

**ALASKA LABOR RELATIONS AGENCY
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TEAMSTERS LOCAL 959,)
)
 Petitioner,)
)
 vs.)
)
 CITY OF WHITTIER,)
)
 Respondent.)
)
 _____)
 CASE NO. 93-140-RC)

DECISION AND ORDER NO. 151

This matter was heard on October 26, 1992, in Anchorage, Alaska, before the Alaska Labor Relations Board, Chairman B. Gil Johnson and member James Elliott, with Hearing Examiner Jan Hart DeYoung presiding. Darrell Smith did not participate. The record closed on October 26, 1992.

Appearances:

Randall G. Simpson and James A. Gasper, Jermain, Dunnagan and Owens, for petitioner Teamsters Local 959; and Gary Williams, City Manager, for respondent City of Whittier.

Digest:

Under AS 23.40.090, based on such factors as community of interest and the prohibition against fragmenting bargaining units, the unit appropriate for collective bargaining in the City of Whittier includes all permanent employees of the City of Whittier, including the public works director, harbormaster, physician's assistant, and the librarian, but excludes the city manager, city clerk, finance director, police chief, and seasonal workers.

DECISION

Findings of Fact

1. On September 8, 1992, the Teamsters Local 959 filed a representation petition to be certified as the collective bargaining representative for all employees of the City of Whittier except the city manager, city clerk, finance director, and police chief. Seasonal workers were included in the original petition.
2. Upon investigation, the Alaska Labor Relations Agency determined that a question of representation existed for all employees meeting the definition of employee in 2 AAC 10.220(b)(2)(A) by receiving vacation and retirement benefits. Seasonal workers, however, do not receive vacation and retirement benefits and, therefore, do not meet the definition of employee in 2 AAC 10.220(b)(2)(A). The Teamsters concurred in their removal from the proposed unit. The Agency found that the Teamsters satisfied the requirement of a 30 percent showing of interest among the members of the proposed bargaining unit, as amended.
3. On October 6, 1992, a notice of petition for certification of employee representative was posted at work sites in the

City of Whittier.

4. On October 12, 1992, the City of Whittier objected to the composition of the unit proposed. The City objected to the inclusion of four employees who were department heads under service agreements with the City -- director of public works, physician's assistant, librarian, and harbormaster.
5. On October 14, 1992, the Agency issued a prehearing order and notice of hearing, providing notice of a hearing on October 26, 1992. The parties filed prehearing briefs and at the hearing presented evidence in the form of exhibits and witness testimony.
6. The director of public works is also known as the shop foreman. Job description, Exh. 12, p. 6, Exh. F. The position currently is occupied by John Labowe, who works under a service agreement. Exh. 4. Three employees work in the shop in addition to Labowe. His job duties include overall planning and policy direction of the public works department; design, construction, maintenance, and operation of public works projects; and coordination with other departments, employees, and government agencies under the general direction of the city manager. Exh. 12, p. 6, Exh. F. Labowe has the authority to settle grievances and suspend, but he does not have independent authority to employ, promote, transfer, or discharge.
7. The physician's assistant, Myra Jones-Wood, is responsible for the City's medical clinic. The City has no licensed nurses or physicians. The physician's assistant participates in patient planning; evaluates patients and documents her observations; operates equipment, such as x-ray equipment; discusses treatment plans and preventive health care; and supervises nonphysician health care personnel, as needed. Job description, Exh. 12, p. 4, Exh. E. Jones-Wood works with a receptionist-bookkeeper, Nancy Davidson. Davidson, who has seen Jones-Wood's paycheck, testified that it was similar to hers in the manner of pay and the vacation and other benefits provided. Davidson works 15 hours per week and another person works the remaining 25 hours of the receptionist- bookkeeper's obligations. No other employees work in the medical clinic. Jones-Wood is the first level supervisor for the receptionist-bookkeeper. She can suspend or settle first level grievances but she does not have independent authority to employ, promote, transfer, or discharge.
8. The librarian, Terry J. Bender, testified that one person works for her. She hires this person from a casual hire list. The librarian's job duties include operation of the library for the public, maintaining an inventory of the collection, planning and acquisition of new materials, assisting library patrons, preparing the budget, and keeping the facility clean and orderly. Job description, Exh. 12, p. 8, Exh. H. The librarian does not settle grievances, fire, or suspend. She does not participate in policy development. She does not know City secrets or confidences. The librarian works under a service agreement that sets forth her benefits and pay. Exh. 2. She is a part time (20 hour) employee; she receives retirement and holiday pay; and she accrues sick and vacation leave. Because she is half-time, she accrues these benefits at half the rate of full-time employees.
9. The harbormaster heads the largest City department. There are six employees in the department. The current harbormaster is Douglas Bolle, working under a service agreement. Exh. 5. One of the harbor officers that works for Bolle is Matthew Sayen. He testified that he had worked for the City as a harbor officer for three and one half years as a summer hire and three years as a permanent hire. The harbormaster's job description describes the duties and responsibilities of that position to be the supervision and administration of all harbor operations and staff. Specifically, the duties are overseeing harbor expansion, piloting rescue vessels, proposing the budget, controlling mooring and assigning berths for all vessels, operating radios, enforcing the harbor code, directing maintenance and repair of the facility by subordinates, and safety and emergency training. In personnel matters, the harbormaster has authority to settle grievances and suspend. He does not have authority to employ, promote, transfer or discharge. The harbormaster may make recommendations, but ultimate authority rests with the city manager.
10. The four positions work under service agreements. The purpose of the service agreements was contested. Regardless of the purpose, the agreements appear to be fairly standard employment contracts setting forth the terms and conditions of employment and the reciprocal responsibilities of the City and each employee. See Exhs. 2 & 3--6.

Conclusions of Law

1. The Alaska Labor Relations Agency has jurisdiction under AS 23.40.090 to determine the appropriate unit for

purposes of collective bargaining.

2. AS 23.40.090 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 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.

4. The community of interest and working conditions of the director of public works (also called "shop foreman"), physician's assistant, librarian, and harbormaster are similar to those of other City employees. The existence of a service agreement does not distinguish them materially from other workers. All of the employees accrue sick leave and vacation and retirement benefits. It is not the label attached to the position, but rather the work performed that is important in evaluating community of interest.

5. Service agreement employees are not independent contractors exempt from the Public Employment Relations Act. The four positions are public employees under AS 23.40.250(6) and 2 AAC 10.220(b)(2)(A).

6. The four positions do not possess five of the six supervisory functions that would make it appropriate to distinguish them from the rank and file employees under 2 AAC 10.220(b)(3), which defines "supervisory employee."

7. We find the similarities outweigh the differences and conclude that the four positions share a community of interest with other City employees.

ORDER

1. The objection of the City of Whittier to including in the bargaining unit the director of public works, harbormaster, physician's assistant, and librarian is DENIED;

2. The appropriate unit is comprised of all permanent employees of the City, including the director of public works, harbormaster, physician's assistant, and librarian but excluding the city manager, city clerk, finance director, police chief, and seasonal workers.

3. The election shall proceed under AS 23.40.100 and the regulations.

ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Chairman

James W. Elliott, Board Member

NOT PARTICIPATING

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 Teamsters Local 959 v. City of Whittier, Case No. 93-140-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 3rd day of December, 1992.

Norma Wren

Clerk IV

This is to certify that on the 3rd day of December, 1992, a true and correct copy of the foregoing was mailed, postage prepaid to

James Gasper

Gary Williams

Signature