

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

TEAMSTER LOCAL 959)
 Petitioner)
)
and)
)
IBEW LOCAL 1547)
 Intervenor)
)
and)
CITY OF FAIRBANKS,)
MUNICIPALS UTILITIES)
SYSTEM)
)
_____)

CASE NO. UC F85-2

DECISION AND ORDER 86-3

Upon a petition duly filed under 2 AAC 10.050 of PERA, a hearing was held on December 4, 1985 before a hearing officer of the Labor Relations Agency. Upon the entire record in this proceeding, the Agency finds:

1. The employer is a public employer within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.
2. The petition proposes to clarify or amend certified Teamster unit by adding the newly created job classification of EPABX Trainer assigned to the unit.
3. The IBEW has intervened, proposing that the classification in question appropriately belongs in the unit currently represented by IBEW.

DISCUSSION OF MOTION TO DISMISS

The IBEW has filed a motion to dismiss, asserting a contract bar exists. In support of that motion, they have submitted documents indicating that

the employer and the IBEW have, by mutual agreement, incorporated the classifications in question into the certified IBEW unit. The agreement was reduced to writing, (Letter of Understanding No. 4) and was signed by the parties August 9, 1985, before the Teamster petition was filed.

The Agency has previously held that it will not entertain petitions for unit clarification mid-term of an existing contract where the positions existed at the time of the unit election and where the positions are covered by the existing collective bargaining agreement. Fairbanks Firefighters Association v. City of Fairbanks, UC F 84-1, Decision and Order No. 85-2; The Agency reaffirmed this position in Decision and Order No. 85-5, International Brotherhood of Electrical Workers Local 1547 and Teamsters Local 959 v. City of Fairbanks, UC F84-2, Decision and Order No. 85-5.

However, the latter decision distinguished those classifications that are newly created during the term of a contract and found that they were a proper subject for a unit clarification petition. That reasoning is operative here. This dispute involved issues of whether a question of representation exists and what is the appropriate unit for the employer's EPABX trainers. Parties cannot, by unilateral agreement, place employees in one unit when they may properly belong in another unit. The determination of questions of representation, accretion, and appropriate unit do not depend upon contract interpretation but involve the application of statutory policy, standards and criteria. United Food and Commercial Workers International Union, Local No. 1222, AFL-CIO, CLC and Fed Mart Stores, Inc. et. al. 262 NLRB No. 88; and Marion Power Shovel Company, Inc., 230 NLRB 576, 577 (1977). Therefore, the IBEW motion is dismissed.

DISCUSSION OF THE MERITS

The Petitioner argues that the Marketing Consultant and the EPABX Trainer share a community of interest through the duties they perform; that they are both supervised by the Subscriber Services Manager; that both classes wear more formal clothes and are not required to use tools of the trade; and that neither is cross trained as an installer. Petitioner also points out that neither class is assigned a vehicle which carries the tools or equipment used by the Installers. Finally, Petitioner argues that customer requests for training go to the Marketing Consultant who gives these to the Trainer, thus establishing a nexus in the everyday work situation. In Counterargument, the Intervenor states:

- 1.The M.U.S. Director of Telecommunications, Mr. Cuzzacreo, drafted the position descriptions for Marketing Consultant and EPABX Trainer specifically to separate the customer service functions from public relations/sales functions and that it was his intention that the Trainer position be an integral part of the installation program since the trainer needed easy access to the EPABX Coordinator, Engineers and Repair Foreman.
- 2.According to Mr. Cuzzacreo, the EPABX Installers, the Coordinators and the Engineers are all represented by IBEW and are directly supervised by the Installation Foreman who, under the structure he created, directly supervises the Trainers and delegates 90~ of their work;
- 3.The skills for the Trainer classification, as drafted, are much closer to the skills of installation than they are to the modified Commercial Marketing Representative, (CMR) now referred to as Marketing Consultant;

4. Janet Wakefield was an exceptional CMR. Mr. Cuzzacreo stated that the other CMR's were not qualified to do the type of customer training required.
5. Mr. Cuzzacreo testified that most CMR's lacked the experience, skills or ability to perform much of the operational customer service tasks formerly assigned to them on paper, which are now assigned to the Trainers, and that prior to the reorganization, the Installers did the real customer training;
6. Testimony indicates that the Trainers and Installers frequently work closely together, while there is very little contact between the Marketing Consultants and the Trainers;
7. The Installation Foreman, Mr. D'Alelio testified that he participated in the selection of the employees who filled the Trainer positions. In this capacity, he stated he desired someone with installation experience so that they could perform some installation activities as needed. Further, Mr. D'Alelio noted that the Trainers and Installers work out of the same location and that the working conditions may be similar or dissimilar, depending on the particular type of job being done, the availability of vehicles, etc.;
8. Trainers share the same fringe benefits as other IBEW members; and
9. The incumbent employees desire to remain represented by IBEW.

On balance, the Agency finds the intervenor's arguments on community of interest more persuasive. We give no weight to the similarity in fringe benefits since these stem from the Letter of Agreement placing the Trainers in an IBEW unit. Likewise the employee's desires, while noted, are not

afforded great weight in our decision. There is no bargaining history to be considered; however, the remainder of the intervenors arguments are convincing and support a greater community of interest with the IBEW represented unit than with the Petitioner's Teamster represented unit.

The Trainers and Installers are supervised by the Installer Foreman who is, in turn, supervised by a newly created position titled, Subscriber Services Manager. This new management position also directly supervises the Marketing Consultants. While the Petitioner argues that both Marketing Consultants and Trainers are supervised by the Subscriber Services Manager, in reality the Subscriber Services Manager supervises the Trainers, Installers and EPABX Engineers and Coordinator only indirectly through the Installer Foreman. To say that this creates a community of interest between the Trainers and the Marketing Consultants is to say that a community of interest also exists between the Marketing Consultants, the Installers, the Coordinator and the EPABX Engineers.

Petitioner indicates that neither the Marketing Consultant nor the Trainer is cross trained as an Installer. This is misleading since the direct supervisor of the Trainers states that one of his prerequisites for a Trainer is prior experience as an Installer. Therefore, Installer cross training is superfluous for the Trainer.

Petitioner also attempts to show a nexus in that the Marketing Consultant sends customer requests for training to the Trainers. In actuality such requests are routed through channels, through the Installer Foreman, who assigns the work to the Trainers. The remainder of the petitioner's arguments are insufficient to establish a strong community of interest between the Marketing Consultants and the Trainers.

Finally, both sides discuss at length the skills, experience and qualifications of Ms. Janet Wakefield, formerly a CMR now a Marketing Consultant. There appears to be little disagreement that Ms. Wakefield may be qualified to serve in the position of EPABX Trainer. We note, however, that this is unusual for a CMR or Marketing Consultant and is due to the years of extra training which she herself has sought. She has no doubt been an exceptional employee, as duly noted by both sides. What is of particular interest here, is the fact that this extra training, which she has received over a period of several years, has been provided by the Installation section, not by her own section, Commercial Marketing. This reinforces our opinion that the experience, skills, and abilities necessary to perform the training function are more closely related to the IBEW represented Installers than they are to the Teamster Commercial Marketing Representatives.

ORDER

It is hereby ordered that the unit certified by this Agency on December 24, 1984 as a result of election Number 7 be clarified by the addition of the job classification EPABX Trainer.

Signed this 18th day of February, 1986.

Robert J. Bacolas, Chairman

Donald R. Wilson, Member

James R. Carr, Member

[SEAL AFFIXED AND SIGNATURES ON FILE]

This Decision and Order takes effect the day signed and unless appealed to the Superior Court as provided in the rules of appellate procedures of the State of Alaska, becomes final on the 30th day after it is signed.