

STATE OF ALASKA
before, THE DEPARTMENT OF LABOR
LABOR RELATIONS AGENCY

INTERNATIONAL BROTHER-)	
HOOD OF ELECTRICAL)	
WORKERS LOCAL 1547,)	
)	
Petitioner,)	
and)	CASE NO. RC 0286-001
)	
CITY OF FAIRBANKS,)	
)	
Respondent,)	
_____)	

AMENDED DECISION AND ORDER 86-8

On September 16, 1986, the Department of Labor, Labor Relations Agency rendered Decision and Order 86-6 regarding the February 25, 1986, petition by the International Brotherhood of Electrical Workers Local 1547 (hereinafter IBEW) for certification of a unit of management and supervisory personnel of the City of Fairbanks Municipal Utilities System (hereinafter MUS). On appeal to Superior Court, Decision and Order 86-6 was remanded for reapplication of 2AAC 10.220(b)(1) to the facts of RC 0286-001.

DISCUSSION

The IBEW petitioned the Department of Labor, Labor Relations Agency (hereinafter Agency), to certify a unit of twenty-eight supervisory and managerial employees of the MUS. The MUS objected to the proposed unit on the grounds that: the IBEW represented rank and file MUS employees and could,

therefore, not represent supervisory and managerial employees as well; there was no community of interest between six (6) Central Services employees petitioned and the balance of MUS employees petitioned; and finally, the unit proposed to combine managerial and confidential employees with supervisory employees. The Agency ruled that there was no express prohibition of dual representation within the Public Employees Relations Act (PERA), precluding the IBEW from representing both rank and file and supervisory employees. Therefore, the IBEW was an appropriate labor organization to represent the employees of the proposed unit. Secondly, the Agency found that a community of interest did exist between the Central Services employees and the other petitioned MUS employees. The MUS argued that ten (10) positions petitioned by the IBEW had substantial responsibility in policy determination and formulation in the area of collective bargaining. Those positions included:

WASTE WATER PLANT

SUPERINTENDENT
ASSISTANT SUPERINTENDENT- TREATMENT SYSTEMS
ASSISTANT SUPERINTENDENT- SYSTEMS MAINTENANCE

ELECTRIC UTILITY

SUPERINTENDENT
ASSISTANT SUPERINTENDENT- ELECTRIC PRODUCTION
ASSISTANT SUPERINTENDENT- ELECTRIC DISTRIBUTION

TELECOMMUNICATIONS

DIRECTOR
SUBSCRIBER SERVICE MANAGER

CENTRAL SERVICES

CONTROLLER
ACCOUNTING MANAGER
FINANCIAL ANALYST II

ADMINISTRATIVE AND SUPPORT SERVICES

DIRECTOR

The MUS withdrew its objections to both the ASSISTANT SUPERINTENDENT-TREATMENT SYSTEMS and the ASSISTANT SUPERINTENDENT- SYSTEMS MAINTENANCE. These positions did not in fact exist, and had only been proposed by MUS to the Public Utilities Board (PUB) for creation. The positions were never adopted by the PUB. Therefore, the Agency found that the positions were not properly included in the proposed unit. This reduced the number of positions objected to by the MUS, and to be considered by the Agency on remand, to eight (8).

"Confidential employee" is defined at

2 AAC 10.220(b)(1):

"[A]n employee who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the area of collective bargaining."

Since the issuance of Decision and Order 86-6 on September 16, 1986, the Agency further considered the interpretation and application of the term "confidential employee" in Decision and Order 88-1. In D&O 88-1, the Agency also addressed the two step analysis of "confidential employee",

required by the court in its review of the case at bar. (City of Fairbanks v Alaska Department of Labor, Case No. 4FA-86-2271 Civil (October 2, 1987)) That analysis and interpretation is as follows:

"The term [confidential employee] is to be narrowly construed. [2AAC 10.220(b)(1)]

A two step analysis must therefore follow to identify confidential employees.

The [Agency] must first determine which persons, if any, formulate, determine, and effectuate collective bargaining management policy. Then we must decide

whether a particular position assists or acts in a confidential capacity to such policy makers. [City of Fairbanks, supra.]

The phrase "formulate, determine and effectuate" is inclusive. Therefore, a person must perform all the specified elements, not just one or two, relative to collective bargaining policies to be a policy maker contemplated by the definition....

In assessing which employees assist or act in a confidential capacity to a policy maker, some regard must be given to the nature of the assistance or action. The very nature of PERA, contemplates the assistance/action must be directly related to the collective bargaining policies of the employer. A confidential employee is one who has access to, or a

knowledge of, more than mere raw data utilized in the collective bargaining process.

The confidential employee is one who is privy to or helps participate in management strategy or formulation of policies relative to collective bargaining. This reasoning is consistent with the treatment of this issue by the NLRB:

The Board has in the past denied eligibility in representation elections to those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations.

Pullman Standard Division of Pullman, Inc., 214 NLRB 762. American Radiator & Standards Sanitary Corporation, 119 NLRB 1715. BF Goodrich Company, 115 NLRB 722, 714

Further the NLRB has stated:

In determining the issue of confidentiality, the precise nature of the allegedly confidential information is significant. The Board has held that it will not exclude as "confidential" employees who merely have access to personnel or statistical information upon which an employer's labor relations policy is based; nor will it exclude employees with access to labor relations information after it has become known to the union or the employees concerned.

Pullman Standard Division of Pullman, Inc. supra, American Radiator & Standard Sanitary Corporation, supra, NLRB v HCREMC, 454 US 170.

PERA does not specify the frequency an employee must assist or act in a confidential capacity to be classified as a confidential employee. The NLRB has [ruled

that] [e]ven though an employee acts in a confidential capacity a relatively small percentage of the time, it does not detract from a confidential status.

Reymond Bakina Company, 249 NLRB 156."

The first step, therefore, is to identify those persons who formulate, determine, and effectuate collective bargaining policy for MUS. Evidence adduced at hearing identified three levels authorized to formulate, determine, and effectuate collective bargaining policy. The City Council has ultimate authority to set policy for the City of Fairbanks. Secondly, the Public Utilities Board (PUB) has the authority to set policy within guidelines established by the City Council. Finally, the General Manager of the MUS is the lowest level which policy formulation, determination, and effectuation takes place.

The next step is to identify whether any of the eight positions objected to by the MUS assists or acts in a confidential capacity to the General Manager, the PUB, or the City Council. No evidence was presented that would show that the PUB and/ or the City council are advised or assisted in matters pertaining to collective bargaining by any of the positions objected to as confidential. Virgil Gillespie, General Manager of the MUS, testified that only he and the Deputy City Attorney participate in collective bargaining for

management. Decisions regarding what approach and direction management will take in its negotiations are made at Mr. Gilespie's level or higher. The job classifications objected to by the MUS do share similar responsibilities for recommending courses of action in the areas of employee appointments, dismissals, promotions, and discipline. Individuals who occupy positions objected to as confidential, have access to information utilized in the collective bargaining process. Some have even provided analysis of data for Mr. Gilespie during and for negotiations, but do not know how the results of their work was used in the collective bargaining process. However, no evidence was presented to show that these individuals actually participate in the formulation of management strategy or collective bargaining policy. These positions do not assist or act in a confidential capacity to the MUS General Manager, the PUB or the City Council. Clearly, the duties and responsibilities of the classifications objected to by MUS, do not fall within those contemplated as "confidential" by 2 AAC 10.220. Therefore, they are appropriately included in the proposed bargaining unit.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The Agency having again reviewed the transcripts of the proceedings, the post hearing briefs, the comments of the Court, and having discussed the matters,

HEREBY makes the following Findings of Fact and Conclusions of Law:

1. Employees in the classifications petitioned have the right to organize under PERA;
2. Employees in the classifications petitioned are not confidential employees as that term is defined at 2 AAC 10.220(b)(1);

ORDER

1. It is hereby ordered that a secret ballot election be conducted in the "Fairbanks Municipal Utilities Systems Supervisory/Managerial Personnel" unit. The unit shall consist of the following job classifications:

WASTE WATER PLANT:

1. Superintendent
2. Assistant Superintendent- Water Distribution and District Heat

ELECTRIC UTILITY:

1. Superintendent
2. Assistant Superintendent- Electric Production
3. Assistant Superintendent- Electric Distribution

TELECOMMUNICATIONS:

1. Director
2. Subscriber Services Manager
3. Network Services Manager
4. Plant Manager
5. Installation and Maintenance Manager
6. Telephone Traffic Supervisor
7. Service Center Supervisor
8. Central Office Engineering Supervisor
9. Outside Plant Engineering Supervisor
10. Outside Plant Construction Superintendent
11. Planning & Scheduling Supervisor
12. Directory Supervisor
13. Traffic Engineer

CENTRAL SERVICES:

1. Controller
2. Accounting Manager
3. Financial Analyst
4. Data Processing Manager
5. Billing Supervisor
6. Data Processing Operations Coordinator

ADMINISTRATIVE SUPPORT SERVICES:

1. Director
2. Customer Service Manager
3. Material & Maintenance Superintendent
4. Customer Service Supervisor

2. Pursuant to 2 AAC 10.150 the MUS shall file with the Agency and deliver to IBEW, election eligibility lists. These lists shall contain the names, specific job classifications, and work addresses of all eligible voters within this unit.

3. Elections shall be conducted as specified in the Notice of Election to be issued by the Agency, and posted in accordance with 2 AAC 10.140.

Signed this 2nd day of March, 1989.

JIM SAMPSON, CHAIRMAN
LABOR RELATIONS AGENCY

THOMAS E. STUART, JR., MEMBER

JAMES R. CARR, MEMBER

[Seal Affixed and Signatures on File]

APPEAL PROCEDURES

An Agency 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 Rules of Appellate Procedure of the State of Alaska.

An Agency 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 IBEW Local 1547, Petitioner and the City of Fairbanks, Respondent, Case No. RC 0286-001, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 6th day of March, 1989.

Clerk

[Signature On File]