly, the captain is an appropriate member of the bargaining unit.

#### D. Chief Dispatcher

The chief dispatcher supervises and trains the dispatchers and is responsible for scheduling. The position also has substantial clerical responsibilities for the public safety department. The position fills in for the dispatchers when the need arises. This position implements rather than makes policy and is a middle level manager and an appropriate member of the bargaining unit.

In sum, on the basis of the factors listed in AS 23.40.090, we find the fire chief not appropriate for inclusion in the unit. On the other hand, the evidence establishes that the remaining three disputed employees are appropriate members of the proposed unit.

#### Conclusions of Law

1. The Alaska Labor Relations Agency has jurisdiction under AS 23.40.100 and City of Cordova Ordinance No. 686 over the petition for certification as bargaining representative filed by the Alaska Public Employees Association.

2. The building services manager, the chief dispatcher, and the captain of police share sufficient community of interest, wages, hours, and other working conditions with other employees in the unit proposed by the APEA to be appropriate members of that unit under AS 23.40.090.
3. The fire chief is an upper level manager and, because of his responsibilities, he does not share sufficient community of interest or other factors with the proposed members of the bargaining unit to be an appropriate member of the unit under AS 23.40.090.
4. The bargaining unit consists of all City and Cordova Community Hospital employees except those named in paragraph 7 above and the fire chief. This bargaining unit constitutes an appropriate unit under AS 23.40.090.

## **ORDER**

The bargaining unit described herein is appropriate and the election shall proceed under AS 23.40.100 and the regulations.

### **THE ALASKA LABOR RELATIONS AGENCY**

Darrell Smith, Board Chairman

B. Gil Johnson, Board Member

H. O. Williams, Board Member