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INTERNATIONAL UNION OF)
OPERATING ENGINEERS, LOCAL 302,)
Petitioner,)
)
vs.)
)
CITY OF KOTZEBUE,)
)
Respondent.)
_____)
Case No. 91-023-RC & 91-035-RC (Consol.)

DECISION AND ORDER NO. 167

This case was heard on August 3, 1993, before the Alaska Labor Relations Agency, with Chair Alfred L. Tamagni, Sr., and with Board Member James W. Elliott, participating by telephone, and Board Member Darrell Smith, participating by review of the record. Hearing Examiner Jan Hart DeYoung presided. The record closed on August 3, 1993.

Appearances:

Scott Vaughn, field representative, for petitioner International Union of Operating Engineers, Local 302; and Jerald M. Reichlin, attorney, for respondent City of Kotzebue.

Digest:

A city in a remote and evolving part of the state acted promptly and effectively to reject the Public Employment Relations Act under section 4, chapter 113, SLA 1972, when it acted within approximately four months of its reasonable discovery of the option to reject PERA.

DECISION

This is the second time this case is before the Agency, and again, the issue is the effectiveness of the City Of Kotzebue's attempt to reject the Public Employment Relations Act under section 4 of the legislation adopting PERA, ch. 113, SLA 1972. In the first case the Agency determined that, by delaying four and one half years after the enactment of PERA before adopting its ordinance, the City did not act promptly and the ordinance was thereby ineffective to reject PERA. On appeal the superior court found that the Agency did not consider adequately the circumstances existing at the time in Kotzebue and remanded the case for further fact finding "to make a determination whether, under the facts and circumstances of the time, the City acted in a timely manner."

The Agency first considered this matter on stipulated facts. Those facts were supplemented at the hearing conducted on August 3, 1993.

Statement of Facts

1. William Goodwin, Jr., currently mayor of the City of Kotzebue, has been a member of the Kotzebue City Council since 1972, with the exception of the years between 1974 and 1976. He testified about conditions in Kotzebue around the time of PERA's adoption in 1972.

2. The City adopted in 1971 a Comprehensive Development Plan. It addressed City needs, such as water and sewer, communications, and land use. The plan's abstract states:

> Kotzebue is a developing Native community of 200 people[1] and the regional center of Alaska's Arctic Northwest. Most of its residents are Eskimo. In general, they are poor and poorly housed, with limited educational and employment opportunities. Although the community's needs are great and urgent, its public and private resources are slender.
>
> The City's economic base is weak and of uncertain promise for the future. The Region's mineral potential is suspected to be great, but development has not yet materialized. In the past, the region and its development needs have been relatively neglected by State and federal governments. State and federal leadership, particularly in the fields of transportation and resource development, are critically needed to strengthen the Region's economy.
>
> This plan is specifically geared to Kotzebue and its social and governmental setting. Upgrading of housing and basic community services is stressed. Particular emphasis is also put on the need for increased local-State-federal coordination for effective community and regional development and for greater local self-determination.

Comprehensive Development Plan, Exh. A, at i (March 1971).

3. Resources to communicate to and from Kotzebue were minimal compared to those available in urban areas of the state. See Exh. 4 (comparison of Alaska telephone systems in early '70s). Media serving the City in 1972 included one newspaper, the Fairbanks News Miner and television, taped some weeks earlier in Seattle. The community did not have local news or a radio station, although persons with a wired antenna might pick up radio transmission from other cities.

4. Although many residents had telephones,[2] only four long distance lines served the City in 1972. Goodwin remembered long delays of one-half to one hour waiting to use a line to call outside of Kotzebue.

5. The Comprehensive Development Plan addresses communications, Exh. A, at 77:

> In an era when most Americans accept instant communication across continents as a fact of life, they are hardly ever reminded that it is not a fact of life at all. Kotzebue has no local radio station, no local newspaper, no television and very limited telephone service. Although Kotzebue is a regional center for a dozen northwest communities, it has no reliable means of quick communication with them. People in the Kobuk Region are vividly reminded all the time that good communications is not a fact of life. They are living with a communications crisis.

. . . .

> Poor communications, and the frustrating state of political and cultural paralysis that implies, is central to the disintegrative impact of western culture on Eskimo cultural and political life. In the political realm, poor communications, within the community and beyond, hobbles efforts to mobilize and act in a timely, effective way for common purposes. At a broad cultural level, people lack the tools of communication they need to fashion out of their common wisdom and group resources their own way, as a cultural group, of responding to the opportunities and threats of change. Willy-nilly, control over their freedom and their growth slips from their hands.

6. The Comprehensive Development Plan described local government in the City by stating that Kotzebue was a fourth class city with limited powers and responsibilities. Exh. A, at 88. It did not have responsibility to finance or operate a local school system and its taxing power was limited to a general sales tax. In addition,

> The City has very few paid administrative employees, mainly a city clerk and the city police force. High turnover in these positions has hurt efficient administration, Kotzebue does not have a city manager or city

administrator. [Id.]

7. In 1969 the City's annual budget was $47,000. Exh. A, at 90. The 1972 budget was similar. Exh. F. The budget grew steadily in small increments until the late '70s when the City assumed operation of the water and sewer system from the public health service.

8. In 1972 the governing body of the City was the city council, which met in the B.I.A. school twice a month. In 1972 the question of a city manager was put before the electorate, and the first city manager, Leo Schaeffer, was appointed in December of 1972. He was the City's first full time administrator, and he was paid with revenues from a sales tax. By 1973, the City had become a second class city. Exh. 3, at 3.

9. In 1973 the City employed three or four employees. Alaska Municipal League records show more public officials for Kotzebue, see Exh. 3, but many of the positions listed are state employees or unpaid positions, such as the magistrate or volunteer fire fighters. Staffing stayed close to the 1973 level until the late '70s when the City assumed the water and sewer utility from the health service.

10. As the City provided more services, its payroll increased. The fastest period of growth was the oil boom during the early '80s.

11. Barbara Steckel was hired as city clerk in July of 1973 and served as city manager between September 1974 and March 1976. Her job duties as city clerk included keeping the minutes of council meetings, setting the council agenda, maintaining land records, maintaining city records, bookkeeping and acting as city administrator during the city administrator's absence. As city manager her duties became the overall administration of the City, including reporting to the city council, dealing with planning employees and police and fire protection, and administering grants. If a police officer were not available, she would provide security and even work as a jail guard.

12. She described sources of information available to assist with running the City -- the city attorney, the City's risk manager, professional associations, such as the city manager association and Alaska Municipal League, newspapers, and an occasional trip to the state's capitol. The City did not employ a lobbyist. It learned of legislative matters from its legislators, who provided copies of legislation affecting the community and, less consistently, statewide legislation. City officials could also learn through word of mouth, league bulletin, or the City's attorney. The City apparently did not maintain a set of state statutes.

13. Goodwin was not aware of PERA when it was adopted in June of 1972. The council did not discuss the Act or unionization. In response to the question, "Was there any discussion by the City or the employees about unionizing," Goodwin responded, "No, like I said we had only two policemen maybe two maybe most of the time just one."

14. Steckel recalled using the Alaska Municipal League course materials on labor relations. These materials were part of a correspondence course in public employment labor relations sponsored by the Alaska Municipal League and culminating in a conference on November 19, 20, and 21, 1975. M. Miller, letter to B. Steckel (Nov. 4, 1975), Exh. J; D. Berry, mem. to board (Date stamped Jan. 1976), Exh. L.

15. Extracts from the course indicate by a date stamp that they were received in Kotzebue in January of 1976. Exh. L. The extract shows that rejection of the Act was a topic of discussion at the conference. Exh. H, at 17. More specifically, the Alaska Supreme Court decision in Alaska v. City of Petersburg, 538 P.2d 263, 89 L.R.R.M.(BNA) 3095 (Alaska 1975), and its implications were addressed. Id. at 18.

16. The course materials from the Alaska Municipal League describe the opt out provision of PERA and report that "Anchorage and eleven other local governments have chosen not to be covered by its terms." Exh. G, at 6.

17. Alaska Municipal League Public Employment Labor Bulletin No. 75-1 discusses the Public Employment Relations Act and addresses the exemption provision in section 4, ch. 113, SLA 1972:

The Right to Opt Out. The Public Employment Labor Relations Act, as originally promulgated at Chapter

113, 1972 SLA, included Section 4, a provision which allowed cities and boroughs of the state, whether or not home rule, to reject application of the public employment labor relation statute to their municipalities. In that regard, Section 4 provided: "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 applied." Soon after the enactment of the statute, many municipalities within Alaska did, in fact, opt out of coverage by the act. (In at least one instance, a political subdivision that originally opted out of coverage by the act has, subsequently, elected to come back under the application of the act and submit itself to regulation by the provisions of the state act.) In those cases where municipalities have continued to regulate their own labor relations program, such regulation has been accomplished largely by municipal ordinances or resolutions or by unwritten policy directed by the respective administrative and legislative sections of the municipality. Several questions arise out of the provisions of the "opt out" section of the session laws. Specifically:

1. Why was Section 4 not published in the Alaska Statues when such statutes were promulgated and what is the effect of the failure to publish that section?

2. By what procedure must a municipality opt out?

3. Do any time limits prevail as to when a municipality may opt out or may it come and go under the act as many times as it sees fit?

4. What are the relative advantages and disadvantages of the application of the act to municipal governments in the state?

5. If a municipality desires to opt out, should the municipality enact its own legislative framework for collective bargaining?

The purpose of this discussion is not to answer the above questions. Suffice it to say that the "opt out" section of the session laws has largely been recognized throughout the state. Any exercise of the option to reject application of the act to municipality should be formalized through resolution or ordinance. Probably to be more safe, if a municipality desires to reject the application of the act to its employee relations program, the municipality should be sure that the exercise of option is by formal municipal ordinance in those cases where the charter of the municipality requires that actions which are deemed to be permanent in nature be by ordinance. While it appears that no minimum time frames were placed in the statute for exercise of the option, municipalities should not wait until after the desire for employee organization is presented to management from its employees before exercising this option. At present, one case is before the Supreme Court of Alaska involving the issue of whether a municipality waited too long to exercise its option to reject the application of the statute. On the one hand, management for that municipality argued that the state statute allowed the municipality to exercise its option at any time. The employee organization, on the other hand, argued that once employee organization had been commenced under the provisions of the statute, it was, at that time, too late for the municipality to attempt to escape the application of the statute. The case has not yet been resolved but will be reported to you when a decision is rendered by the Supreme Court. Such problem can be avoided, however, by exercise of the municipality's option at the earliest possible date if, in fact, the municipality desires to reject the application of the state statute. Each municipality has to weigh the advantages and disadvantages of application of the state statute within its own factual circumstances. Probably, however, it is safe to say that some sort of regulatory framework should exist concerning the right of employees to collectively bargain, whether that framework exists by state statute or by municipal ordinance.

Exh. N, section C.

18. To the best of Steckel's recollection, these materials prompted her inquiry to the City's attorney Grace Schaible about the opt out provision in PERA. It was Steckel's first knowledge of it and she needed to know what to do. Steckel believes that given her usual practice she would have acted soon after she received notice of the provision to opt out of PERA.

19. Schaible responded by letter dated December 31, 1975, Exh. E.

20. The agenda for the city council meeting of February 5, 1976, included a proposal for an ordinance exempting PERA, stating,

> Ordinance 76-73 exempts the City of Kotzebue from the state statute on labor relations. If we had a group of employees that wanted to organize a "union" or organization of employees, we would follow every rule, etc. of the state statute. If we pass this ordinance, we will be allowed to formulate our own ordinance when and if the time comes when the employees decide they want to organize.

Exh. B, section 1.

21. Steckel believed that, by opting out of PERA, the City could deal with its own set of circumstances if ever it had employees who wanted to organize. Steckel believed that, because of Kotzebue's location, many of the strict rules and regulations would be difficult to work with. The ordinance was not adopted to stop the employees from organizing. Its spirit was to allow the City to formulate its own ordinance, taking into account local conditions.

22. On March 4, 1976, the city council enacted Ordinance 76-73, rejecting the provisions of the Public Employment Relations Act (PERA), under the authority of section 4, chapter 113, SLA 1972. Stip. Exh. 1.

23. The ordinance preamble notes that:

> [T]here are no pending negotiations with employees of the City of Kotzebue nor is the Council aware of any intended formation of a bargaining unit within the City at the time of introduction of this ordinance.

24. In December of 1990, the City was contacted by the International Union of Operating Engineers, Local 302 (Local 302), which stated its interest in representing City employees in the Public Works Department.

25. On December 13, 1990, the City informed Local 302 that it had long ago rejected PERA and enacted a scheme of ordinances dealing with wages, hours and other terms and conditions of employment. The City's ordinances do not contain a provision for collective bargaining. Stip. Exh. 2.

26. The City offered to meet and confer with Local 302 regarding any recommendations or proposals it might have. The offer to meet and confer said that it was not recognition of any particular representative status nor was it an offer to bargain. Id.

27. Pursuant to the City's reply a meeting with Scott Vaughn of Local 302 and Caleb Pungowiyi was held in early February, 1991, at which there was discussion of union representation of City employees and employee concerns over recent City cost cutting measures including reduction of hours and layoffs.

28. On February 22, 1991, the Agency informed the City that it had received a petition from Local 302 seeking certification as the representative of the employees of the City's Public Works Department. The letter stated:

> Under 2 AAC 10.060 this Agency must verify that the Petitioner has shown that 30 percent of the permanent and probationary employees in this union want to be represented. To do so I require a certified list of the names and job classes for all employees currently employed in this unit.
>
> If, after comparing the interest cards with this list, it is determined that the petitioner has obtained the required threshold of interest, I will first notify the parties and then post notices of the petition in workplaces of the proposed unit. Please note that this notice will state that interested parties may object to the petition with the Agency within 15 calendar days from the date of posting the notice.

Stip. Exh. 3.

29. The City replied by letter of March 4, 1991, that it had rejected PERA in 1976. With regard to the authority for the Agency's verification of employees under 2 AAC 10.060, the City wrote:

> The statutory authority for this regulation is AS 23.40.170, a part of PERA. Since the City has validly opted out of PERA it is the opinion of the City of Kotzebue that the regulation has no application to the City.

The City also noted that the statute enumerating the powers, duties and functions of the Alaska Labor Relations Agency limited its authority to PERA. Stip. Exh. 4.

30. By letter of March 18, 1991, the Agency informed the City that:

> [It would] consider your correspondence as a timely objection to the Representation Petition. However, the City must file the requested employee list.

. . . .

> If the Agency determines that there is not the required showing of interest then the Agency will dismiss the petition. If this threshold is satisfied, the Agency will post the Notice of Election. The employer then has 15 days from the date of posting to file any objections to the petition or election.

. . . .

> This Agency takes the position that it has jurisdiction to review the effectiveness of a municipality's rejection, by ordinance or resolution, of the Public Employment Relations Act per section 4, ch. 113, SLA 1972.

. . . .

> If I do not receive a current employee list . . . , I will determine the showing of interest without it. I will consider any failure to provide a current employee list to be a waiver of any objection to that determination.

The Agency cited Kodiak Island Borough v. State of Alaska, Case No. 3AN-90-4512. Stip. Exh. 5.[3]

31. On May 1, 1991, the Alaska Labor Relations Agency wrote and informed the City that since it had declined to provide the Agency with an employee roster,

> [I]t has waived any right to challenge whether the petitioner has established the threshold requirement of a thirty percent showing of interest under AS 23.40.100.

Stip. Exh. 6.

32. On May 8, 1991, the Agency's letter, along with a notice of petition for certification of public employee representative and a petition for certification of public employee representative were served on Pungowiyi, the City Manager, by an Alaska State Trooper. The trooper sought to post the notice and petition in the city hall and the public works department.

33. Pungowiyi presented the Trooper with a copy of the lawsuit, City of Kotzebue v. Alaska Labor Relations Agency, Case No. 2KB-91-35 Civil (filed May 2, 1991), and refused to allow posting of the petition notice.

34. On May 8, 1991, the City filed a complaint for declaratory and injunctive relief against the Agency seeking a declaration that the Agency had no jurisdiction over the City and seeking to enjoin Agency proceedings in this action. City of Kotzebue v. Alaska Labor Relations Agency, Case No. 2KB-91-35 Civ. (filed May 2, 1991).

35. On May 10, 1991, the Agency wrote the City and stated:

> Because the City of Kotzebue has refused to allow posting, the Agency is departing from its usual procedures and is scheduling a hearing on the sole issue of the Agency's jurisdiction over the City of Kotzebue under section 4, ch. 113, SLA 1972.

Stip. Exh. 7.

36. On June 7, 1991, the International Union of Operating Engineers, Local 302, filed a representation petition, case file no. 91-035-RC, to represent the Kotzebue police department nonsupervisory personnel.

37. The Agency consolidated the two petitions on July 9, 1991, for "the purpose of resolving the jurisdictional issue that has been raised in both cases."

38. The Agency issued its Decision & Order No. 140 in this matter on May 28, 1992.

39. The City of Kotzebue appealed the Agency's decision to the superior court. City of Kotzebue v. Alaska Labor Relations Agency, Case No. 2KB-92-88 (filed June 29, 1992). The court ordered the appeal consolidated with the City's action in 2KB-91-35 on August 19, 1992.

40. The Agency conducted a mail ballot election in the two bargaining units for the City's payroll period ending August 12, 1992. Ballots were mailed to voters on September 9, 1992, and due at the Agency on September 30, 1992.

41. On September 10, 1992, the superior court ordered the Agency to "'impound the ballots and to refrain from certifying the election results or from otherwise' implementing the election results 'until further order of the court.'" Id., Mem. Decision & Order, at 2 (issued Sept. 10, 1992).

42. The superior court issued its decision remanding the matter to the Agency on November 9, 1992.

43. The Agency petitioned the Alaska Supreme Court to review the order of the superior court on November 19, 1992.

44. The Court denied the petition on January 22, 1993.

45. The Agency conducted its hearing on remand on August 3, 1993.

Discussion

In previous cases the analysis the Agency has used to review the effectiveness of an ordinance or resolution rejecting PERA under section 4, ch. 113, SLA 1972, can be described as a two-part test. The first part of the test is whether the political subdivision acted in derogation of employee rights under PERA. Kodiak Island Borough v. State, slip op. no. 3965 (June 4, 1993); Alaska v. City of Petersburg, 538 P. 2d 263, 89 L.R.R.M.(BNA) 3095 (Alaska 1975).

The second part of the test is an examination of the timeliness of the decision. The timeliness requirement has evolved into a bright line test requiring action within one year of PERA's enactment or the municipality's formation, whichever occurs later. Public Employees Local 71 v. City of Haines, Decision & Order No. 163 (July 19, 1993); International Bhd. of Elec. Workers, Local 1547 v. Thomas Bay Power Authority, Decision & Order No. 145 (Nov. 25, 1992).

The superior court in the appeal of the first decision issued in this case was not satisfied that the Agency had considered adequately its conclusion that the City did not act in a timely manner. The record before the Agency consisted of stipulated facts, which did not include any information about conditions at the City either at the time PERA was adopted in 1972 or when the City adopted its ordinance in 1976. The case therefore was remanded for additional factfinding.

The testimony and exhibits at the hearing on remand painted a vivid picture of conditions in Kotzebue and its local government at that time. In 1972 the City was an evolving community whose first interest was the provision of basic services. It was at the threshold of tremendous changes brought by the influx of oil tax revenues in the early '80s. In 1972 government presence in Kotzebue consisted principally of state and federal employees. There was little local

government and not much of a labor force to raise employment and labor relations issues. The only staff were two or so police officers and a city clerk. The City evolved to the point that now, 20 years later, petitions for representation of bargaining units in the public works and police departments affect approximately 28 employees.

The City appears first to have discovered the existence of the Public Employment Relations Act and its rights and obligations under that Act in the fall of 1975. The discovery was made by the City's second paid administrator during a course on labor relations sponsored by the Alaska Municipal League. The opportunities to have otherwise discovered the Act and its implications were few. A legislator might have sent copies of the bill to the council when it was pending in 1972 or an attorney with whom the City consulted might have advised of the law at any time. The City at this time did not retain a lobbyist or even maintain a set of state statutes. Moreover, if the City were to have acquired this information, its need to act promptly would not be apparent at a time when the City had almost no workforce.

When City Manager Steckel discovered the existence of the Public Employment Relations Act and the option to reject it on or around November of 1975, she pursued the matter with the City's attorney, and the ordinance was adopted in March of 1976. It is important to note that the City's action in rejecting PERA was independent of any organizing or other activity by the City's employees. Given conditions at the City during this time period, with few affected employees and few opportunities to discover and act on the information, the timing of the discovery and the response to it were prompt and reasonable.

Typically one year should be a reasonable time to act on the option to reject PERA. Certainly this should be true for the larger, older communities with a longer tradition of dealing with employees and personnel issues. But the facts of this case show that this time period was not adequate for the city council of Kotzebue to act. We conclude that this evolving, remote community without any administrator and staff knowledgeable in labor relations should not be held to the same standard as other more established municipalities. Because the City's actions were prompt under the circumstances and did not interfere with the exercise of rights under PERA, we believe an exception to the usual rule is reasonable and warranted in this case.

Conclusions of Law

1. This Agency has jurisdiction under AS 23.40.100 to consider the issue of a challenge to a municipality's attempt to reject PERA 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, homerule or otherwise unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

3. To effectively exercise its option under section 4, ch. 113, SLA 1972, a municipality must not interfere with employees' exercise of rights under PERA and it must act promptly and diligently. In Anchorage Municipal Employees Ass'n v. Municipality of Anchorage, the Alaska Supreme Court states:

> Nor does Petersburg set a limited time period of six months after the enactment of PERA during which the exemption must be exercised, thus precluding exemption by newly formed governments such as the Municipality which were not in existence during that period. Petersburg merely holds that a public employer which chooses to opt out of PERA must do so promptly, rather than at its leisure, and that under the facts of that case, six months was adequate time for the City to act. The decision does not deprive a newly formed municipality of the option to reject PERA, so long as it does so promptly after its formation and without interfering with the employees' exercise of their established rights. To hold, as AMEA urges, that the exemption option was only intended to be available for a limited period of time after the enactment of PERA would basically rob Section 4 of any continued validity even though it is still printed in the Alaska Statutes. Had the legislature wanted Section 4 to be of temporary duration, we think it would have so indicated.

618 P.2d 263, 579, 108 L.R.R.M.(BNA) 2255, 2259 (Alaska 1980)(emphasis added, footnote omitted).

4. The adoption of City of Kotzebue ordinance 76-73 was not in response to and did not interfere with the exercise of rights under PERA by City employees.

5. Under the usual circumstances, one year should be an adequate time period to exercise the option and would constitute prompt and diligent action. General Teamsters Local 959 v. City of North Pole, Decision & Order No. 139 (Jan. 16, 1992); International Bhd. of Elec. Workers v. City of Homer, Decision & Order No. 138, at 6 - 7 (Dec. 31, 1991), appeal dismissed Case No. 3AN-92-1095 CI (super. ct. May 21, 1992). For example, the City of Petersburg adopted its ordinance six months after the effective date of PERA. Alaska v. City of Petersburg, 538 P.2d 263, 89 L.R.R.M.(BNA) 3095 (challenge upheld). The City of Anchorage adopted its resolution rejecting PERA on August 8, 1972, one month before PERA's effective date, and the Greater Anchorage Area Borough adopted its resolution rejecting PERA in April of 1973, seven months after the effective date. Approximately one month after the merger of the city and borough in September of 1975, the newly created Municipality of Anchorage passed a resolution rejecting PERA. Anchorage Municipal Employees Ass'n v. Municipality of Anchorage, 618 P.2d at 576, 108 L.R.R.M.(BNA) at 2257 (challenge rejected). The City of Fairbanks adopted its resolution one month before the effective date of PERA -- August of 1972. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, 623 P.2d 321, 108 L.R.R.M.(BNA) 2397 (Alaska 1981) (challenge rejected). Sitka acted eleven months after the effective date. City of Sitka v. International Bhd. of Elec. Workers, Local 1547, 653 P.2d 332, 333, 114 L.R.R.M.(BNA) 2858, 2859 (Alaska 1982) (challenge rejected). In all of these cases the municipalities acted either within one year of PERA's effective date or within one year of their formation. Conversely, action after one year under ordinary circumstances would not be "prompt." See Public Employees Local 71 v. City of Haines, Decision & Order No. 163, appeal pending 1JU-93-1301-CI (filed Aug. 18, 1993); International Bhd. of Elec. Workers, Local 1547 v. Thomas Bay Power Authority, Decision & Order No. 145 (Nov. 25, 1992). See also Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993); Alaska Public Employees Ass'n v. City of Bethel, Decision & Order No. 152, at 9 (Dec. 30, 1992).

6. However, the evidence in this case demonstrates that this standard may not be appropriate for the evolving, remote community whose principal concern must be the provision of the most basic services and it justifies an exception. The evidence shows that the City acted conscientiously and diligently in adopting its ordinance to reject PERA. See Anchorage Municipal Employees Association v. Municipality of Anchorage, 618 P.2d at 581, 108 L.R.R.M.(BNA) at 2260, where the Alaska Supreme Court stated, "Although seven months may be considered untimely under some circumstances, there is nothing in the present case to indicate that GAAB acted less than conscientiously and diligently in rejecting PERA." Because its actions were conscientious and diligent, the City acted "promptly" in exercising the option to reject PERA in section 4, ch. 113, SLA 1972.

7. City of Kotzebue ordinance 76-73 is effective to reject the application of PERA and PERA therefore does not apply to the City of Kotzebue.

ORDER

1. The City of Kotzebue's objection is GRANTED.

2. The petitions of the International Union of Operating Engineers, Local 302, are DISMISSED; and

3. Thirty days after the effective date of this decision the ballots under impound from the two elections conducted in the petitions, shall be destroyed.

THE ALASKA LABOR RELATIONS AGENCY

Alfred L. Tamagni, Sr., Chair

James W. Elliott, Board Member

Darrell Smith, Board Member

Board Member Smith dissenting:

I respectfully dissent from the majority holding in this case. I am not persuaded that City of Kotzebue officials could have remained unaware of the provisions of the Public Employment Relations Act for a period of over four years. Even so, lack of knowledge of the law should not excuse the City's failure to act more promptly. Part of the responsibility of elected officials is to stay abreast of changes in the law. I would conclude that the delay of four and one half years to adopt the ordinance was not prompt action and would find the ordinance ineffective to reject the Public Employment Relations Act, as the Agency did in the initial decision in this case, Decision & Order No. 140 (May 28, 1992).

_____

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 Decision and Order No. 167 in the matter of International Union of Operating Engineers, Local 302, v. City of Kotzebue, case no. 91-023-RC & 91-035-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 6th day of December, 1993.

Victoria D.J. Scates

Clerk IV

This is to certify that on the 6th day of December, 1993, a true and correct copy of the foregoing was mailed, postage prepaid, to

Scott Vaughn, IUOE

Jerald M. Reichlin, City

Signature

1This figure must be a typographical error. 2000 residents would be more likely. The text of the comprehensive development plan places the population at 1850. Exh. A, at 8.

2The number of telephones in the community in 1973 was 121. Exh. 4, at 1.

3The appeal from this decision is reported at Kodiak Island Borough v. State, 853 P.2d 1111 (Alaska 1993).