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DAN MILLARD,)
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Petitioner,)
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vs.)
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INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL)
UNION 1547,)
Respondent,)
)
and,)
)
KODIAK ISLAND BOROUGH,)
)
Intervenor.)
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SANDRA COLLINS-JACKSON,)
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Petitioner,)
)
vs.)
)
)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL)
UNION 1547,)
Respondent,)
)
and,)
)
KODIAK ISLAND BOROUGH,)
)
Intervenor.)
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CASE NOS. 94-299-RD & 95-320-RD (Consol.)

DECISION AND ORDER NO. 183

This matter was heard on September 12 and 13, 1994, before a panel of the Alaska Labor Relations Board, with vice chair Stuart H. Bowdoin and board member Karen J. Mahurin, present in Anchorage and board member James W. Elliott, participating on the basis of a review of the record. Hearing examiner Jan Hart DeYoung presided. The record closed on September 13, 1994.

Appearances:

Dan Millard, petitioner in 94-299-RD; Steve Cole, Gray, McLean, Cole & Razo, for petitioner Sandra Collins-Jackson in 95-320-RD; William F. Morse, Associate General Counsel, for respondent International Brotherhood of Electrical Workers, Local Union 1547; and Robert M. Johnson, Wohlforth, Argetsinger, Johnson & Brecht, P.C., for intervenor Kodiak Island Borough.

Digest:

The appropriate unit of Kodiak Island Borough employees represented by the Electrical Workers for purposes of

participation in a decertification election is the unit originally defined as appropriate in the 1990 decision and order of the Department of Labor, Labor Relations Agency.

DECISION

History

The International Brotherhood of Electrical Workers, Local Union 1547, first sought to represent a unit of Kodiak Island Borough employees in 1989. The Kodiak Island Borough resisted a representation election under the Public Employment Relations Act (PERA) by arguing that a 1980 resolution exempted it from the Act. It also argued that, even if the Act were to apply, the unit inappropriately excluded certain employees. This Agency's predecessor, the Department of Labor, Labor Relations Agency (DOLLRA),¹ found that the ordinance was ineffective to exempt the Borough from PERA but found that the larger unit was a more appropriate unit for collective bargaining than the unit the IBEW initially sought to represent. The principal difference was the larger unit's inclusion of certain mental health center employees.

The Borough appealed the decision that its resolution was ineffective to exempt it from PERA, but neither party appealed the unit determination. The DOLLRA conducted the election and certified the Electrical Workers as the bargaining representative of the larger, general unit of Borough employees it had defined. Pending the Borough's appeal on the effectiveness of its resolution to reject PERA, the Borough and the Electrical Workers agreed to suspend any bargaining. They further agreed that the one year election bar in AS 23.40.100(c) would run after the appeal was finally decided.

On June 4, 1993, the Alaska Supreme Court issued its decision affirming the ineffectiveness of the Borough resolution to reject PERA. Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993). Very soon thereafter the Borough filed a petition with this Agency to clarify the unit to determine certain workers ineligible for unit status. The petition was dismissed on the basis that the election bar, effective from the date of the appeal, precluded consideration of the petition.

The parties began negotiations and tentatively agreed during negotiations to the exclusion of some of the mental health employees. The parties, however, have not reached a final collective bargaining agreement.

On April 5, 1994, a petition to decertify the Electrical Workers was filed in 94-299-RD, and on July 18, 1994, a petition to sever and decertify a unit of mental health employees was filed in 95-320-RD.

Findings of Fact

1. The International Brotherhood of Electrical Workers, Local Union 1547 (Electrical Workers), is the certified bargaining representative of a general government unit of Kodiak Island Borough employees.
2. The Electrical Workers' effort to represent a unit of Borough workers began approximately in 1989 when Electrical Worker representative and organizer Barbara "B.J." Jewel was contacted by Borough employees interested in collective bargaining. Jewel made a presentation about representation by the Electrical Workers. The group that had contacted her were interested in organizing as a general government unit and had not included the mental health center or community support program employees in the unit. Jewel did not meet with mental health employees until after the Borough objected to a unit excluding them.
3. After a hearing, the Department of Labor, Labor Relations Agency (DOLLRA) determined that the appropriate unit under AS 23.40.090 included mental health employees. The Agency also rejected the defenses to coverage under the Public Employment Relations Act (PERA) and conducted an election.
4. The Borough appealed the decision on the issue of coverage under PERA. The parties agreed to delay bargaining until after the conclusion of the appeal. On June 4, 1993, the Alaska Supreme Court issued its decision affirming the ineffectiveness of the Borough resolution to reject PERA. Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993).

5. Soon after the Supreme Court issued its decision, Jewel made a demand to bargain. The Electrical Workers contacted approximately 40 nonsupervisory employees of the Borough in June of 1993 about beginning negotiations with the Borough. Meeting Notice, Exh. 5; Nonsupervisory employee roster (41 employees), Exh. 6. Jewel met several times with employees to determine what the employees wanted in an agreement. Jewel selected a bargaining team and began to meet with team members to discuss proposals and strategy.

6. On August 2, 1993, the Borough sought clarification of the composition of the bargaining unit. Kodiak Island Borough v. International Brotherhood of Electrical Workers, Local Union 1547, 94-241-UC (filed Aug. 2, 1993); Exh. B. Mayor Jerome Selby explained that clarification was sought to correct errors in the initial unit determination and to address new positions that had been created. On the basis of 8 AAC 97.060(e), the Agency dismissed the petition. Order on Respondent's Motion to Dismiss (Sept. 21, 1993); Exh. C.

7. The parties began negotiating in August of 1993. The main spokesperson for the Borough was Walter Sapp. Mayor Jerome Selby also participated in the initial sessions. Sapp indicated an interest in negotiating the composition of the unit. The Borough sought to exclude several positions, including some of the employees in the mental health department and some others outside that department.

8. The mental health employees, particularly the clinicians, told Jewel that they did not want to be in the bargaining unit. Jewel sought a statement from each of the clinicians to confirm their desire to be excluded from the unit, and all of the clinicians did provide confirmation. After obtaining the statements and after the Borough expressed interest in excluding certain employees from the unit, see Exh. D, at 1 & 2, Jewel raised in negotiations the issue of excluding the mental health clinicians.

9. On March 25, 1994, the Electrical Workers and the Borough tentatively agreed to exclude from the unit a number of positions:

Excluded from the unit are elected officials, the Borough attorney, Borough Clerk, Deputy Clerk, Records Coordinator, Engineering & Facilities Director, Environmental Engineer, Construction Inspector/Arch., Construction Inspector/Eng., Community Development Director, Personnel Assistant, Administrative Assistant to the Mayor, Assessor, Finance Director, Data Processing Manager, Mental Health Center (MHC) Director, MHC Assistant Director, MHC Clinicians, MHC Staff Assistant, MHC Rehabilitation Director and Fire Chief.

Members of bargaining unit (Mar. 25, 1994), Exh. 7. Specifically excluded were the mental health center clinicians. Employees who were excluded from the bargaining unit in the stipulation were asked not to participate further in the negotiations.

10. The stipulated unit does not exclude the mental health center clerical staff or the community support program(CSP) employees from the unit, although Jewel did discuss excluding them with community support program employees, including Mary Guilas. CSP employee Mary Guilas also spoke with Electrical Workers business representative Robert K. Larsen about excluding the community support program employees from the unit. See proposed stipulation, Exh. 202.

11. Business representative Larsen took over Jewel's responsibilities in the Borough in March or May of 1994. At a bargaining session Larsen did address the question of the definition of the unit with Borough representative Sapp and Mayor Selby. Larsen believed at this meeting that the Borough had agreed to exclude the CSP personnel from the unit and that only memorializing the agreement in writing remained. At the next negotiating session Larsen presented the Borough with a draft stipulation to memorialize the agreement. However, it mistakenly named the clerical workers whom the Electrical Workers' bargaining team had not sought to exclude. At the following session Larsen brought a new stipulation omitting clerical workers. At this meeting, however, Sapp stated that the Borough would not act further on unit issues until after the Agency's hearing in this case.

12. Once the parties tentatively agreed to a term in the collective bargaining agreement, their ground rules provided that a party could not reopen it unless the other party agreed. The ground rules provide, Agreement on individual items shall

be signed off by the parties as TA'd and "off the table" unless the parties mutually agree to reopen a specific item.

Ground Rule No. 10 (Aug. 30, 1993), Exh. 102.

13. Although a party may not unilaterally reopen a tentatively agreed upon term, the term is not effective until a final agreement is reached. The parties' ground rules provide,

The Agreement reached shall be tentative until final ratification by the bargaining unit employees and approval by the International Office of the International Brotherhood of Electrical Workers and by a majority of the Kodiak Island Borough Assembly. When full Agreement has been reached, the Borough's negotiating team agrees to recommend approval to the Borough Assembly.

Ground Rule No. 12 (Aug. 30, 1993), Exh. 102.

14. At the time of the hearing in this case, the parties had not reached a final agreement.

15. On April 5, 1994, Kelli L. Veech filed a petition to decertify the Electrical Workers as the bargaining representative of the unit. She described the unit in her petition:

INCLUDED: Construction Inspector, Baler Operator, Baler/Landfill Supervisor, Appraiser, Assessment Clerk, Associate Planner, Draftsman/Technician, Accountant, Accounting Clerk, Clerk/Cashier, Switchboard Operator/Receptionist, Resource Management Officer, Administrative Assistant, Records Coordinator, Programmer/Analyst, Programmer, Computer Operator, Rehabilitation Director, Skills Trainer, Residential Trainer, Case Manager, Employment Training Specialist, Job Coach, Clinician, Rehabilitation Program Coordinator, Clerk Cashier, Administrative Assistants in the Mental Health Clinic and Borough Mayor's Office and Secretaries located in Facilities, Community Development, Finance and Borough Mayor Offices.

EXCLUDED: Elected officials, the Borough Attorney, Borough Clerk, Deputy Clerk, Facility Coordinator, Community Development Director, Personnel Officer, Assessor, Finance Officer, Data Processing Manager, Mental Health Director and the Fire Chief.

The unit description is based upon the unit determined by DOLLRA in its 1990 decision and does not include the tentative changes addressed by the Electrical Workers and the Borough in their negotiations.

16. After confirming that the petition was supported by 30 percent of the members of the unit, as required in AS 23.40.100(a)(1) and 8 AAC 97.030(b), the Agency requested the Borough to post the petition.

17. On or about April 20, 1994, the petition to decertify was posted in the work places of affected employees. The notice described the unit as set forth in the DOLLRA's 1990 decision.

18. On May 4, 1994, the Electrical Workers requested a hearing, objecting to the petition on the basis that it included the following positions that were no longer included in the unit:

Construction Inspector, Administrative Assistant, Records Coordinator, Rehabilitation Director, Skills Trainer, Residential Trainer, Clinicians, Rehabilitation Program Coordinator, Administrative Assistants in the mental health clinic and the borough mayor's office and Personnel Assistant.

19. The Borough, the Electrical Workers, and Kelli Veech could not come to an agreement over the composition of the bargaining unit and a hearing before the Alaska Labor Relations Board was set for August 9, 1994.

20. On July 18, 1994, Sandra Collins-Jackson filed a petition to sever a group of employees from the bargaining unit and decertify the Electrical Workers as its bargaining representative. The petition was supported by a sufficient showing of interest under AS 23.40.100(a)(1) and 8 AAC 97.030(d). The petition described the group to be severed as all persons assigned to the mental health department and listed the current job titles as follows:

Assistant Director, Rehabilitation Director, Clinician III, Clinician II, Staff Assistant/MHC, Case Manager, Program Coordinator, Clerk/Cashier--MHC, Secretary III, Rehabilitation Technician, Rehabilitation Aide.

21. Jackson seeks to be severed from the unit because she believes that she does not share enough in common with other Borough employees to gain from or contribute to representation in a unit with them.
22. On July 22, 1994, the Electrical Workers gave notice that it did not oppose the petition filed by Jackson to sever the mental health department employees from the unit. It also filed a motion to consolidate the two petitions and continue the hearing.
23. On July 29, 1994, the motion to consolidate and continue the hearing was granted and the consolidated cases were scheduled for hearing on September 12 and 13, 1994.
24. Notice of the Jackson severance petition in 95-320-RD was posted in various work places in the Borough on or about August 15, 1994.
25. On August 23, 1994, Kelli L. Veech requested to withdraw the decertification petition she had filed in 94-299-RD, stating she no longer represented the views of the persons signing the authorization cards. On August 24, 1994, co-petitioner Dan Millard asked to be substituted as the named petitioner in place of Veech in 94-299-RD, and on August 26, 1994, Dan Millard was ordered substituted for Kelli Veech.
26. At the time of the hearing, there were approximately 48 nonsupervisory employees of the Borough. Eighteen employees are employed in the mental health center, including the community support program.
27. The chief executive officer of the Borough is the mayor. Jerome Selby has served as mayor for about 11 years, including all of the time the Electrical Workers Local 1547 has been active in the borough. The Borough is organized into seven departments reporting to the mayor: general administration, community development department, facilities/engineering department, finance department, data services department, assessing department, and the mental health center. Exh. 103, at 4.
28. The mental health center or department is centrally administered with the other departments. All departments rely on the central office for administrative support. For example, purchasing is centrally administered. Data processing is also centralized. The mental health center has a local area network (LAN) and is tied by computer to the administrative office building. The various departments must work with the Borough clerk to present matters to the Assembly. The finance department assists all departments in financial matters. In addition, the finance department is involved with finances for the hospital and the school district, which are Borough treasury functions.²
29. The heads of each department, including the mental health center, meet weekly. There are also monthly staff meetings that include mental health staff when individual schedules allow.
30. Regular Borough work hours are between 8:00 a.m. and 5:00 p.m., Monday through Friday. Many employees in the various departments, however, work different hours, including the mental health center, community support program, baler/landfill operation, data processing department, finance department, community development department, and engineering and facilities department.
31. The Borough is working on a health and safety program. Mental health center employees have participated in the development of the program and the program will include procedures for mental health. One community support program participant stated that its unique concerns are addressed in a CSP health and safety manual and will not be included in the Borough-wide health and safety program.
32. The Borough operates under a uniform set of personnel rules covering all employees, including the mental health center and community support program employees. It also has a common classification system and salary schedule that it adopted by ordinance in 1988 after a recommendation in an independent study. All Borough employees receive the same benefits package.

33. A position classification may cross department boundaries. This is particularly true with the clerical, accounting, and administrative positions. For example, the entry level requirements for a secretary III are the same at all departments. Employees holding the position of secretary III in the community development and the engineering departments believe that they have the skills required to work as a secretary III in the mental health center.

34. Kaye McClain has worked as a secretary III in the engineering department since October 24, 1980, and participated in the representation election in 1990. She works at the engineering facility. She works occasional overtime for meetings. She does typing, filing, archiving documents, and researching in the archives.

35. Eileen Probasco is a secretary III in the community development department in the borough building. Her skills and duties include the ability to interact well with others, computer word processing, and various clerical skills. She has little interaction with the mental health center or community support program personnel. Her work involves planning and zoning issues. She can respond to questions from the public in this area and refers those she cannot answer to others in the department.

36. The engineering department has two secretaries, a maintenance/baler person, and four baler workers, construction inspector, environmental engineer and the department head. Daniel Paul Millard is the construction architectural inspector for the Borough and has been employed by the Borough 12 years. The department provides support and maintenance services for the mental health center and community support program, such as paper recycling, and vehicle maintenance. The department maintains a pool of vehicles. Some are maintained at locations other than the Borough building. The department also provides engineering support for the school district.

37. The community development department has seven employees. There is a department head, two associate planner positions (one focussing on long range planning and the other on zoning enforcement). There is also a planner position that is unfilled. There is a drafting technician and two secretarial positions (a secretary I and a secretary III). All department employees are paid on an hourly basis except the department head, and they work 8:00 a.m. to 5:00 p.m., Monday through Friday. Community development department employees have routine contact with the assessing department, the facilities and engineering department, and the clerk's office, and occasional contact with the data processing department, which provides computer support. For example, associate planner Bob Scholze does long range planning for the Borough. He is an hourly employee and works an average of five to eight hours of overtime per week to attend meetings after regular hours. His normal work schedule is five eight-hour days. Scholze has little or no interaction with mental health center or community support program employees. His interaction varies with the different employees. For example, he has some contact with the finance department and more contact with facilities and engineering and data services.

38. The mental health center primarily provides services to individuals or families for therapeutic intervention, to improve the quality of life, or to manage chronic mental health problems. The center can provide medical intervention with its contract psychiatrist or it can provide clinical services, such as counseling, anger management, and group therapy. Services can be provided following a request by the individual, through referral, or under court order. The center provides services to the schools under contract for special education and drug prevention programs in the high school and for evaluation and consultative services in the junior high and elementary schools. It can provide services to other offices, such as the coast guard upon request or contract.

39. The mental health center has not always been a part of the Borough. Initially it was a separate entity directed by a governing board and administered independently from the Borough. For example, the center formerly issued its own payroll. The Borough's connection to the center at this time was to pass through revenue sharing funds to the center. Since that time the Borough has been in the process of integrating the center into the Borough's administrative operations.

40. The head of the center is the administrative director. There is an assistant director, clerical support, and seven clinicians. For the clinicians, a master's degree is a minimum requirement. Four of the seven have a doctorate degree. Sandra Collins-Jackson is a clinician III for the Borough in the mental health center and has been employed by the Borough since 1981. She counsels and performs emergency and acute care. She has specialized education, a master's degree, and training to qualify her as a clinician. Her hours are irregular and she is not compensated for overtime. Her

work location varies. She can work in the center but also may work in the high school, hospital, and jail. She has little interaction with the main Borough office or with Borough employees outside of the center.

41. The mental health center has an advisory board. The advisory board meets monthly on center business. It reviews center budget and programs. The board consists of nine members, including a member of the Assembly. Other members are invited to sit by the mayor.

42. Jackson states she has always been vocally opposed to being included in the bargaining unit. She states that center employees are united in not wanting to be in the unit. See Employees joining in petition for severance and decertification, Exh. 203.

43. The mental health center secretary III since October of 1989 is Kristine Wisher. Her duties at the center include answering telephones, making appointments for the clinicians. She is required to follow the strict confidentiality requirements of the center. She does some work with insurance requirements. She works with the clients as their first contact at the center, trying to make them comfortable and putting them at ease. She has been recognized as borough employee of the month on two occasions, in 1990 and 1993. Wisher in her capacity as secretary does interact with other Borough employees. She delivers money and picks up center mail daily at the Borough office. Wisher seeks to be excluded from the bargaining unit represented by the Electrical Workers.

44. The community support program is a part of the mental health center. The CSP facility is located about one mile from the mental health center but the offices are in close contact. CSP provides services to the chronically mentally ill. These services include independent living training, pre-vocational training and case management services. Kodiak Island Mental Health Center Community Support Program, Exh. 211. The program teaches the chronically mentally ill daily living skills such as socializing, dressing, shopping, laundry, job hunting, and caring for an apartment. The program assists its clients with medicaid and social security benefits paperwork, taking medications, and banking. CSP operates a recycling center as work preparation for its clients.

45. Linda Deeble is the program coordinator at CSP. Her immediate supervisor is the staff assistant at the mental health center, Jan Pennington. As program coordinator Deeble is responsible for administrative operations at the program, such as payroll and purchasing, duties as assigned by the rehabilitation director, monitoring the daily activities of the program, assisting with grant preparation and reporting, and acting as liaison with other agencies, among other things. Exh. 214. Deeble has been with the program for six years. She transferred from the mental health center. She is paid hourly and is compensated for overtime. The work hours and locations are variable, given the nature of the duties.

46. Deeble does interact with other Borough offices, such as the facilities department for building repairs and the administrative departments for payroll matters, but she interacts with them less than with mental health center staff.

47. Mary Guilas is the case manager for the community support program. Guilas has worked for CSP over seven years. She has a degree in psychology. Her job duties include life skills assistance to the chronically mentally ill. She assists them with obtaining benefits or resolving problems with benefits. She might assist them with paying their bills. She also provides services to the homeless shelter and may assist with devising individual educational programs for students at the school system. Her schedule is 1:00 p.m. to 10:00 p.m. on Monday and Tuesday and 8:00 a.m. to 5:00 p.m., Wednesday through Friday. She uses a Borough vehicle. Guilas does not want to be part of the bargaining unit represented by the Electrical Workers.

48. About eight of the CSP clients live in the CSP facility, which is in a different location than the Borough offices.

49. The mental health center and community support program employees do not participate in the annual summer picnic or the Christmas party with other Borough employees. The mental health center and community service program employees do celebrate birthdays and Christmas together as a group.

50. Employees of the mental health center and the community support program do transfer between the two programs.

51. At a hearing before a panel of the Alaska Labor Relations Board on September 12 and 13, 1994, the parties presented testimony and other evidence. The record closed on September 13, 1994.

Conclusions of Law

1. Kodiak Island Borough is a public employer under AS 23.40.250(7) subject to the Public Employment Relations Act, Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993), and the Alaska Labor Relations Agency has jurisdiction under AS 23.40.090 and AS 23.40.100 to consider these consolidated cases.

2. Petitioners have the burden to prove each element of their case by a preponderance of the evidence. 8 AAC 97.350(f).

The petition to decertify the entire unit, 94-299-RD

3. The issue requiring hearing in Millard's petition to decertify the Electrical Workers is the composition of the bargaining unit. The issue must be decided to determine who is eligible to vote in the election on the question of decertification.

4. Determining the appropriate unit for collective bargaining generally requires consideration of community of interest, wages, hours, other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees involved. In addition, bargaining units must be as large as is reasonable to avoid unnecessary fragmenting. AS 23.40.090.

5. The question of the appropriateness of the unit under AS 23.40.090 was addressed in the earlier decision of International Brotherhood of Electrical Workers, Local Union 1547 v. Kodiak Island Borough, DOLLRA No. 90-5 (May 4, 1990), affirmed on other grounds Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993). After applying the factors in AS 23.40.090 in that case, the Department of Labor, Labor Relations Agency held:

1. To segregate the Mental Health Clinic employees would constitute unnecessary fragmentation.
2. The Mental Health Clinic employees share adequate community of interest, wages, hours, and working conditions with the other Borough employees to justify their inclusion in the bargaining unit.

Id., at 19. Neither party appealed this unit determination.

6. Maintaining the unit as originally established by the DOLLRA would promote stability and consistency in the unit and in the work place. In Alaska Institutional Security Employees Ass'n v. Alaska State Employees Ass'n, SLRA Order & Decision No. 112 (Mar. 22, 1988), the State Labor Relations Agency³ rejected a second petition to sever a unit from the state's general government unit, stating:

The Agency recognizes that the parties appearing before the Agency need to have some measure of predictability and knowledge as to what the Agency will do with respect to issues presented to it. While the Agency reviews each case on a case-by-case basis, the Agency is compelled to conclude that, in addition to the reasons set forth specifically in the Order and Decision, AISEA has not presented such substantially different or new information as to compel the Agency to reconsider or reverse its findings of fact and conclusions of law in Order and Decision No. 105.

Id., at 8-9.

7. Likewise in this case, the parties have not presented substantially new or different information compelling a reversal of the previous unit determination. There was substantial evidence that in the time following the DOLLRA's initial unit determination, the mental health center has been increasingly integrated into the Borough's general organization. With the exception of evidence of the desires of the mental health employees, the evidence of factors named in AS 23.40.090 supports the continued appropriateness of a larger unit that includes the mental health center and CSP employees.

8. A general wall to wall unit in the Borough is as large as is reasonable and avoids unnecessary fragmenting.

9. This Agency has previously stated that parties may negotiate changes to the composition of a bargaining unit. Alaska State Employees Ass'n/AFSCME Local 52, AFL-CIO v. State of Alaska, Decision & Order No. 170 (Jan. 26, 1994), reversed on other grounds case no. 3AN-94-879 CIV (super. ct. July 7, 1994), appeal pending case no. S-6540 (filed Aug. 8, 1994). The National Labor Relations Board generally has found that the unit described in the parties' collective bargaining agreement is the appropriate unit for purposes of a decertification election. See Brom Machine & Foundry Co. v. N.L.R.B., 569 F.2d 1042, 97 L.R.R.M.(BNA) 2590, 2591 (8th Cir. 1978).

10. In this case the parties tentatively agreed on March 25, 1994, to change the unit. Under their ground rules, however, the parties could agree to reopen the issue and the agreement is not final until ratification by the employees and approval by the International Office of the Electrical Workers and the Borough Assembly. Because the unit changes remain tentative, they are not effective.

11. Millard has satisfied his burden to demonstrate that the larger unit is the appropriate unit for the decertification election.

The petition to sever the mental health workers from the unit, 95-320-RD

12. The named petitioner in 95-320-RD states that she seeks to be severed from the unit because she believes that she does not share enough in common with other Borough employees to gain from or contribute to representation in a unit with them. However, parties seeking to sever a unit must prove the five factors in 8 AAC 97.025(b):

In addition to the requirements of (a) of this section, if a petition for certification proposes to sever a bargaining unit from an existing bargaining unit, the petition must state

- (1) why the employees in the proposed bargaining unit are not receiving adequate representation in the existing unit;
- (2) whether the employees in the proposed bargaining unit are employed in jobs that have traditionally been represented in the same unit;
- (3) why the employees in the proposed unit have a community of interest that is not identical with that of the employees in the existing unit;
- (4) how long the employees in the proposed bargaining unit have been represented as a part of the existing unit; and
- (5) why the grant of the petition will not promote excessive fragmentation of the existing bargaining unit.

13. "Carve-out" petitions have been addressed under PERA on several occasions. Int'l Bhd. of Elect. Workers v. Fairbanks North Star Borough School District & Teamsters Local 959 v. Fairbanks North Star Borough School District, Decision & Order No. 153 (Mar. 24, 1993) (hereafter Fairbanks North Star Borough), citing Alaska Correctional Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 105 (May 14, 1987); Public Safety Employees Ass'n, Inc. v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 106 (May 14, 1987); and Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 112 (Mar. 22, 1988).

14. These five factors in 8 AAC 97.025(b) in conjunction with the prohibition against unnecessary fragmenting in AS 23.40.070 impose a significant burden to the petitioner seeking to carve out a smaller unit from an existing unit. Fairbanks North Star Borough, Decision & Order No. 153; Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 112, at 8.

15. Applying the factors in 8 AAC 97.025(b), we note that evidence supports the conclusion that the employees in the mental health center have been adequately represented by the Electrical Workers: mental health employees were included in the bargaining team and the Electrical Workers responded to their needs at the bargaining table. We have

found that the mental health employees share a sufficient community of interest to be represented with other Borough workers.

16. The Agency in applying these factors also gives weight to NLRB precedent. Fairbanks North Star Borough, Decision & Order No. 153. In Mallinckrodt Chemical Works, 162 N.L.R.B. 48, 64 L.R.R.M.(BNA) 1011, 1016 (1966), the NLRB has found the following factors relevant when considering craft severance:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

17. The evidence in this case focussed on the Borough organization and on the mental health center employees' aversion to collective bargaining. We have already found that the Borough organization supports continuation of the unit boundaries found appropriate in 1990. Several employees, notably Jackson and Guilas, testified that they do not want to participate in a general borough collective bargaining unit. They have not, however, established that it would be appropriate to sever the entire mental health center and community support program work groups from a general unit.

18. The homogeneity of the mental health employees is supported by evidence that the mental health employees socialize together and do not as a rule join in Borough social activities, such as the Borough's annual picnic. While socializing as a unit is relevant, it is not a key factor in determining whether the group to be severed is an appropriate unit. Mallinckrodt requires an examination of the skills and job functions of the employees in the proposed unit. Are these employees functionally distinct and do they work in an occupation that is traditionally separate? The proposed unit is composed of management, clinicians, administrative staff and clerical workers. See finding of fact no. 20. The mental health clinicians are specially educated and trained professionals whose work possibly would qualify as functionally distinct, although the record is silent on the question of a tradition of separate representation for such workers. On the other hand, clerical and administrative mental health center employees probably would not qualify as functionally distinct. The evidence in the record focusses on the secretary III positions. The training and skills of the mental health center secretary III could qualify her to serve as a secretary III in other departments. We do not believe management, clerical or administrative employees are functionally distinct or should be segregated from the Borough.

19. The history of collective bargaining is not particularly helpful in this case because the parties have been bargaining only since 1993. The mental health center was a separate entity at one point but it is now part of the Borough and its administrative functions have been integrated into the Borough's operations. The history of collective bargaining in the industry does not appear in the record of this case. There is no information in the record, for example, on whether municipal and borough mental health workers are customarily represented in bargaining or even whether other

municipalities or political subdivisions provide mental health services.

20. The mental health center employees appear to have maintained an identity separate from other Borough employees despite the organizational integration. The organizational integration, however, is significant. The proposed unit includes clerical and administrative personnel in the mental health department. Severing these employees from the remainder of Borough employees could promote excessive fragmenting prohibited in 8 AAC 97.025(b)(5) and AS 23.40.090.

21. The Borough's argument that severing these employees could cause fragmentation is persuasive. Its uniform system of employee job classifications allows transfer and promotion across department lines and, at least among clerical employees, such transfer has occurred. Dividing administrative and clerical workers between two work groups would inhibit this flexibility and potentially interfere with Borough operations.

22. Applying 8 AAC 97.025(b) and the NLRB's Mallinckrodt factors, we conclude that Jackson has not met her burden. While the mental health center and community support program are a separate department, the administrative functions are integrated with the other departments in the Borough and it is functionally dependent upon them for facilities and vehicle maintenance, computer support, revenue, payroll, etc. There is ample history under PERA for wall to wall units and we find a wall to wall unit appropriate in this case.

23. Applying the criteria in AS 23.40.090, 8 AAC 97.025(b), and Mallinckrodt to the facts in this case, we conclude that the petition of Sandra Collins-Jackson must be dismissed.

ORDER

1. The appropriate unit represented by the International Brotherhood of Electrical Workers, Local Union 1547 is the unit as originally set forth in International Brotherhood of Electrical Workers, Local Union 1547 v. Kodiak Island Borough, DOLLRA No. 90-5 (May 4, 1990).

2. The petition in case no. 94-299-RD should proceed to an election under AS 23.40.100 and 8 AAC 97.030.

3. The petition in case no. 95-320-RD is DISMISSED.

ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Jr., Vice Chair

James W. Elliott, Board Member

Karen J. Mahurin, 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 Dan Millard v International Brotherhood of Electrical Workers Local Union 1547 and Kodiak Island Borough and Sandra Collins-Jackson v International Brotherhood of Electrical Workers Local Union 1547 and Kodiak Island Borough, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 21st day of December, 1994.

Victoria D. Scates

Administrative Clerk III

This is to certify that on the 21st day of December, 1994, a true and correct copy of the foregoing was mailed, postage prepaid, to

William F. Morse/IBEW

Daniel Millard/Petitioner299

Steve Cole/Petitioner320

Robert M. Johnson/Borough

Signature

¹This Agency was the result of the consolidation of the Department of Labor, Labor Relations Agency, which administered PERA for municipalities, the State Labor Relations Agency, which administered PERA for the State, and the Railroad Labor Relations Agency, which administered the railroad labor laws for the Alaska Railroad Corporation. Executive Order 77 (eff. July 1, 1990).

²The unit placement of hospital and school district employees is not at issue in these consolidated petitions.

³The State Labor Relations Agency is another predecessor to this Agency. See footnote no. 1, supra.