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INTERNATIONAL BHD. OF ELEC.)
WORKERS, LOCAL 1547,)
 Petitioner,)
)
vs.)
)
THOMAS BAY POWER AUTHORITY,)
 Respondent.)
)

Case No. 92-043-RC

DECISION AND ORDER NO. 145

This case was argued on August 11, 1992, before the Alaska Labor Relations Agency, with Chairman Gil Johnson and board member Darrell Smith and with board member James Elliott participating on the record. Hearing Examiner Jan Hart DeYoung presided. The record closed on August 11, 1992.

Appearances:

William F. Morse, Associate General Counsel, for petitioner International Brotherhood of Electrical Workers, Local 1547; and Parry Grover, Davis Wright Tremaine, for respondent Thomas Bay Power Authority.

Digest:

Acting to reject the Public Employment Relations Act more than one year after a local government had the capacity to reject it is untimely and ineffective.

DECISION

In this case the International Brotherhood of Electrical Workers challenges a power authority commission's rejection of the Public Employment Relations Act (PERA) by motion and order at a meeting held eighteen years after passage of PERA and five years after the power authority began operations. It argues that the attempt to "opt out" of PERA was ineffective for several reasons. Most persuasive is the argument that the Agency's decision in International Union of Operating Engineers v. City of Kotzebue, ALRA Decision & Order No. 140 (May 28, 1992), controls. The Agency held in Kotzebue that a delay of three and one half years between the enactment of PERA and its rejection was unreasonable and that the delay invalidated the "opt out." We find that decision controlling here.

Statement of Facts

(Per Parties' Stipulation)

1. The Thomas Bay Power Authority (TBPA) is responsible for the management and operation of the Tyee Hydroelectric Project (Tyee Project). The TBPA is the joint creation of the cities of Wrangell and Petersburg. The Tyee Project was constructed and is owned by the Alaska Energy Authority (AEA), which was formerly known as the Alaska Power Authority.

2. The Tyee Project is located approximately 40 miles east-southeast of Wrangell, Alaska, and consists primarily of the following facilities: all lands constituting the project areas and enclosed by project boundary; a tunnel from Lake Tyee; a powerhouse on the south side of the Bradfield River Valley and a switch plant adjacent to the powerhouse; and a 138-KV transmission system, approximately 81 miles long, to the cities of Wrangell and Petersburg.
3. On June 30, 1986, the Alaska Power Authority and the cities of Wrangell and Petersburg entered into an agreement authorizing TBPA, as the joint agency of the two cities, to operate and maintain the Tyee Project. Ex. A. As of June 30, 1986, the primary responsibility for management and operation of the Tyee Project passed to TBPA.
4. TBPA's workforce is employed at two locations. The generation foreman and two operators are employed at the Tyee Project site on Bradfield Canal. This remote site is accessible only by aircraft and boat from the two cities it serves. The Tyee Project site employees are primarily responsible for operation and maintenance of the hydroelectric facilities there. A senior dispatcher, a lead dispatcher and two dispatchers are employed by TBPA in Wrangell. The dispatchers are responsible for monitoring the electric power demands of the cities of Wrangell and Petersburg and providing the needed power. The dispatchers and the TBPA manager work in space provided in the City of Wrangell electric utility building. Ex. B.
5. By special election on July 30, 1974, the voters of the City of Wrangell amended the city charter to include Section 12-3. On December 10, 1974, pursuant to charter section 12-3, the Council of the City of Wrangell passed Ordinance No. 324, which created the Thomas Bay Power Commission (Commission) and codified provisions relevant to the Commission as WMC 03.90.010 -- 03.90.040. The council has amended those provisions several times. The current provisions are codified as WMC 03.90.010 -- 03.90.060. Wrangell City Charter § 12-3 & WMC 03.90.010 -- 03.90.060, Ex. C.
6. The City of Petersburg has adopted a charter and a series of ordinance provisions relevant to the Commission. Petersburg Charter § 17.3 & PMC 03.68.010 -- 03.68.150, Ex. D.
7. The councils of the cities of Wrangell and Petersburg passed a series of resolutions and ordinances related to construction of the Tyee Project and transfer of operation and management of the Tyee Project to the Commission. Ex. E & F.
8. The Commission is a body of seven persons authorized to run the TBPA. The Commission is composed of three members appointed by the respective councils of the cities of Wrangell and Petersburg. One of the appointees from each of the cities must be the superintendent of the city's electric utility. The seventh member of the Commission is chosen by the other six members.
9. The respective municipal ordinances authorize the Commission to establish rules of procedure and in the absence of any such rules requires meetings to be conducted pursuant to Robert's Rules of Order, revised in 1972. As of its April 24, 1991, meeting, the Commission had not adopted procedures and therefore meetings are run according to Robert's Rules of Order.
10. The City of Wrangell opted out of the Public Employment Relations Act (PERA) on April 10, 1973, pursuant to City of Wrangell Resolution 4-73-1. Ex. G. The resolution has not been revoked and is still in full force and effect. City of Wrangell employees are not represented by any labor organization, including the City's electric utility workers. Wrangell electric utility employees work out of the same facility used by the TBPA's dispatchers and manager.
11. Early in 1973, employees of the City of Petersburg Light & Power Plant began discussing the possibility of joining a union. As a result, in March of 1973, the entire eight-man workforce signed cards authorizing the International Brotherhood of Electrical Workers, Local 1547, to act as its collective bargaining representative. In April 1973, aware that these employees had authorized the IBEW to represent them, the Petersburg City Council passed a resolution purporting to exempt the City from the provisions of PERA. The Alaska Supreme Court held the attempted opt-out to be invalid. See State of Alaska v. City of Petersburg, 538 P.2d 263 (Alaska 1975).
12. The City of Petersburg has since recognized other bargaining units of its employees. Those units and their

representatives are subject to the Public Employment Relations Act.

13. In the last months of 1990 and early 1991, the Commission directed its attorney to overhaul its personnel rules. The Commission took that action because of an employee disciplinary matter that arose in July 1990. It learned TBPA's existing personnel rules were inadequate in several respects. In the course of that review, its attorney recommended that the Commission consider opting out of the PERA. The personnel rules were revised as requested by the Commission. TBPA Personnel Rules, Ex. H.

14. The Commission's practice is to publish public notice of the date, time and place of its meetings in both communities it serves. To that end, the agenda for the Commission's April 24, 1991, regular meeting was posted in the Wrangell City Hall, the Wrangell Post Office and in the front window of the Wrangell Sentinel, the local newspaper. Similarly, the agenda was posted in the Petersburg City Hall, the Petersburg Post Office and the offices of Petersburg Light & Power. Public notice of the April 24 meeting was given in this manner for three or more days before the meeting. Additionally, notice of the meeting was given by public radio broadcast and via the "scanner" cable television channels available in Wrangell and Petersburg. Commission Agenda (April 24, 1991), Ex. I.

15. The Commission convened its regular monthly meeting in open session on April 24, 1991, at 9:00 a.m. at the Wrangell Council Chambers. The meeting was open to the public, including any TBPA employees not on duty at that time. After addressing preliminary matters and pursuant to agenda item number 5, the Commission went into executive session to review a letter from its attorney regarding PERA and to receive advice of counsel. The Commission took no action in executive session. Upon returning from executive session, the Commission added the question whether to opt out of PERA to its agenda as item 9D under category "New Business." The Commission then addressed other matters on its agenda. Ex. M.

16. Later in the April 24 Commission meeting, after addressing other new business, a motion was made and seconded to opt out of PERA. Members of the Commission discussed the motion in open session and responded to comments from the Wrangell City Clerk who also was in attendance. At the conclusion of the discussion, the Commission voted unanimously to opt out of PERA. Neither the Commission, the TBPA manager, nor its counsel had any knowledge of actual or incipient union organizing activities among TBPA employees at that time. Id.

17. The Commission had not discussed opting out of PERA before the April 24 meeting. The Commission did not give written notice to its employees, the public, or the communities or city councils of Wrangell and Petersburg that it intended to consider opting out of PERA at that meeting. The topic of the possible opt out was not listed on the agenda for the April 24, 1991, meeting prior to that meeting. Minutes of the Commission's January, February, March, and April 1991 meetings, Ex. J -- M; meeting transcript April 24, 1991, Ex. S.

18. Employees of the Alaska Energy Authority enjoy the rights guaranteed to employees of public employers under PERA.

19. On July 10, 1991, the IBEW, Local 1547, submitted a Petition for Certification of Representative for a unit of employees of TBPA, described as:

Included: All employees of the employer at its Wrangell control center and the Tyee Hydroelectric facility at Bradfield Canal, inclusive of dispatcher, lead dispatcher, operator/mechanic, operator, and generations foreman.

Excluded: office clerical employees, administrative employees, professional employees and guards.

Ex. N. TBPA did not receive notice of the Petition until early August 1991. This Petition was TBPA's first notice of employee interest in possible representation by a labor organization. TBPA notified the Alaska Labor Relations Agency by letter dated August 19, 1991, that it objected to the Agency's jurisdiction because it previously opted out of PERA. Ex. O.

20. In November 1991, the IBEW and TBPA entered into an "Agreement for Consent Election by Mail Ballots." The agreement was approved by the Agency. The parties agreed to proceed with a consent election while reserving the right

to later resolve whether the Agency had jurisdiction over the TBPA. Ex. P.

21. The mail ballot tally was conducted on December 30, 1991, and on January 6, 1992, the Agency certified that the IBEW received the majority of the votes cast in the election. Ex. Q.
22. On February 17, 1992, the TBPA gave timely notice that it intended to pursue its claim that TBPA had timely opted out of the PERA and that the Agency therefore lacked jurisdiction over TBPA to conduct a representation election. Ex. R.
23. If the seven members of the proposed unit were employed by the City of Petersburg to do the same work they do for TBPA, those seven could be included properly in the bargaining unit described in paragraph 11, which is represented by the IBEW, subject to an election or accretion proceeding initiated for that purpose.

Conclusions of Law

1. This Agency has jurisdiction under AS 23.40.100 to consider the issue of a challenge to a political subdivision's attempt to reject the Public Employment Relations Act under section 4, ch. 113, SLA 1972.
2. Section 4, ch. 113, SLA 1972 provides:

This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.
3. The Public Employment Relations Act (PERA) applies absent an affirmative act to reject it. Alaska v. City of Petersburg, 538 P.2d 263, 268, 89 L.R.R.M.(BNA) 3095, 3098 - 3099 (Alaska 1975).
4. In International Union of Operating Engineers v. City of Kotzebue, ALRA Decision & Order No. 140 (May 28, 1992), this Agency held that a political subdivision subject to the Public Employment Relations Act must act promptly and diligently under section 4, ch. 113, SLA 1972 to exercise its rights under that section, relying upon Anchorage Municipal Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575, 579, 108 L.R.R.M.(BNA) 2255, 2260 (Alaska 1980).
5. In Kotzebue, the City had enacted an ordinance rejecting PERA in March of 1976, three years and nine months after PERA was signed into law and three years and six months after PERA's effective date.
6. In this case, the cities of Wrangell and Petersburg jointly created the Thomas Bay Power Commission to run the Thomas Bay Power Authority in 1974. TBPA assumed management and operation of the Tyee Hydroelectric Project from the Alaska Power Authority on June 30, 1986. The Commission did not take any steps to reject or "opt out" of PERA until April 24, 1991. The delay between PERA's effective date and the Commission's action is 20 years. However, while the Commission was created in 1974, it did not begin actual operations until 1986, when it undertook management of the Tyee Hydroelectric Project. The period between the date TBPA began operations and the date it acted to reject PERA is the period relevant for determining whether the political subdivision acted promptly and diligently under section 4, ch. 113, SLA 1972. See Anchorage Municipal Employees Ass'n, 618 P.2d at 576, 108 L.R.R.M.(BNA) at 2257 (Municipality of Anchorage adopted opt out ordinance one month after it was created through unification of Greater Anchorage Area Borough and City of Anchorage). A delay of approximately four years and nine months exceeds the delay this Agency found unreasonable in Kotzebue. A political subdivision should be able within one year after it commences operation and hires employees to develop its employment and labor policies, including making and exercising a decision to opt out of PERA under section 4, ch. 113, SLA 1972.
7. The attempt of the Thomas Bay Power Commission to reject the application of PERA is ineffective and PERA therefore applies.
8. Our decision makes it unnecessary for us to reach the municipal law or other issues raised in this case.

ORDER

1. The Thomas Bay Power Authority's objection to the International Brotherhood of Electrical Workers' representation petition is DISMISSED.
2. The certificate of election dated January 5, 1992, certifying the International Brotherhood of Electrical Workers, Local 1547, as the exclusive representative of the unit of Thomas Bay Power Authority employees, more particularly described as

All employees of the employer employed at its Wrangell, Alaska, control center and at the Tye Hydroelectric Facility on Bradfield Canal, including the dispatcher, lead dispatcher, lead dispatcher, operator, operator/ mechanic and generations foreman, is AFFIRMED.

THE ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Board Chairman

James W. Elliott, Board Member

Darrell Smith, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court brought by a party in interest against the Agency and all other parties to the proceedings before the Agency, as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of International Bhd. of Elec. Workers, Local 1547 v. Thomas Bay Power Authority, Case No. 92-043-RC, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 25th day of November, 1992.

Norma Wren

Clerk Typist IV

This is to certify that on the 25th day of November, 1992, a true and correct copy of the foregoing was mailed, postage prepaid to

William F. Morse, IBEW

Parry Grover, Thomas Bay Power Authority

Signature