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

GENERAL TEAMSTERS LOCAL 959	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. ULP 87-006
	)	
FAIRBANKS NORTH STAR BOROUGH	)	
	)	
Respondent.	)	
_____	)	

DECISION AND ORDER 87-8

The Department of Labor, Labor Relations Agency ("Agency") considered an unfair labor practice charge filed by General Teamsters Local 959 ("Union") against respondent Fairbanks North Star Borough ("Employer"). The parties agreed to waive hearing on this matter with regard to the threshold questions of law. By stipulation, the parties submitted briefs on the following issues:

1. Is the Fairbanks North Star Borough a successor employer to the City of Fairbanks in the acquisition of Alaskaland?

2. If the Fairbanks North Star Borough is a successor, is it obligated to bargain with the Union?

Thomas E. Stuart, Jr., Chairman, and members J. R. "Randy" Carr and Dennis Geary, constituting a quorum of the Agency, considered the briefs presented to them and, based upon those briefs, make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Employer is a public employer within the meaning of the Act, and this matter is properly within the jurisdiction of the Agency.

2. The City of Fairbanks, ("City") and the North Star Borough entered into an agreement to transfer ownership of the theme park known as Alaskaland from the City to the Employer.

3. At the time of the transfer and prior to that time, six of the City of Fairbanks' employees working at Alaskaland were part of a larger bargaining unit certified by the Agency and represented by the Union since 1984.

4. At the time of the transfer and prior to that time, the Employer had existing job classifications in the Parks and Recreation Department of Parks Caretakers, Parks Maintenance Foreman, and Building Maintenance Mechanics. These classifications have been part of a larger bargaining unit represented by APEA since 1977.

5. On or about May 4, 1987, the City, through its manager, requested that the Employer employ the City's Alaskaland workers after the transfer of ownership.

6. On or about June 29, 1987, the Employer, through its mayor, advised the City that the Employer was under no obligation to hire the City's Alaskaland employees, that it did not intend to hire any new employees because studies indicated the work could be done by the Employer's current workforce and supervision in existing job classes.

7. On July 6, 1987, the City filed a quitclaim deed transferring Alaskaland to the Employer.

8. On August 4, 1987, the Union requested that the Employer recognize the Union as the exclusive bargaining representative for the City's former Alaskaland employees.

9. On August 11, 1987, the Employer rejected the Union's request, citing as reasons that they were not a successor employer nor an "alter ego" of the City.

10. The Agency takes official notice that the City and the Employer are separate legal entities and separate political subdivisions duly formed in accordance with Alaska Statutes.

11. The Employer has not hired a majority of the City's employees at Alaskaland since the transfer.

12. The Employer's operation of Alaskaland involves a complete change in the supervisory hierarchy.

DISCUSSION

This is a case of first impression for the Agency. Neither the Statutes, the Regulations, nor our counterpart State Labor Relations Agency have ever addressed the issue of "employer successorship." Therefore, we must look to decisions of the federal courts and the NLRB in reaching a decision. The leading case on successorship is NLRB v Burns International Detective Agency, Inc., 406 US 272, in which the court determined that the NLRA requires successor employers to take over and honor collective bargaining agreements negotiated by the predecessor, barring unusual circumstances. In a 1987 case, Fall River Dyeing and Finishing Corp. v NLRB, 125 LRRM 2441, the court reviewed and reaffirmed its decision in Burns.

In Burns, the high court articulated criteria upon which a bargaining obligation rests. Included criteria are:

1. The bargaining unit remains unchanged;

2. A majority of the employees of the predecessor are hired by t

The guiding NLRB policy concerning successorship, approved by the court in Burns, consists of the following criteria of substantial continuity:

1. Is there substantial continuity of the same business operation;

2. Does the new employer use the same plant;

3. Is substantially the same workforce employed;

4. Do the same jobs exist under the same working

5. Are the same supervisors employed;

6. Are the same equipment, machinery or methods of

7. Are the same services offered.

The Union argues that a discriminatory motive exists for the Employer's refusal to hire the predecessor's employees, and such refusal is therefore unlawful. They allege that the Employer did not want to hire the City employees because it did not want to bargain with Local 959. In fact, the affidavit from Gerald Hood states that he was "advised by the Borough officials that they were not going to continue to offer employment to the Alaskaland employees so they would not have to bargain with Local 959." This statement indicates that not bargaining with Local 959 is the result of the decision not to hire the city workers rather than the reason for not hiring them.

In American Press v. NLRB, 126 LRRM 3131, the United States Court of Appeals, Sixth Circuit, found anti-union animus existed where a successor employer had hired all of its predecessor's non-union employees while failing to hire most of its union workers. The employer, American Press, actively tried to prevent union members from learning of the sale of the business; told employees they would not be hired because of their union affiliation; and stated they did not want to be involved with a union as they intended to be a non-union shop. The case at hand is markedly dissimilar. No coverup of the transfer is alleged; the Employer is not attempting to keep itself non-union as it is already organized; the Employer's failure to hire is not due to union affiliation, rather, it is due to lack of need on the part of the Employer for the City worker's training and experience.

The Union has cited Shortway Suburban Lines, 126 NLRB 1225 in support of its allegation of discrimination. In Shortway, the employer hired new workers off the street to staff its operation and, in doing so it advertised

for those workers in a manner that would have prevented the predecessor's workers from knowing that hiring was taking place, i.e.: They advertised in Detroit and Toledo for jobs in the Washington/Pittsburg area. The present case is distinguishable from Shortway for the same reasons as enunciated with regard to American Press, Supra.

Burns makes it clear that a new employer is free to select its own workforce. Additionally, the NLRB has ruled that when a potential successor employer staffs its new operation with experienced personnel taken from other locations in accordance with customary practice, a charge of discrimination fails. Industrial Catering Co., 224 NLRB 972.

Absent a finding of discrimination, it remains to examine whether a continuity of the workforce exists in order to determine successorship. The court and the NLRB are in agreement that successor majority is of paramount importance in determining successorship. The Board has been consistent in ruling no successorship exists where a finding of a "majority status" was lacking. There has been much written on the issue of the appropriate time for measuring majority status. The choices being the time of takeover, the time the full complement of employees is hired or some time in between when a substantial and representative" complement is hired. The court determined the latter to be appropriate in Fall River, Supra; however, analysis of this question by the Agency is moot since the Employer hired no additional employees from the City or elsewhere at time of takeover or to date. Under these circumstances it is impossible to believe that the Employer intended to take advantage of the trained workforce of its Predecessor.

CONCLUSIONS OF LAW

1. The fragmentation of the City's Alaskaland employees from the unit certified by the Agency does not constitute, on its face, an appropriate unit. The Employer's workers at Alaskaland are part of a much larger boroughwide unit. Therefore, if the City's Alaskaland workers were hired by the Employer, the bargaining unit would have been changed in some manner.

2. No discrimination is evident in the Employer's hiring practices. It has hired no one in the affected classes since the transfer.

3. Former City workers do not have majority status with regard to the Employer's workforce at Alaskaland.

4. The supervisory structure of the City has been replaced by that of the Employer, and entirely new supervisors exist than existed under the City's ownership.

5. The City of Fairbanks and the Fairbanks North Star Borough are not alter egos.

DECISION

Based on the foregoing findings of fact and conclusions of law, the Agency unanimously decides that:

1. The Fairbanks North Star Borough is not a successor employer to the City of Fairbanks in the acquisition of Alaskaland.

2. Because it is not a successor, the Fairbanks North Star Borough is not obligated to bargain with General Teamsters Local 959.

ORDER

THEREFORE, the Agency finds that the charge filed by General Teamsters Local 959 should be DISMISSED, and it is so ordered.

DATED this 4th day of January, 1988.

DEPARTMENT OF LABOR/LABOR RELATIONS AGENCY

By___

By_____
J.R. "Randy" Carr, Member

By_____
Dennis Geary, 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 General Teamsters Local 959, Complainant, and Fairbanks North Star Borough, Respondent, Case No. ULP 187-006, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 19th day of January, 1988

_____
Clerk

[Signature On File]