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ALASKA GATEWAY EDUCATION)
SUPPORT PERSONNEL,)
)
Petitioner,)
)
vs.)
)
ALASKA GATEWAY SCHOOL DISTRICT,)
)
Respondent.)
_____)
CASE NO. 93-135-UC)

DECISION AND ORDER NO. 154

This matter was heard on November 4, 1992, in Anchorage, Alaska, before the Alaska Labor Relations Agency, Chairman Gil Johnson and board member James W. Elliott, and with Jan Hart DeYoung, presiding. Member Darrell Smith participated on the record. The record closed on November 4, 1992.

Appearances:

Robert Johnson, Wohlforth, Argetsinger, Johnson & Brecht, PC,

for petitioner Alaska Gateway Education Support Personnel; and Howard S. Trickey, Jermain, Dunnagan and Owens, for respondent Alaska Gateway School District.

Digest:

The superintendent/board executive secretary assists and acts in a confidential capacity to the superintendent, who formulates, determines, and effectuates management policies in the area of collective bargaining. As such the secretary should be excluded from the general classified bargaining unit of classified employees at the school district.

DECISION

Findings of Fact

1. Alaska Gateway Education Support Personnel Association (AGESP) is the recognized bargaining representative of approximately 50 full and part-time classified employees of the Alaska Gateway School District. Agreement § 107 (June 1990 -- December 1992), exh. 1.
2. During negotiations for the June 1990 -- December 1992 agreement, the parties agreed to exclude the secretary to the superintendent from the bargaining unit, reserving the right to AGESP "to challenge the status of that position after July 1, 1991." Id. Gayle Pierce, spokesperson for AGESP during the negotiations for the 1990 -- 1992 agreement, stated that the parties in negotiations agreed to defer the question of the inclusion of the superintendent's secretary in the unit to the PERA.

3. Before the parties negotiated the June 1990 -- December 1992 contract, bargaining with the classified employees had been only on a meet and confer basis.
4. The present occupant of the position, Alissa Bustillo, did not testify at the hearing and whether she desires to be in the unit is unknown.
5. District superintendent Spike Jorgensen described the duties the secretary to the superintendent performs. He states that he believes that she splits her time evenly between secretarial and executive duties. The executive duties are those unique to her position as the "superintendent/board executive secretary." Jorgensen stated that about half of the duties listed on the job description are executive duties. More specifically, Jorgensen stated that Bustillo was gathering salary data to prepare for negotiations, providing information about bargaining to the board members and collecting board member input. She also records the board members' executive sessions. Jorgensen compared Bustillo's role in personnel matters to that of a personnel officer although she had no previous experience as a supervisor or in personnel or labor relations matters until her work as superintendent/board executive secretary. To prepare for her duties Bustillo has attended the school board association's training on negotiations. Jorgensen stated that, since classified employees are represented as a unit and bargain collectively, he is relying more on the executive secretary to do research and collect information for negotiations.
6. The current job description for the position "superintendent/board executive secretary" includes a list of 14 duties, including:
 1. Will be the recipient of certain confidential information in the transaction of District business and must be able to maintain the integrity of such information. Responsible for attending and keeping necessary records of all Board sessions, including executive sessions. Organize confidential record keeping systems, including those matters related to collective bargaining and other confidential matters of the Board and Superintendent.
 2. Initiate necessary action and notification in processing grievance matters or other collective bargaining issues. Develop, at Board and Superintendent's direction, technical reports for State and Federal compliance, correspondence, bargaining proposals, etc.

Exh. 3, p. 3. An earlier version of the job description did not contain these two provisions. Exh. 3, p. 2. Other duties described include organizing and maintaining filing systems for the superintendent's office, legislative materials, policy development and implementation materials, official records, and personnel records; typing; attending board meetings and preparing and transcribing minutes; organizing and hostessing district inservices; ordering supplies and equipment; charting, planning, recording, and filing curriculum materials; developing agendas; initiating and carrying out computer research; knowledge and application of modern technology; initiation and supervision of projects and development of "skills in English language, collective bargaining, personnel work and other areas specified above." Exh. 3, p. 3.

7. Jon Landroche, President of AGESP, testified about the duties of the superintendent/board executive secretary. He stated that he had been on the AGESP negotiating team and the superintendent's secretary had not participated at negotiations. He did not believe that she participated in a policy role. He did not know what role she might have in collecting information for the negotiators.
8. The position of superintendent/board executive secretary compares to the positions of school secretary and administrative secretary, which are in the AGESP bargaining unit, with some differences apparent from the job descriptions. One difference between the school secretary, on the one hand, and the administrative and superintendent/board executive secretaries, on the other, is the work the school secretary performs with students and student records. Another difference is that the administrative and superintendent's secretaries are located in the administrative offices, while the school secretaries work in a school. In addition, the administrative and superintendent's secretaries are expected to work evening hours. Exh. 1 & exh. 3, p. 3. A similarity is the pay. All of these positions are paid on an hourly basis. The pay level of the administrative and superintendent's secretaries is level 8. Pay for the school secretary ranges between 5 and 7, depending on the school. The critical difference, which distinguishes the superintendent/board executive secretary from all other secretaries, is the assignment of duties related to assisting or supporting management in labor relations matters.

9. In addition to secretarial positions, the AGESP bargaining unit includes teacher aids, custodial workers, and the accounting department.
10. On July 21, 1992, the AGESP filed this petition for unit clarification, seeking to include the secretary to the superintendent in the bargaining unit. The Agency required additional information, which was received by the Agency on July 28, 1992.
11. On November 4, 1992, a hearing was held before the Alaska Labor Relations Agency, at which the parties presented testimony and other evidence.

Conclusions of Law

1. The Alaska Gateway School District is a public employer under AS 23.40.250(7), as amended sec. 7., ch. 1, SLA 1992.
2. The Alaska Labor Relations Agency has jurisdiction of this petition for unit clarification and the authority to determine the appropriate unit for collective bargaining under AS 23.40.090, which 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 unnecessary fragmenting shall be avoided.
3. The Alaska Gateway Education Support Personnel (AGESP) has the burden of proof under 2 AAC 10.430 to "prove the truth of each element necessary to his cause by a preponderance of the evidence."
4. In State of Alaska bargaining units, confidential employees may not be combined with other employees. 2 AAC 10.110(a)(2).
5. "Confidential employee" is defined in 2 AAC 10.220(b) as an employee who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the area of collective bargaining. The term "confidential employee" shall be narrowly construed.
6. While the restriction against combining confidential and other employees in a unit in 2 AAC 10.110(a)(2) does not apply to nonstate bargaining units, the reasons underlying the restriction are appropriate to consider in nonstate cases when examining the question of community of interest. An employee acting in a confidential capacity to a key manager involved in labor relations matters has access to management bargaining strategy and would be subject to conflicting loyalties if also a member of the bargaining unit. The superintendent testified about the role the position plays in labor relations, specifically bargaining. Bustillo is present as the recorder during board meeting executive sessions in which confidential labor matters are addressed. She assists District negotiators by collecting and preparing information for bargaining. While a per se restriction such as the one in 2 AAC 10.110 is too inflexible for the smaller public employers, in most cases the Agency will be guided by the restriction and find that confidential employees do not as the usual rule belong in bargaining units with nonconfidential employees.
7. Whether or not the secretary to the superintendent engages in the actual formulation of labor relations policy, she certainly assists and provides information to those formulating policy in a manner that requires that she be excluded from the bargaining unit. These duties separate the position from other classified employees at the District and we conclude that the position does not share a community of interest with other classified employees under AS 23.40.090.
8. By removing this position from the unit, we do not mean to imply that the holder of the position is untrustworthy. The test that we apply here is an objective one. The existence of conflicting interests, not the existence of actual self-dealing, is the test to be applied.

9. This position should remain excluded from the AGESP bargaining unit.

ORDER

The secretary to the superintendent is not included in the bargaining unit represented by Alaska Gateway Education Support Personnel Association. The petition to clarify the unit to include the position is DENIED and DISMISSED.

ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, 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 Alaska Gateway Education Support Personnel v. Alaska Gateway School District, ALRA case no. 93-135-UC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 26th day of February, 1993.

Norma Wren

Clerk IV

This is to certify that on the 26th day of February, 1993, a true and correct copy of the foregoing was mailed, postage prepaid, to

Robert Johnson

Howard Trickey

Signature