

ALASKA LABOR RELATIONS AGENCY
1016 WEST 6TH AVENUE, SUITE 403
ANCHORAGE, ALASKA 99501-1963
Phone (907) 269 4895 Fax (907) 269-4898

PETERSBURG MUNICIPAL EMPLOYEES)
ASSOCIATION/ALASKA PUBLIC)
EMPLOYEES ASSOCIATION,)
AMERICAN FEDERATION OF)
TEACHERS Local #6132, AFL-CIO,)
)
Petitioner,)
vs.)
)
CITY OF PETERSBURG,)
)
Respondent.)
)

Case No. 10-1590-SP

DECISION AND ORDER NO. 294

We heard this petition to determine the strike classification of disputed positions at the City of Petersburg on April 13, 2011. Hearing Examiner Mark Torgerson presided. This decision was based on the documentary record, evidence admitted, and the testimony of witnesses. The parties' arguments were considered, including those presented in post-hearing briefs filed on May 13, 2011. The record closed on June 10, 2011, after the Board deliberated following the filing of post-hearing briefs.

Digest: The petition of the Petersburg Municipal Employees Association, APEA/AFT Local 6132, AFL-CIO to classify the disputed job classifications as strike ineligible (Class I) is denied. The duties of the following positions do not meet the requirements to be classified as Class I employees under AS 23.40.200(a)(1) and (b): Parking and Vehicle Regulation Enforcement; Harbor Office Clerk; Harbor Security Officers I, II, and III; Maintenance/Harbor Security Officer II; Cook; Kitchen Supervisor; Manor Resident Assistant; Manor Resident Assistant Supervisor; and Manor Secretary I.

Appearances: Pete Ford, Southeast Regional Manager, APEA, for Petitioner Petersburg Municipal Employees Association; Patricia A. Vecera, Attorney for Respondent City of Petersburg.

Board Panel: Aaron T. Isaacs, Jr., Vice Chair; Will Askren, Member; and Daniel Repasky, Member.

DECISION

Statement of the Case

In November 2010, the Petersburg Municipal Employees Association, (PMEA) requested interest arbitration on behalf of the Class I employees it represents in the City of Petersburg (City), after failing to reach a negotiated renewal of the collective bargaining agreement. Unable to agree on strike class designations, PMEA seeks the Agency's determination of the appropriate Strike class designations for positions from three separate city departments, listed as follows:

- A. Police Department
 - 1. Parking and Vehicle Regulation Enforcement

- B. Harbor and Port Personnel
 - 1. Harbor Office Clerk
 - 2. Harbor Security Officer I
 - 3. Harbor Security Officer II
 - 4. Harbor Security Officer III
 - 5. Maintenance/Harbor Security Officer II

- C. Mountain View Assisted Living Home (Manor)
 - 1. Manor Secretary I
 - 2. Manor Resident Assistant
 - 3. Manor Resident Assistant Supervisor
 - 4. Kitchen Supervisor
 - 5. Cook

PMEA requests that these positions be classified as Class I, strike ineligible, because they perform police and hospital duties. The City argues that the positions do not meet the necessary requirements to qualify as Class I under AS 23.40.200(a)(1) of the Public Employment Relations Act (PERA).

Edward Tagaban, Harbor Office Clerk/Harbor Security Officer III, and Michelle Lopez, Mountain View Assisted Living Home Manor Secretary I, testified on behalf of PMEA. Jim Agner, Chief of Police; Sheyln Bell, Mountain View Manor Administrator/Director; Gloria Wollen, Harbor Master; and Scott Hahn, City Manager, testified on behalf of the City of Petersburg. The parties submitted separate exhibits and a set of joint exhibits.

Issue

Should the job classifications listed in the strike class petition be Class I, II or III positions for strike classification purposes under AS 23.40.200?

Findings of Fact

1. The Petersburg Municipal Employees Association (PMEA) is the certified bargaining representative of the bargaining unit of City of Petersburg (City) employees.

2. The collective bargaining agreement between the City and PMEA expired in March 2010, following a failure to reach an agreement in negotiations that commenced in February 2010. Subsequently, the parties began the impasse resolution process and PMEA requested interest arbitration on behalf of the Class I employees. The parties were unable to agree on the strike classification under AS 23.40.200 for some job classifications.

3. On December 3, 2010, PMEA filed a petition to determine the strike classification of the disputed job classifications. One job classification is in the City's Police Department, five job classifications are assigned to the harbor at the Port of Petersburg, and five job classifications perform work in the Mountain View Assisted Living Home (Manor).

4. The positions for which determination was sought follow:

A. Police Department Position

1. Parking and Vehicle Regulation Enforcement

B. Harbor and Port Personnel

1. Harbor Office Clerk
2. Harbor Security Officer I
3. Harbor Security Officer II
4. Harbor Security Officer III
5. Maintenance/Harbor Security Officer II

C. Mountain View Assisted Living Home

1. Manor Secretary I
2. Manor Resident Assistant
3. Manor Resident Assistant Supervisor
4. Kitchen Supervisor
5. Cook

6. *Parking and Vehicle Regulation Enforcement/Parking Attendant.* Jenna Duke is employed in the Police Department under the title of Parking Attendant for Parking and Vehicle Regulation Enforcement. Duke has held the position since February, 2010. Previously, the position was filled briefly by Alice Williams and before that Lori Steinblock held the position for ten years. (Testimony of Agner).

7. The Parking Attendant patrols the downtown area by foot and issues citations for parking/vehicle, and animal control laws and ordinances; maintains records of issued citations; operates radio equipment; drives city vehicles as needed for enforcement duties; assists with educational, crime prevention programs; and handles janitorial duties within the department and the jail. (Ex. B). The Parking Attendant also watches the desk for the dispatcher when the dispatcher leaves the dispatch station to feed prisoners. If an emergency call is received while the dispatcher is away, the Parking Attendant calls the dispatcher to return to the dispatching desk. (Testimony of Agner).

8. The Parking Attendant does not serve as a police officer or a corrections officer. The Parking Attendant has no authority to arrest, does not carry a weapon, and cannot pull vehicles over for non-compliance with registration requirements. The Parking Attendant does not have any specialized police training or certification, and does not fill in for absent police or dispatch employees. The employee can note expired registrations on parked cars. (Testimony of Agner).

9. The prerequisites for the position include possessing a valid state driver's license; clearing a background check; having the ability to communicate effectively orally and in writing, and to understand laws, ordinances, and statutes; and completing basic first aid and CPR training. (Joint Ex. 4; Ex. B, at 2).

10. Police Chief Agner testified that the Parking Attendant position is full-time for the six months of the year when the City has the highest number of tourists, as there are more parking violations at that time. The employee in the position works part-time for the remainder of the year, performing mostly janitorial duties. Members of the public likely would not be aware of the absence of the Parking Attendant, unless they noticed fewer parking tickets were being issued, and parking spaces were somewhat harder to find. If the Parking Attendant position were to be vacant for an extended period of time, the duties could be, and have been, delegated to other department employees. In 2010, the employee in the position was absent for a lot of the year caring for an ill family member. The other employees handled the Parking Attendant's duties.

11. *Harbor/Port Job Classifications.* The bargaining unit positions with disputed strike classifications at the harbor are the Harbor Office Clerk; Harbor Security Officers I, II, and III; and Maintenance/Harbor Security Officer II.

12. The harbor is staffed 24-hours per day by rotating shifts, except from 5:00 a.m. to 7:00 a.m. on Wednesdays. For this two-hour period when the harbor is unstaffed, the employee on the graveyard shift notifies the Police Department dispatcher, turns on the cranes, makes sure everything is okay, locks the door, and goes home. (Testimony of Wollen).

13. Harbor Master Wollen's position is not in the bargaining unit. Contrary to the job description, the Harbor Master performs no peace officer duties, nor do any of the harbor employees. (Testimony of Wollen and Tagaban).

14. The harbor personnel secure and manage harbor operations to obtain revenue for the City, and they oversee the harbor for the city residents' use and enjoyment.

15. *Harbor Security Officer II.* The position's typical duties are service-based. They include maintaining the harbor facilities, collecting moorage payments and maintaining records, enforcing city ordinances, making daily rounds on foot or by skiff, overseeing boat and aircraft traffic in the harbor, and performing janitorial duties to ensure the smooth operation of the harbor facilities. (Joint Ex. X-XIV; Ex. 5 & 6; Testimony of Wollen).

16. Three employees work as Harbor Security Officers II. The prerequisites for employment include possessing a current and insurable Alaska driver's license, having knowledge of the geographical area and waterways, and the ability to operate a skiff. Additionally, the position requires that the successful applicant obtain a federally issued Transportation Worker Identification Credential (T.W.I.C.) card¹ within 180 days of employment. (Testimony of Wollen).

17. Wollen said the nature and quality of work performed by a Harbor Security Officer is that of a "watchman." Security measures in place, as required by Homeland Security and the Maritime Transportation Security Act (MTSA), are to secure harbor areas for the safety of the harbor and the City, but not for emergency response or national security defense. The harbor officers are not provided with firearms and are not authorized to arrest anyone. If emergency personnel are needed, the harbor officers call 9-1-1.

18. According to Agner, the City's police officers, not the harbor personnel, investigate crimes, provide required emergency responses, and handle crime prevention duties at the harbor. To be a peace officer, a person must be certified by attending the three-month training program at the police academy and by meeting

¹ Obtaining the required security clearance (T.W.I.C card) is fairly easy. It involves two trips to either Juneau or Ketchikan and clearance from a background check. When the requirement was first implemented, officials came to Petersburg to issue the cards, and approximately 89 cards were issued.

significant physical standards. The harbor officers are not required to attend this training. (Testimony of Agner).

19. The MTTSA, enacted under the Homeland Security Act following September 11, 2001, requires that all ports-of-call have in place a Facility Security Plan. The harbor created its plan under the U.S. Coast Guard's guidance, with assistance from a private security consulting company. The heightened security requirements are utilized only when a Safety of Lives at Sea (SOLAS)² vessel docks at the port. The City hosted five SOLAS ships last year, and this year the City expects to host one. (Testimony of Wollen). The heightened security measures require a designated Facility Security Officer (FSO) to conduct a security check of the area and to complete a form. The City currently has two FSOs on staff, Wollen and the Harbor Office Clerk/Harbor Security Officer III, Edward Tagaban. Wollen is designated as the FSO and Tagaban is the back-up in Wollen's absence. City Manager Hahn said there are plans to create at least two more back-up FSOs.

20. According to Wollen, the required security clearance³ was obtained by community members at the time the heightened security measures were put in place. She said temporary workers are available to cover an interruption of service. They can, and have, come in on short notice; however, if the harbor is not busy it would be closed. The public's health, safety, and welfare would not be immediately or adversely impacted if the harbor closed. Hahn supported Wollen's testimony when he said that any work stoppage would be inconvenient, but would not affect the public's health, safety, and welfare. Even if a work stoppage occurred, services would not be interrupted completely. Residents could still moor their boats, and replacement workers would be able to cover the striking positions, since most community members possess the skills required to provide harbor services.

21. Harbor security officers perform no police, fire, or jail duties. They do not carry firearms, concealed weapons, wear uniforms, or make arrests. They do not receive police certification or training, nor do they fill in for absent law enforcement officers or police dispatchers. (Testimony of Wollen and Hahn).

22. Harbor security officers are prohibited from acting in an official capacity in emergencies. (Testimony of Hahn).

23. *Harbor Security Officer I*. This position is currently vacant. (Testimony of Wollen). The duties and requirements for this position are the same as those of the Harbor Security Officer II position listed above. However, the duties are performed

² SOLAS vessels are international vessels, vessels flying a foreign flag, or vessels carrying more than 150 passengers, such as cruise ships.

³ TWIC cards.

under supervision, and the position is distinguished by the level of experience. (Ex. 7; Joint Ex. X).

24. *Harbor Clerk/Harbor Security Officer III.* The Harbor Office Clerk's duties consist of clerical duties that presently are absorbed into the Harbor Security Officer III position. (Ex. 4). Edward Tagaban has been employed as the Harbor Security Officer III since May 16, 2000. The position's duties include clerical work in managing the harbor, such as collecting and accounting for moorage and port payments. Among other duties, Tagaban patrols the harbor as needed, supervises employees, schedules work shifts, and acts as Harbor Master in the Harbor Master's absence. He is on call. (Joint Ex. XII; Testimony of Tagaban). Tagaban became the Facility Security Officer in approximately 2002, after making the security plan. He served as the Facility Security Officer until Wollen was trained in that position. Tagaban became the alternate Facility Security Officer on March 24, 2011. His position is a busy one, and he provides security in the harbor for customers. Officers must make security rounds twice on their shifts. (Testimony of Tagaban).

25. The prerequisites for the position include possessing a current and insurable Alaska driver's license, and having accounting skills, knowledge of the geographic area and waterways, and the ability to operate a skiff. Additionally, the position requires the successful applicant to obtain a federally issued Transportation Worker Identification Credential (T.W.I.C.) card and certification for Facility Security Officer within 180 days of employment. (Ex. 4, at 2; Joint Ex. XII).

26. *Maintenance/Harbor Security Officer II.* Ben Hinde is employed as a Maintenance/Harbor Security Officer II.

27. The duties and requirements are the same as for the Harbor Security Officer II listed previously, but the position also is responsible for small engine repair, and maintaining the harbor facilities and machines. (Joint Ex. XIII; Ex. 9).

28. *Mountain View Assisted Living Home (Manor).* The job classifications at the Manor whose strike class is disputed are Secretary I, Resident Assistant, Resident Assistant Supervisor, Kitchen Supervisor, and Cook.

29. The Manor's administrator/director is Shelyn Bell, and she has occupied that position since August 2010. Previously, Bell worked as a Resident Assistant since 2004. Her position is not in the bargaining unit that PMEA represents.

30. Hahn and Bell established that the Manor is not licensed as a hospital under Alaska Statutes. Instead, it is licensed as an assisted living facility. Under 47.33.005, the purpose of an assisted living home is to provide a home-like environment for elderly or disabled persons. A registered nurse (RN) is on contract with the Manor to provide needed nursing care, such as filling insulin syringes that residents then

administer themselves. If necessary, residents are transferred to the local hospital for medical care. (Testimony of Bell).

31. Hahn confirmed that the Manor does not provide medical care, and it is prohibited by statute from providing unlicensed medical care or advertising that it provides medical care.

32. *Manor Secretary I.* Michelle Lopez is employed as a Secretary I at the Manor. She has been in the position for two years. Previously, she worked as a Resident Assistant for two years. Her primary duties include providing transportation, being the point of contact for the facility, creating rent invoices and processing payments, maintaining files, assisting as needed with the residents, and their daily living activities, collecting and distributing the mail daily, and assisting with escorts. Lopez works at the Elderly Independent Living Facility, but she spends between 5 and 15 hours a week working in the Assisted Living Facility. These two facilities are in a connected building, and they share a common space, with doors that are open between the two facilities. The Manor has a maximum capacity of 15 residents, and 13 is the greatest number of residents it has had since Lopez has been there. Six residents occupy rooms at the Manor currently. There are 11 staff members, plus the Registered Nurse and the Administrator. A hospital is located in town, one mile from the Manor. There is one assisted living facility in Petersburg, other than the Manor, but it is much more expensive. (Testimony of Lopez).

33. Secretarial duties include bookkeeping, payroll, administration, typing, filing, assisting with the annual budget, transporting residents, and helping with residents as needed. The prerequisites for the position include having a valid state driver's license, knowledge of bookkeeping and accounting, filing and records management, and having typing and computer skills. (Joint Ex. V; Ex. 13). When the Secretary is on vacation or leave, the Administrator performs the secretary's duties. If a strike occurred, Bell could assume the secretarial duties without an effect on the public; however, Bell would be very busy in that case.

34. *Manor Resident Assistant.* Multiple employees work as Resident Assistants (RAs) at the Manor. The facility is staffed around-the-clock. (Testimony of Bell).

35. The RAs help residents with daily living. Activities with which they assist include distributing meals, hygiene, toileting, walking, bathing, housework, following the direction of prescribing physicians by distributing prescribed medications at appropriate intervals by placing pills in cups for residents, and charting food intake. (Joint Ex. VI; Ex. 12; Testimony of Bell). The Manor gets lists of residents' medications from the drug store. The lists contain instructions for dosages and times. The RAs monitor the residents' skin for skin issues, and lotions are applied. (Testimony of Lopez). According to Bell, medications are not prescribed by Manor staff. A medication administration report is obtained from the drug store. The RAs do not

make decisions regarding medications. They give the residents a cup containing the appropriate pills. To be able to perform this task, they have on-the-job training, with two weeks of observation and two weeks of dispensing medicine into the cups. Some residents receive medication five times a day, and others only once a day.

36. The prerequisites for the RA position include possessing a valid state driver's license, having organizational skills, and passing a background check and a tuberculosis test. (Joint Ex. VI; Ex. 12; Testimony of Bell).

37. *Resident Assistant Supervisor.* This position has been vacant for at least two years. The duties of this position have been delegated effectively to other employees, in particular the Manor's Secretary and Administrator. Lopez said the Resident Assistant Supervisor's duties are absorbed among the staff as staff members are available to handle them. For example, Lopez assists with scheduling and budget preparations, duties which are listed in the Resident Assistant Supervisor's job description.

38. The duties of the Resident Assistant Supervisor include those duties of a Resident Assistant, described above, and scheduling, budget preparation, and employee evaluations. In addition to the prerequisites for the Resident Assistant position, the Supervisor position requires two years of documented experience as a care provider. (Joint Ex. VI; Ex. 11).

39. Although the job description for the Resident Assistant says that the applicant must be able to complete the certified nursing assistant (CNA) program within 12 months of being hired, Alaska law no longer requires that certification. (Joint Ex. VI, at 2). The same is true for the Resident Assistant Supervisor. The job description for this position says the applicant must possess a current nursing assistant certification at the time of hire. (Joint Ex. VII, at 2). Bell confirmed that the CNA class was no longer required, although it is encouraged. Lopez testified that although employees did not have the CNA certificate, they have on-going education that is required by the State.

40. There is a Registered Nurse on staff full-time. She works a couple of hours on Monday and Friday, and she is on-call 14 hours daily, from 5:00 p.m. to 7:00 a.m. If there are issues that require a nurse, she is called in, if the resident is not taken directly to the hospital. Prescribed medication is kept in a locked medical cart. Only the Registered Nurse and the Administrator have a key. (Testimony of Lopez).

41. If a work stoppage occurred, Bell and the RN would care for the residents. Bell would ask at the hospital if CNA's were available, and she would ask families, friends, and community members to assist. She would hire new employees, and a new staffing plan would have to be filed with the State within 24 hours. There were 8-9 applicants for the last opening, all of whom were qualified. Although the residents do not like change when a staff member leaves, they adapt to new staff members. (Testimony of Bell). However, Lopez believes a work stoppage would be traumatic for

the residents, as a strong bond is created between the residents, who need assistance with personal care, such as bathing, and the staff members who provide the care.

42. *Kitchen Supervisor.* Becky Turland is employed as the Kitchen Supervisor. The position's duties include preparing menus and meals, managing and monitoring residents' dietary restrictions, purchasing food, and complying with the State's food safety standards. The prerequisites for this position include possessing a valid state driver's license, State food handler's card, and organizational skills, and passing a background check. Turland does not supervise any employees. On Monday, Wednesday, and Friday, the residents' dinners are provided by a contractor. If a work stoppage occurred, the residents would not go without food. The City could contract the food services; volunteers, who have food handler cards, could be recruited from the community; or families and friends could bring food. (Testimony of Bell).

43. *Cook.* The Cook position is vacant. According to Bell, the position is no longer necessary because those duties have been redirected effectively to the Kitchen Supervisor.

44. Hahn supported Bell's testimony about the effects of a work stoppage when he stated the Manor would hire new employees, file an alternative plan with the State, and any interruption of services would be tolerable without a threat to the public's health, safety, and welfare.

ANALYSIS

Alaska Statute 23.40.200 divides public employees into three classes for strike classification purposes. Class I employees perform services that "may not be given up for even the shortest period of time." Class II employees perform services that "may be interrupted for a limited period but not for an indefinite period of time." Class III employees perform services "in which work stoppages may be sustained for extended periods without serious effects on the public." AS 23.40.200(a).

To determine strike classification under AS 23.40.200, this Agency will "first examine whether the employees' duties are those of a position named and classified by the legislature in AS 23.40.200(b), (c), or (d)." *Alaska Public Employees Association v. State of Alaska*, Decision and Order No. 143, at 19 (September 9, 1992), *aff'd* No. 1JU-92-1882 CI (May 27, 1993). "If the employees' duties do not fit one of the named positions, the Agency will next examine the anticipated effect of an interruption of their work on the public." *Id.* The Agency has said, "The key to determining strike class of an employee under AS 23.40.200 is the length of time the public can withstand a work stoppage." *Alaska Public Employees Association v. Fairbanks North Star Borough*, Decision and Order No. 131, at 9 (March 15, 1991) (emphasis added).

The State Labor Relations Agency⁴ issued an order in *In re Alaska Marine Ferry System Workers*, SLRA Order & Decision No. 20, at 2-3 (1976), which provides:

The PERA must be read as a whole; thus it would appear that the enumeration of specific classes of employees in 200(b), (c) and (d) should be construed as *illustrative rather than exhaustive*, and that Sec. 200(a)(1), (2) and (3) is controlling. To conclude otherwise would be to conclude that a classification **title** is more important than the **duties** performed, and such a conclusion could thwart the purposes of Sec. 200(a).

In re Alaska Marine Ferry System Workers, SLRA Order & Decision No. 20, at 2-3 (Feb. 24, 1976). (emphasis added).

We have concluded previously that the legislative intent of AS 23.40.200 is to presume public employees are in Class III positions, and are entitled to the important economic tool of strike eligibility. See *Public Safety Employees Association v. City of Unalaska*, Decision and Order No. 205, at 6 (Aug. 27, 1996). The restrictions imposed by AS 23.40.200 on strike eligibility are least restrictive when there is minimal risk that a strike by employees in a job class will have an adverse affect on the health, safety, and welfare of the public. *Public Safety Employees Association v. City of Unalaska*, Decision and Order No. 285, at 7.

The dispute between PMEA and the City primarily is whether the job classifications at issue are Class I or Class III. The City contends that the affected classifications are not Class I, and at most they are Class II. However, the City did not advocate Class II status for the classifications. In resolving the strike classification issues raised in PMEA's petition, we will determine whether the employees in the disputed positions should be classified as Class I, II, or III employees under AS 23.40.200(a).

As the petitioner, PMEA must prove by a preponderance of the evidence either that the positions in question are among the Class I or Class II job classifications, or that the duties performed by the employees in the affected positions are the type of duties that cannot be given up even for the shortest period of time, or they can only be given up for a limited period, but not indefinite period of time, without adversely affecting the public's health, safety, or welfare.

⁴ Prior to the reorganization of public sector labor relations pursuant to Executive Order Number 77, which created the Alaska Labor Relations Agency, the State Labor Relations Agency (SLRA) served as the labor relations agency for the State and state employees under the Public Employment Relations Act. The Department of Labor, Labor Relations Agency (DOLLRA) served as the labor relations agency for political subdivisions. (Executive Order 77. Effective July 1, 1990)

Police Department/Parking and Vehicle Regulation Enforcement (Parking Attendant)

PMEA argues that the Parking Attendant is a Class I position as a “police employee” under AS 23.40.200(b) because it is the only position within the police department that is not. The Parking Attendant plays an important role supporting the needs of the police department, and if vacant for any length of time, other police personnel must fill the duties of that position.

The City disagrees with PMEA’s position that the Parking Attendant is a Class I employee. Agner testified that the Parking Attendant does not perform any police duties. The Parking Attendant has authority to issue parking and animal control citations, but does not have the authority or police training to apprehend or arrest people. If the position is vacant for any length of time, other police personnel can cover, and have covered, the duties unless the department hires a replacement for the entry-level position.

We will first examine whether the Parking Attendant position is one of the positions listed in AS 23.40.200(b) or (c). We find that it is not. The Parking Attendant, although an employee of the police department, does not receive police officer training and is not a police employee under AS 23.40.200(b). The Parking Attendant has additional duties within the jail, but those duties are janitorial and not the duties of a correctional institution employee under AS 23.40.200(b). The services of the Parking Attendant, although valuable, are non-essential and could be given up for indefinite periods of time without threatening the public’s health, safety, or welfare. The position has been vacant for extended periods of time in the past, and the duties have been effectively delegated to other employees without impacting the public.

We find that the Parking Attendant position is not a job classification listed in AS 23.40.200(b) or (c), and the duties of the Parking Attendant do not conform to those listed in the statute for Class I or Class II because the public could withstand a work stoppage for an extended period of time without serious effects to its health, safety, and welfare. The anticipated effect of a work stoppage on the public is minimal. Thus, we conclude that the Parking Attendant is a Class III employee for the purposes of strike classification under PERA.

Harbor, Port of Petersburg Positions

PMEA argues that the employees in the disputed harbor positions are Class I employees because they perform police protection services as the first line of defense if a terrorist threat occurs at the harbor. The Maritime Security Act requires that the harbor implement a Facility Security Plan to ensure the harbor’s security when a SOLAS ship, such as a cruise ship, docks at the harbor. Harbor employees would be the first to notify the police and the U.S. Coast Guard in the event of a security threat.

However, the City contends that the harbor employees perform no police duties, and their primary duties are the maintenance and clerical operations of the harbor, not security. Even in the brief and sporadic instances when a SOLAS ship's arrival activates the harbor's security plan, the role of harbor employees is to observe and report incidents to the U.S. Coast Guard, police, fire, or other emergency departments. Harbor employees do not have the authority or police training to apprehend or arrest a suspected terrorist, and they do not respond to crimes. The designated Facility Security Officer is tasked only with creating a secure passage for the ship, and a securing an area for passengers to disembark. An interruption in the services the harbor personnel provide would not immediately impact the public adversely because the positions are easily filled with residents from the community. The effect on the public of a work stoppage would be minimal and could be sustained for an extended period of time.

Class I positions are composed of "police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees." AS 23.40.200(b). The job classifications listed as Class II in AS 23.40.200(c) are "public utility, snow removal, sanitation, and educational institution employees other than school district, regional education or state boarding school employees."

We find that the employees' harbor positions at issue are not among the job classifications listed as either Class I in AS 23.40.200(b), or Class II in AS 23.40.200(c). While harbor employees may be the first to know about a security threat at the harbor, they are not trained police officers and they do not perform police duties. If a security risk exists at the harbor, harbor employees will call trained emergency services instead of taking direct action. The police department carries out police duties at the harbor, not the harbor employees.

Examining the duties the employees perform in the disputed harbor positions, we find PMEA produced no evidence that a strike for an extended period by the harbor personnel would seriously affect the health, safety, or welfare of the public. *See, State of Alaska v. Alaska State Employees Association/AFSCME Local 52, AFL-CIO*, Decision and Order No. 205 (August 27, 1996) (classifying the State's computer support employees for the Alaska Public Safety Information Network as Class II employees).

The City established that the harbor closes for two hours every week, without incident, and it has handled absences and vacant positions by shifting schedules or bringing in help from the community, where many residents are qualified for the positions with little or no training. Witnesses testified that in the event of absences, the impact is that it is busier for the personnel on duty, and the only impact on the public is reduced efficiency.

We conclude PMEA has failed to prove by a preponderance of the evidence that the employees in the disputed harbor classifications are Class I employees under AS 23.40.200(b), or Class II employees under AS 23.40.200(c). First, the harbor positions are

not listed among the job classifications in either AS 23.40.200(b) or (c). They are not qualified as police employees under AS 23.40.200(b). Second, looking at the duties of the positions and the length of time the employees' services can be given up, the evidence shows a strike would not have an immediate adverse affect on the public's health, safety, or welfare, and the public could sustain a strike for an unlimited time, as other City residents could be called in to help if a strike occurred. We find the employees in the disputed harbor job classifications are Class III employees, which are "all other public employees who are not included in the classes in (a)(1) or (2)" of the statute. AS 23.40.200(d).

Mountain View Manor Employees

PMEA argues that the disputed Manor positions are Class I positions because the employees are "hospital employees" under AS 23.40.200(b), since those positions provide essential, basic medical support services to residents. The Manor provides housing, food, and assistance with activities of daily living, which includes helping with bathing, toileting, dressing, walking, and other personal care activities.

The City disagrees. It contends that although the job descriptions require that the Resident Assistants (RAs) and RA Supervisor hold or obtain a certified nursing assistant certification, Alaska law no longer requires that certification for either position, and no staff members are certified. The only person at the Manor who is qualified to provide any nursing assistance is the Registered Nurse, who is on contract with the Manor. Neither the Kitchen Supervisor nor the Secretary provides assistance with activities of daily living, or with dispensing medicine. No culinary or medical background is required of any staff members. The Manor is an assisted living facility, and under Alaska statute AS 47.32.900, it may not provide, or advertise that it provides "nursing care," unless it holds a license under AS 18.20.020 - 18.20.130. PMEA produced no evidence that the Manor holds a "nursing care" license.

PMEA contends that, although the Manor is not a "hospital," even a brief work stoppage by the employees in the disputed classes would jeopardize the health of the residents, who need attention around the clock, and who have formed important emotional bonds with the staff members. PMEA questions the effectiveness of the Manor's "strike plan," which calls for calling friends, family, and former employees to help.

The City disputes that there would be any adverse impact on the health, safety, or welfare of the public in the event of a work stoppage. The residents would be cared for if a work stoppage occurred. The Administrator and the RN would continue to meet the residents' basic needs, with outside assistance if necessary. There has been a high rate of turnover in the RA position, and while the residents must adjust to new personnel, it has not caused unnecessary disruption to their lives and well-being.

The evidence shows that none of the employees in the affected positions have the training to provide medical care. The Secretary I and Kitchen Supervisor do not provide any health-related services. The Secretary performs clerical and transportation duties, and the Kitchen Supervisor prepares menus and meals. Neither position requires special certifications or qualifications to provide health-related services. The Resident Assistants and the Resident Assistant Supervisor do not provide medical care. Instead, they assist residents with activities of daily living, such as bathing, walking, and toileting. They place prescribed pills in cups at appropriate times for the residents to take, and they chart residents' food intake. The Resident Assistants and Resident Assistant Supervisor observe residents as they interact with them, and they inform the Administrator or the Registered Nurse of potential medical changes in residents. The Administrator or the Registered Nurse then contacts a medical professional or a family member. The Resident Assistants and the Resident Assistant Supervisor are not required to have training as a certified nursing assistant, and under the State's licensing requirements, the Manor cannot provide medical care or advertise that it provides medical care.

Finally, PMEA produced no evidence that a strike for an extended period within the disputed classifications would seriously affect the health, safety, or welfare of the public. PMEA's witness, Lopez, testified that a strike would be emotionally traumatic to residents who have formed close bonds with the staff at the Manor, but the City's witness, Bell, disagreed. PMEA did not produce any evidence in support of its argument that a disruption of emotional bonds would jeopardize the residents' health, safety, or welfare, or that the ensuing causal chain would result in an adverse impact on the health, safety, or welfare of the public.

The duties performed by the Manor employees that are the subject of the strike class petition may have limited impact on the health, safety and welfare of the Manor residents and the public. However, the Manor employees listed in the petition are not hospital employees. It is undisputed that the Manor is not a hospital; it is licensed as an assisted living facility. If a work stoppage occurred, the Manor would care for the residents with existing, non-bargaining unit staff members, community members, hospital employees, or others that it would call in to provide assistance temporarily while it filed a new plan with the State within 24 hours. The applicant pool for previous vacancies has shown that qualified applicants are available and willing to fill open positions. The evidence showed that a work stoppage would have little effect on the health, safety, and welfare of the public because the positions are easily filled.

Accordingly, we find that neither the positions nor the duties of the Manor employees in the affected positions are of the type listed in AS 23.40.200(b) and (c) and AS 23.40.200(a)(1) or (2) for Class I or II employees. The anticipated effect of a work stoppage on the public is minimal because the public could withstand a work stoppage for an extended period of time without serious effect to its health, safety, and welfare.

Therefore, we conclude that the employees in the disputed Manor positions are Class III employees for the purposes of strike classification under PERA.

CONCLUSIONS OF LAW

1. The Petersburg Municipal Employees Association, APEA, AFT LOCAL 6132, AFL-CIO (PMEA) is an organization under AS 23.40.250(5).

2. The City of Petersburg is a public employer under AS 23.40.250(7).

3. This Agency has jurisdiction to determine the strike classification of employees under AS 23.40.200.

4. As petitioner, PMEA has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).

5. PMEA failed to provide each of the elements of its petition by a preponderance of the evidence.

6. The employees in the disputed positions of Parking and Vehicle Registration Enforcement, Harbor Office Clerk, Harbor Security Officer I, Harbor Security Officer II, Harbor Security Officer III, Maintenance/Harbor Security Officer II, Manor Kitchen Supervisor, Manor Cook, Manor Resident Assistant, Manor Resident Assistant Supervisor, and Manor Secretary I, are not police protection employees or hospital employees under AS 23.40.200(b).

7. The employees in the disputed positions of Parking and Vehicle Registration Enforcement, Harbor Office Clerk, Harbor Security Officer I, Harbor Security Officer II, Harbor Security Officer III, Maintenance/Harbor Security Officer II, Manor Kitchen Supervisor, Manor Cook, Manor Resident Assistant, Manor Resident Assistant Supervisor, and Manor Secretary I, provide services in which work stoppages may be sustained for extended periods of time without serious effects on the public. AS 23.40.200(a)(3).

8. The employees in the disputed positions of Parking and Vehicle Registration Enforcement, Harbor Office Clerk, Harbor Security Officer I, Harbor Security Officer II, Harbor Security Officer III, Maintenance/Harbor Security Officer II, Manor Kitchen Supervisor, Manor Cook, Manor Resident Assistant, Manor Resident Assistant Supervisor, and Manor Secretary I, are Class III employees under AS 23.40.200(a)(3) and (d).

ORDER

1. The petition of the Petersburg Municipal Employees Association (PMEA) to classify the City of Petersburg employee positions of Parking and Vehicle Regulation Enforcement, Harbor Office Clerk, Harbor Security Officer I, Harbor Security Officer II, Harbor Security Officer III, Maintenance/Harbor Security Officer II, Manor Kitchen Supervisor, Manor Cook, Manor Resident Assistant, Manor Resident Assistant Supervisor, and Manor Secretary I, as Class I employees under AS 23.40.200(a)(1) and (b) is denied and dismissed.

2. The positions of Parking and Vehicle Regulation Enforcement, Harbor Office Clerk, Harbor Security Officer I, Harbor Security Officer II, Harbor Security Officer III, Maintenance/Harbor Security Officer II, Manor Kitchen Supervisor, Manor Cook, Manor Resident Assistant, Manor Resident Assistant Supervisor, and Manor Secretary I, are designated as Class III strike positions under AS 23.40.200(a)(3) and (d).

3. The City of Petersburg 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

Aaron T. Isaacs, Jr., Vice Chair

Will Askren, Board Member

Daniel Repasky, 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 mailing 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 *Petersburg Municipal Employees Association/APEA/AFT, Local 6132, AFL-CIO v. City of Petersburg*, Case No. 10-1590-SP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this _____ day of July, 2011.

Colin Milstead
Office Assistant III

This is to certify that on the _____ day of July, 2011,
A true and correct copy of the foregoing was mailed,
postage prepaid, to:

Pete Ford, PMEA, APEA/AFT

Patricia Vecera, City of Petersburg

Signature