

confidential employees with other employees; (d) combined professional employees with non-professional employees; (e) and a conflict of interest existed as the personnel employed by the Alaska Department of Labor, Wage and Hour Division, who would participate in the appropriate disposition of the petition were represented by APEA, the petitioning union.

The State of Alaska, Department of Labor, requested the Alaska Labor Relations Agency to hear this matter due to the allegation pertaining to a conflict of interest.

The Labor Relations Agency heard the matter. None of the three parties objected to the Board assuming jurisdiction to hear this matter. The Fairbanks North Star Borough had not opted out from the Agency's jurisdiction, pursuant to AS 23.40.070 (See §4, Ch. 113 SLA 1972).

The Borough's objection based upon the combination of professional employees and non-professional employees has been dealt with extensively by the Agency in the past. That objection is not a proper criteria for separating individuals into separate units.

AS 23.40.090 empowers the Agency to decide in each

case the appropriate unit for collective bargaining. The decision is based upon such factors as community of interest, wages, hours and other working conditions, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmentation shall be avoided.

From the evidence received at the hearings, the employees within the proposed unit were under a common salary schedule, common retirement system, common health insurance system, and a common set of personal merit system rules. The great majority of the employees signed showing-of-interest cards.

APEA and LTC both made strong arguments for one unit consisting of all the employees in the unit. Both aptly pointed out the Agency's past record of following the statutory mandate of making the units as large as possible and avoiding unnecessary fragmentation.

However, the organizational structure of the Fairbanks North Star Borough is in a state of flux. The new Mayor, elected the fall of 1982, has undertaken a proposed set of changes in his organizational structure. The new organizational structure is

important to determine whether the employees' new duties would be supervisory, non-supervisory, confidential, or a combination of the three. The Agency attempted to balance the time needed for the Mayor to change his organization with the rights of the employees to organize. The Agency waited a reasonable amount of time to allow those proposed changes to take place. The Agency realized the need for the employees to know their status during this transition period.

The main thrust of the proposed reorganization is to attempt to have the Mayor employ a cabinet level form of government. The Mayor desires to have members of that cabinet, (basically consisting of the directors of the 12 divisions, plus his special assistants), serve at his pleasure. In effect, the employees would be the Mayor's employees and not covered by the merit system rules. Appointed officials are not covered by PERA, See AS 23.40.250(5). The Mayor thus argued that the directors and his special assistants will soon be acting as employees pursuant to AAC 10.220 (a) as appointed officials. The Borough also argued that the Directors and Mayor's personal staff are presently formulating and implementing collective bargaining

policy. The Agency is not persuaded that the Directors attendance at "cabinet" meetings where collective bargaining is discussed has raised the Directors to the level of appointed officials.

The Fairbanks Assembly has to approve the ordinances and financing to implement the Mayor's proposed changes. The Agency has received no information from any party that the Assembly approved a proposal by the Mayor to make members of his staff appointed officials or exempt from the definition of public employee under AS 23.40.250(5).

The Agency waited for such proposed changes, and has decided to wait no further before deciding this case.

In any event, the Borough has argued that all members of the Mayor's "cabinet" are confidential employees as they have significant responsibilities in the area of collective bargaining policy formulation and implementation by assisting and acting in a confidential capacity to the people who formulate, determine and effectuate management policies in the area of collective bargaining.

Basically, the Mayor, George McKee and the Borough Attorney are in the positions of formulating the final management

policies. The Mayor has had several cabinet meetings where collective bargaining is discussed and information is exchanged. Also, several of the directors are on the Mayor's negotiating team.

The confidential employees under 2 AAC 10.220(b)(1) has been narrowly construed by the Agency. Significant responsibilities for policy formulation and implementation must necessarily be narrowly construed. It is the basic nature of the collective bargaining process that the information passes from the employees to lower level managers, to middle level managers, to upper level managers, to division heads and then to the Commissioners. This process takes place within the State where thousands of individuals are employed and there is only one Commissioner. The same process is taking place in the Fairbanks North Star Borough, where there are fewer employees. The Borough employees have greater access to their "Commissioner" (the Directors) by the nature of the workplace, and the fact the Borough "Commissioner" is working along side his employees and has the same basic interests in the conditions of employment. These Directors are going to be affected the most by the Borough

organizational changes. They are now being ordered to be present when collective bargaining policies are discussed whereas in the past, those duties were not part of their function.

The State of Alaska presently has a Confidential Unit comprised of the State's Personnel Analysts and some of their clerical help.

The Division of Labor Relations (DLR) of the Department of Administration has employees in the Confidential Unit at the present time. The DLR's actual negotiators were in the Confidential Unit until 1980. So there is ample precedent for similarly situated employees being represented for collective bargaining within Alaska.

The Agency is aware of the Borough's argument that the Directors will be in an inherent conflict of interest by bargaining for themselves with the Mayor and his staff. The situation would be sensitive, at best, if the Directors had the primary responsibility for bargaining with the Borough employees. But George McKee is the Mayor's hired negotiator. The conflict situation is alleviated by the fact that his position is not included in any proposed unit. His position and 20-years of experience makes him most capable of representing the Mayor's

interests if he negotiates with the Directors.

In the final analysis, the nature of the workplace dictates the parties' community of interest. No organizational chart, in and of itself, changes that shared community of interest. However, a change in the ordinances could affect the relationship by making the positions appointed so the employees serve at the pleasure of the Mayor, and are not covered by the Borough merit system.

The Borough furthermore contends that there are ten positions of individuals who fall within the supervisory status of the Agency's regulations. That status includes those who have the substantial responsibility to hire, fire, promote, transfer, suspend or adjudicate grievances. Eight of those ten individuals would possibly become appointed officials if the proposed ordinance passes. The two which would not are the Borough Engineer and the Risk Manager.

Following the Borough's arguments to the logical extreme, we could possibly determine that there are to be three units created for these thirty-seven people. Those units would be a confidential, a supervisory, and managerial. The

confidential would have 13, supervisory, 2, and managerial, 22. That fragmentation is not deemed appropriate for such a small unit.

The Agency having reviewed the transcripts of the proceedings, the post-hearing briefs, and having discussed the matters,

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

1. The Agency finds that APEA, Borough, and LTC stipulated that the Mayor's legal counsel and his two assistants, attorneys and the Executive Director of Administrative Services, Human Resource Director, and Executive Director of Community Services, should be excluded from any bargaining unit. That the Executive Secretary to the Mayor and the Special Assistants to the Mayor, are each at less than pay grade 18 and are not in a supervisory position, and are excluded from any bargaining unit determination

2. That APEA and the Borough were in agreement for the purposes of unit determination, that the Director of Community Research should be treated the same as the 12 department

directors. The Agency finds that the Director of Community Research shares a similar community of interest with the 12 department Directors.

3. That the Capital Improvements Projects Coordinator the Internal Auditor should be regarded as members of the managerial unit for such purposes.

4. That the communities of interest make it appropriate to have two bargaining units from the members of the proposed unit. The first bargaining unit shall be comprised of the Director of Community Research and the other 12 department directors (Transit, Parks and Recreation, Library, Emergency Services, Public Works, A&C, Rural Community, Community Planning and Development, Land Management, Finance, General Services, and Data Processing).

5. That the second bargaining unit shall consist of the managerial employees at pay grade 18 and above, plus Greg Rindslebacher who is a manager but at pay grade 15.

6. That the thirty percent of the members of both units signed showing-of-interest cards.

7. This Agency finds that members of both units

shared, and still share, a substantial community of interest in the areas of wages, hours, and working conditions. However, since the new organizational structure of the Borough has begun to be implemented, there is a sufficient disparity to require two units.

8. That none of the employees in either unit are appointed officials pursuant to 2 ACC 10.220.

9. That confidential employees within Alaska are not prohibited from collective bargaining. The Agency notes the Federal implied exclusion of confidential employees. The Alaska Legislature has not excluded managerial or confidential employees. If confidential employees in this proposed unit, view themselves as closely aligned with management and thus, they will vote for no representation. The Alaska Legislature has expressly acknowledged the desires of the employees as a primary requisite in unit determination. This Agency finds the secret ballot election as the best way for the employees to show their desires.

10. The organizational structure of the Borough and the actual changes in the organization were considered by this Agency. Proposed changes of organization not approved by the

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Borough, were not considered by the Agency.

12. LTC timely intervened and will be on the ballot.

Dated this 19th of May, 1983.

C.R. "Steve" Hafling, Chairman
ALASKA LABOR RELATIONS AGENCY