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ALASKA STATE EMPLOYEES ASS'N/)
AFSCME LOCAL 52, AFL-CIO,)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
Respondent,)
and)
)
PUBLIC EMPLOYEES LOCAL 71,)
AFL-CIO,)
Intervenor.)
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CASE NOS. 96-434-UC, 96-435-UC, & 96-436-UC (Consol.)	

DECISION AND ORDER NO. 237

Digest: The bargaining unit placement of the boiler and pressure vessel inspector I positions in the Department of Labor, PCN's 07-4508, 07-4505, 07-4509, and 07-4541, is appropriately in the general government bargaining unit represented by the Alaska State Employees Association/AFSCME Local 52, AFL-CIO. There has not been a change of circumstances that would justify placing the positions in the labor, trades, and crafts unit represented by Public Employees Local 71, AFL-CIO. 8 AAC 97.050(a)(1).

DECISION

Statement of the Case

On August 11, 1995, Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA), filed petitions to clarify the bargaining unit status of four boiler and pressure vessel inspector I positions in the Department of Labor. On October 16, 1995, Alfred L. Tamagni, Sr., Chair of the Alaska Labor Relations Agency, delegated the authority to hear the case to the hearing officer. On October 5, 1995, the hearing officer advised the parties that the cases would be heard in November of 1995. Cases 96-434-UC and 96-435-UC were consolidated with 96-436-UC for hearing on October 10, 1995. On October 12, 1995, ASEA requested that the hearing be postponed until after the first of the next year. Public Employees Local 71, AFL-CIO (Local 71) initially opposed ASEA's request to postpone the hearing, but after the hearing was scheduled for November 20, 1995, Local 71 also asked for postponement until after the first of the year. The hearing officer granted the postponement request on November 6, 1995. On December 8, 1995, the hearing was rescheduled for January 31, 1996. The hearing was held on January 31, 1996, and the record closed that same day.

On October 16, 1995, the board member panel assigned was Stuart H. Bowdoin, Jr., James W. Elliott, and Karen J. Mahurin. On August 30, 1996, the Agency amended the panel assignment to substitute board member Blair E. Marcotte, f/k/a Blair E. Schad, for former member Stuart H. Bowdoin, Jr. On November 10, 1997, the Agency amended the panel assignment to substitute board member Robert A. Doyle for former member James W. Elliott.

Panel: Board members Robert A. Doyle, Karen J. Mahurin, and Blair E. Marcotte, participating after review of the record.

Appearances: John Marton, business agent for petitioner Alaska State Employees Association/AFSCME Local 52,

AFL-CIO; Art Chance, labor relations specialist, for respondent State of Alaska; and Kevin Dougherty, attorney, for intervenor Public Employees Local 71, AFL-CIO.

Procedure in this case is governed by 8 AAC 97.330--8 AAC 97.480. Hearing officer Jean Ward presided.

Issue

1. Is the appropriate unit for the boiler and pressure vessel inspector I positions, PCN's 07-4508, 07-4505, 07-4541, and 07-4509, located in the Department of Labor, Labor Standards and Safety Division, Mechanical Inspection Section, the general government unit or the labor, trades, and crafts unit?

Summary of the Evidence

A. Exhibits.

The parties agreed to the admission of joint exhibits.

- J1. State class specification, boiler & pressure vessel inspector I (July 20, 1995);
- J2. State class specification, boiler & pressure vessel inspector (rev. Feb. 1, 1979);
- J3. Agreement between ASEA and State, Articles 1, 2, and 3; Preamble;
- J4. State salary schedule (April 22, 1992);
- J5. ASEA and State letter of agreement #95-GG-030 re: interim terms (July 1, 1995--June 30, 1996);
- J6. Labor Relations Agency certification of election and collective bargaining representative (Sept. 28, 1988);
- J7. D. Hull, memorandum to L. McCurry (July 21, 1995) (comparing boiler & pressure vessel inspector I and II positions);
- J8. State class specification, electrical inspector WG IA (rev. Dec. 16, 1976);
- J9. State class specification, plumbing inspector (rev. Aug. 16, 1980);
- J10. State Classification Outline of Classified and Partially Exempt Classes (Oct. 1995);
- J11. Public Employees Local 71 and State agreement covering labor, trades, and crafts unit employees (Nov. 1, 1995--June 30, 1996);
- J12. State class specification, elevator inspector WG IA (rev. Nov. 4, 1977); and
- J13. State class specification, occupational safety compliance officer.

Petitioner Alaska State Employees Association, AFSCME Local 52, AFL-CIO offered the following exhibits, which were admitted into the record:

- 8. State automated payroll system salary schedule for labor, trades, and crafts bargaining unit (eff. July 1, 1993);
- 9. State automated payroll system salary schedule for labor, trades, and crafts bargaining unit (eff. July 1, 1993);
- 11. Application for examination National Board Commission (rev. Feb. 2, 1994);

12. National Board of Boiler & Pressure Vessel Inspectors commission for Joseph T. Trotter (Nov. 27, 1991); and

13. NBIC National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors (1992).

B. Testimony.

Incumbents Terry A. Hines, James Crowe, Joseph T. Trotter and David F. Kenison; and Gerard Mankel, the acting chief of the Mechanical Inspection Section, testified.

C. Agency case file. 8 AAC 97.410.

Factual Summary and Arguments of the Parties

The positions at issue are located in the Juneau, Fairbanks, and Anchorage offices of the Mechanical Inspection Section of the Department of Labor, and are in the general government unit. Labor Standards & Safety Division, Mechanical Inspection Section Organization Chart (Mar. 16, 1994); Reaume letters to Masten (Aug. 4, 1995). The incumbents occupy the following position control numbers: James Crowe, PCN 07-4508; Terry Hines, PCN 07-4505; Joseph T. Trotter, PCN 07-4541; and David F. Kenison, PCN 07-4509. Labor Standards & Safety Division, Mechanical Inspection Section Organization Chart (Mar. 16, 1994).

The State determined that effective July 21, 1995, the appropriate bargaining unit for the four boiler and pressure vessel inspectors I, Crowe, Hines, Trotter, and Kenison, was the labor, trades, and crafts unit (LTC). State of Alaska Position Description Questionnaires for Crowe, Hines, Trotter, and Kenison. On August 4, 1995, the State advised ASEA that the above PCNs should be moved from the general government unit (GGU) to the LTC unit. ASEA, which represents the GGU, filed a timely petition objecting to the State's request and asked for clarification of the unit.

The boiler inspector positions have been part of the general government unit since at least 1976. *See Pertaining to Unit Clarification Petition by Public Service Employees Local No. 71, Successor Organization to Tri Trades Public Service Council*, Order and Decision No. 24 (May 12, 1976). An attempt to have the positions moved from the GGU to the LTC unit was denied in Order and Decision No. 24.

According to the class specifications for boiler and pressure vessel inspectors (boiler inspectors), applicants must have a minimum of "five years of experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker or boiler inspector. PLUS a commission from the National Board of Boiler and Pressure Vessel Inspectors specifying competency to inspect boilers and unfired pressure vessels, . . ." Exhs. J1, at 3; J2, at 2. According to Gerard Mankel, acting chief of Mechanical Inspection at the Department of Labor, the required commission is an "A" endorsement. He testified all inspectors he supervises have a "B" endorsement, which is a higher level endorsement than the "A" endorsement.

Mankel, who is in the supervisory bargaining unit represented by the Alaska Public Employees Association (APEA), supervises boiler inspectors Hines, Crowe, Trotter, and Kenison. Prior to assuming his supervisory responsibilities on August 1, 1995, he had worked as a boiler inspector for the State of Alaska (State) since July 1978. In addition to the boiler inspectors, he supervises electrical, plumbing, and elevator inspectors, as well as an administrative clerk II, who in turn supervises three employees. The boiler inspectors and administrative clerk are in the GGU, and the other inspectors are in the LTC unit. Mankel said he did not think unit placement would make a difference as to how he supervised the various employees represented by the different unions, although it might be easier for him personally if he only had to apply one union contract to all employees.

Terry Hines testified he has been a boiler inspector in the Fairbanks area since May 16, 1986. He developed expertise through on-the-job and formal training in Tulsa, Oklahoma. He received training in boiler inspections through Royal Insurance Company. He has been a member of the GGU during the time he has worked for the State. His duties have not changed during that time. He reviewed his position description questionnaire (PDQ) and testified it "pretty well covers everything." It was his understanding that the boiler inspectors' pay rate would decrease if they changed

bargaining units. He testified he has daily contact with the other inspectors in the Fairbanks office. Five of the other inspectors are in the LTC unit, and one other, the health inspector, is a member of the GGU. Hines also has contact with other Department of Labor staff who are in the GGU. He prefers to stay in the GGU.

The parties stipulated that the other boiler inspectors who testified, Crowe, Trotter and Kenison have "similar skills, duties, supervision, [and] working conditions as Terry Hines." Crowe testified he had been a boiler inspector with the State for more than 20 years. He was educated in the Navy and worked as a diesel and power plant operator. He was a member of the LTC bargaining unit represented by Local 71 for about three months of that time, but he said boiler inspectors "opted out" of Local 71 in 1974 or 1975. His duties have not changed during the time he has worked as a boiler inspector for the State. Crowe prefers to be in the GGU. He testified he was aware a transfer to the LTC unit would affect his pay scale, but he realized his wages would freeze and he would not lose wages.

Trotter has worked as a boiler inspector for the State for four years, two months. He worked for an oil company from 1948 to 1991, with 22 years as a facility operator and 18 years as an inspector. Most of his education was on-the-job. He has a high school diploma and has taken several night classes. He asserted inspectors in private industry are not in bargaining units, and private industry would consider it a conflict of interest to have the builders of a vessel in the same bargaining unit as the inspectors of that vessel. On cross examination, he acknowledged he was unaware British Petroleum inspectors are now in a bargaining unit. His preference is to remain in the GGU.

Kenison testified that during the five years he has worked as a boiler inspector, his duties have not changed, but the amount of work has increased. He graduated from Benson Tech High School in Portland, Oregon, where he learned the basics of engineering. He spent seven years in the Navy where he went to school for two years and worked as a nuclear reactor operator for five years. He was trained as a boiler inspector by Continental Insurance Company. He worked as a boiler inspector for 3 insurance companies during a 10-year period, and also for the State of Oregon for 8 years. Kenison does not have a preference regarding the GGU or LTC bargaining unit. However, he believes the boiler inspectors belong in the fire marshall's union. He realizes that union is not an available choice.

ASEA argues there has been no change in circumstances to justify placing the incumbents in the LTC unit. ASEA asserts that, based on this factor alone, they should stay in the GGU. ASEA further argues that the incumbents are professional/technical workers, not just tradespersons, and furthermore, their preference is to stay in the GGU. ASEA also contends that the history of collective bargaining warrants keeping the incumbents in the GGU.

The State argues that it is time for the Agency to give a "modern look" to the labor, trades and crafts unit, which is now represented by Local 71. The State also argues that the incumbents' class specifications were reviewed and revised, and new PDQs were produced. The State contends the resulting "all new" job descriptions constitute changed circumstances, even though it admits the descriptions may well be essentially the same as they have been in the past. As part of this "modern look" scenario, the State asks the Agency to reconsider Order and Decision No. 24, which it describes as a "very obtuse" decision. The State contends the positions should be placed in the LTC unit based on "modern agency processes and modern agency tests," and the community of interest test.

Local 71 argues that the boiler inspectors' community of interest lies with the LTC unit. It contends that, like LTC inspectors, the boiler inspectors use badges and code books. Moreover, they have a social interchange with LTC inspectors, and have common skills in enforcing industrial codes. They also have similar occupational requirements they are trying to fulfill; therefore, there is professional interchange. Local 71 argues that it would not be a conflict of interest to put the boiler inspectors in the same unit with the employees who maintain the boilers and pressure vessels.

Findings of Fact and Conclusions of Law

The Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) is the recognized bargaining representative of the general government unit of State of Alaska employees. Exhs. J3, at 1, J5, & J6. Public Employees Local 71, AFL-CIO is the recognized bargaining representative of the labor, trades, and crafts unit of State of Alaska employees. Exh. J11. ASEA, as petitioner, has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).

The State of Alaska is a public employer under AS 23.40.250(7). ASEA and Local 71 are organizations under AS

23.40.250(5). This Agency has jurisdiction under AS 23.40.090 and 8 AAC 97.050 to consider this matter. AS 23.40.090 states:

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.

After initial recognition of a bargaining unit, a bargaining agent or public employer may bring a petition for unit clarification to resolve a dispute over the unit's composition under 8 AAC 97.050(a), effective July 22, 1993, which provides in part: "A public employer or public employee representative may file a petition seeking (1) clarification of an existing bargaining unit, where no question concerning representation exists, in order to resolve a question of unit composition raised by changed circumstances since certification[.]"

In *Lower Kuskokwim Education Association/NEA-Alaska v. Lower Kuskokwim School District*, Decision and Order No. 172 (Mar. 2, 1994), this Agency discussed unit clarifications:

Before July 22, 1993, the preceding regulation governing unit clarification, 2 AAC 10.050, provided only for bargaining representatives to file unit petitions and did not exclude cases raising a question of representation or require changed circumstances. However, the Agency, consistent with National Labor Relations Board practice, did not consider as a petition for unit clarification those petitions that raised a question of representation by seeking to add a position historically excluded from the unit. *Northwest Arctic Education Ass'n, NEA-Alaska v. Northwest Arctic Borough School District*, Decision & Order No. 162, at 6-7 (June 30, 1993). See also, *Union Electric Co.*, 217 NLRB No. 124, 89 L.R.R.M. (BNA) 1535 (May 1, 1975). The appropriate time to raise a unit dispute based on accretion is when the position is created or reasonably soon thereafter.

Decision & Order No. 172, at 8.

In this case, the boiler inspectors have been part of the GGU for more than 20 years. This is the second time a question concerning the unit placement of the boiler inspectors has arisen. It was addressed previously in the 1970's. Our predecessor agency, the State of Alaska Labor Relations Agency (SLRA)¹ decided the unit placement for boiler inspectors in *Pertaining to Unit Clarification Petition by Public Service Employees Local No. 71, Successor Organization to Tri Trades Public Service Council*, Order and Decision No. 24 (May 5, 1976) (*O&D No. 24*). There, Local 71 had petitioned to clarify the appropriate unit for boiler inspectors and industrial hygienists. *O&D No. 24* distinguished the job duties and requirements of those inspectors who had previously been placed into the LTC unit from those of the boiler inspectors and industrial hygienists, who were in the GGU.

The decision noted that the industrial safety, electrical, plumbing inspectors "had a great affinity of interest with the trades and crafts whose work they were responsible for inspecting." *O&D No. 24*, at 2. It then stated:

Testimony at the May 5 hearing with respect to the classifications concerned did not indicate a similar affinity. The Boiler and Pressure Vessel Inspectors are certificated by examination and not by virtue of journeyman status in a trade. Their training is received from insurance companies or the United States Navy, and they do not come up through the ranks as a part of their training. . . . There was no evidence that the desires of the affected employees are to be in the Labor, Trades and Crafts Unit. The only evidence presented at the hearing was to the contrary.

Id., at 2-3.

Accordingly, the SLRA denied Local 71's petition to place the boiler inspectors in the LTC unit. Since then, the boiler inspector positions have been in the GGU. This includes the period since certification of ASEA as the collective bargaining representative of the GGU on September 28, 1988. Exh. J6. Thus, we find the boiler inspectors have been

excluded historically from the LTC bargaining unit.

Therefore, the issue for decision is whether changed circumstances have occurred since certification, and if so, whether those changes justify placement of the boiler inspectors in the LTC unit. In Decision & Order No. 172 at 8, this Agency discussed changed circumstances:

To change the scope of a unit to add a position historically excluded, some changed circumstances must be shown. Changes that would be relevant to a unit determination would be changes to the factors listed in AS 23.40.090 -- community of interest, wages, hours, working conditions, history of collective bargaining, and desires of employees.

The State argues changed circumstances warrant such a placement due to the reclassification of the boiler inspector positions. However, a review of the prior and current class specifications for the boiler inspector positions shows there has been no significant change in distinguishing characteristics, work duties, or knowledge, skills and abilities. Moreover, minimum qualifications for the job remain unchanged. Exhs. J1 and J2.

Evidence has not been presented that establishes changed circumstances affecting community of interest or working conditions, such as a change in the duties or responsibilities of the positions, or the other factors listed in AS 23.40.090. *See* D&O 172, at 8-9. In fact, the State admitted that job duties have not changed. Rather, the State and Local 71 appear to argue that the boiler inspector positions originally should have been placed in the LTC unit even though the inspectors voted to be part of the general government unit in 1973, and have over a 20 year history in that unit.

All of the boiler inspectors testified their job duties have remained the same. None of them pointed to some changed circumstance in their position. The mere fact that the State decided to review job descriptions and rewrite them making minor language changes does not qualify as the type of changed circumstance that would justify moving employees from one bargaining unit to another. We have compared the old and new class specifications and find them substantially the same. If a simple re-wording of a class specification, which leaves the distinguishing characteristics, work duties, knowledge, skills and abilities essentially unchanged, qualified as a change of circumstance under 8 AAC 97.050(a)(1), the State could ultimately dictate composition of bargaining units. We believe such an interpretation of that regulation would be contrary to the legislature's declaration of policy in AS 23.40.070 for the Public Employment Relations Act. Therefore, we conclude there has not been a change of circumstance to justify placing the boiler inspectors in the LTC, and they should remain in the GGU. Because a change in circumstances justifying a change to the bargaining unit has not been demonstrated, we are not required to address whether placement of the boiler inspectors in the labor, trades and crafts unit is appropriate under AS 23.40.090. *See* D&O 172, at 9.

ORDER

1. The petition of the Alaska State Employees Association, AFSCME Local 52, AFL-CIO, is GRANTED. The boiler and pressure vessel inspector I positions, PCN 07-4508, 07-4505, 07,4509 and 07-4541, are appropriately in the general government unit.
2. The State of Alaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Blair E. Marcotte, Vice Chair

Robert A. Doyle, Board Member

Karen J. Mahurin, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of *Alaska State Employees Association/AFSCME Local 52, AFL-CIO, v. State of Alaska and Public Employees Local 71, AFL-CIO, Case Nos. 96-434-UC, 96-435-UC, 96-436-UC (Consol.)*, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 19th day of August, 1998.

Margie Yadlosky

Personnel Specialist I

This is to certify that on the 19th day of August, 1998, a true and correct copy of the foregoing was mailed, postage prepaid to

Heidi Tourout, ASEA

Ron Gillette, State

Kevin Dougherty, Local 71

Signature

Executive Order 77 consolidated the Alaska State Labor Relations Agency, which served as the labor relations agency for the state and its employees; the Department of Labor, Labor Relations Agency, which served as the labor relations agency for municipalities and their employees; and the Railroad Labor Relations Agency, which served as the labor relations agency for the railroad and its employees. The consolidation became effective on July 1, 1990.