

STATE OF ALASKA
before, THE DEPARTMENT OF LABOR
LABOR RELATIONS AGENCY
3301 EAGLE STREET
ANCHORAGE, ALASKA 99510

IN THE MATTER OF

INTERNATIONAL BROTHERHOOD)
OF ELECTRICAL WORKERS,)
LOCAL 1547,)
)
Petitioner,)
)
ALASKA PUBLIC EMPLOYEES) Case No. UC F89-1
ASSOCIATION)
) **DECISION AND ORDER 90-1**
Intervenor,)
)
CITY OF FAIRBANKS,)
Employer.)
_____)

INTRODUCTION

On July 21, 1989, the International Brotherhood of Electrical Workers, local 1547 (IBEW), petitioned the Department of Labor, Labor Relations Agency (Agency) to amend a unit of employees of the City of Fairbanks Municipal Utilities System (MUS). IBEW was certified as the exclusive representative of the MUS Supervisory/ Managerial Personnel unit on April 26, 1989. The Petition sought to amend or clarify the MUS Supervisory/Managerial Personnel unit by adding to the existing unit the newly created job classifications of:

1. PURCHASING AGENT
2. BUDGET DIRECTOR
3. COMMERCIAL MARKETING SUPERVISOR
4. DRAFTING & SYSTEMS CONVERSION SUPERINTENDENT
5. REVENUE & SEPARATIONS ANALYST
6. TEST AND PROTECTION SUPERINTENDENT
7. DEPUTY CITY ATTORNEY / UTILITIES
8. MAINTENANCE & OPERATIONS ENGINEER

Objections to Petition:

MUS objected to the inclusion of two job classifications sought in the petition: DEPUTY CITY ATTORNEY/UTILITIES; and MAINTENANCE & OPERATIONS ENGINEER. At the hearing, however, the IBEW modified its petition and deleted the DEPUTY CITY ATTORNEY/UTILITIES from the job classifications sought.

The Alaska Public Employees Association (APEA) intervened and objected to the Petition, but gave no grounds for its objection.

Objections were also received from the incumbents of two petitioned classifications: BUDGET DIRECTOR; and DEPUTY CITY ATTORNEY/UTILITIES.

On September 8, 1989, the Agency conducted a hearing into this Petition to decide whether to clarify or add the positions cited above.

The Agency, having reviewed the transcripts of the proceedings and discussed the matters, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

2 AAC 10 070 allows for the filing of objections to the appropriateness of proposed additions to a unit. MUS did object to two (2) classifications (one of which was deleted from petition by IBEW at hearing), but did not object to the remaining six (6) positions:

1. PURCHASING AGENT
2. BUDGET DIRECTOR
3. COMMERCIAL MARKETING SUPERVISOR
4. DRAFTING & SYSTEMS CONVERSION SUPERINTENDENT
5. REVENUE & SEPARATIONS ANALYST
6. TEST AND PROTECTION SUPERINTENDENT

The Agency finds that the MUS conceded by its action that these six positions share a community of interest, wages, hours, and other working conditions with the petitioning unit.

Objection was raised by the BUDGET DIRECTOR for inclusion of her position in the proposed unit. The objection was based solely on personal concerns regarding collective bargaining and not factors addressed in A.S. 23.40.090. The desires of the employee are among the considerations contemplated by the Agency when making its decision. *Id.* Nevertheless, the Agency finds the community of interest this position shares with other petitioned positions and the need to avoid unnecessary fragmentation outweighs the desires of the incumbent in this case.

The MAINTENANCE & OPERATIONS ENGINEER (M&OE) is a full time position within the MUS Power Plant. The M&OE incumbent, David Gerdes, was the only person to testify who had a direct knowledge of the work performed by the M&OE. The M&OE directs the day to day operations of the Electric Utility. The M&OE effectively manages the Electric Utility in that he: schedules employee work shifts and assignments; initiates purchases of needed supplies; and approves the purchase of electricity from other utilities.

The Job Description of the M&OE, submitted by MUS at hearing, does not accurately describe the actual duties performed by the M&OE (Exhibit 1). Only 10% of the daily tasks performed by the M&OE are accurately reflected in the MUS Job Description. The Utility Superintendent altered the organization of the Electric Utility by practice and turned over control of the day to day operations to the M&OE, allowing the Assistant Superintendent to devote his time to duties in the other Utilities (Exhibit 6,7). The majority of the work performed by the M&OE involves the management and operation of the Electric Utility.

The Deputy City Manager - Utilities is the only person within MUS who can approve hirings, promotions, discipline or effect the resolution of grievances. Nevertheless, the suggestions or recommendations of the M&OE regarding these kinds of decisions are given the same weight as the suggestions and recommendations of the members of the MUS Supervisory/Managerial Personnel Unit.

The actual duties performed by the M&OE differ from the duties performed by the other engineers in other Utilities within MUS. The M&OE does not share a community of interest with the other engineers in the MUS.

CONCLUSIONS OF LAW

1. This Agency has the jurisdiction to hear and consider requests for Unit Clarification pursuant to AS 23.40.090 and AS 23.40.160.
2. The MUS Supervisory/Managerial Personnel unit, is a unit

comprised of MUS supervisors and managers. (D&O 86-8) Supervisors are defined by regulation at 2 AAC 10.220 (b) (3):

[A]n individual having substantial responsibility on behalf of the public employer regularly to participate in the performance of all or most of the following functions: employ, promote, transfer, suspend, discharge or adjudicate grievances of other employees, if in connection with the foregoing, the exercise of such responsibility is not of a mere routine nature but requires the exercise of independent judgement.

3. Managerial employees have previously been defined by this Agency as those who either: formulate and effectuate management policies by expressing and making operative the decisions of management; or, represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy. (D&O 86-8)

4. The Public Employment Relation Act (PERA) requires that the Agency decide, for each job classification, the unit appropriate for the purposes of collective bargaining (A.S. 23.40.090). The PERA requires that the unit be an appropriate unit for collective bargaining purposes, although it need not be the only appropriate unit. Id.

5. The six positions uncontested by MUS (PURCHASING AGENT, BUDGET DIRECTOR, COMMERCIAL MARKETING SUPERVISOR, DRAFTING & SYSTEMS CONVERSION SUPERINTENDENT, REVENUE & SEPARATIONS ANALYST, TEST AND PROTECTION SUPERINTENDENT) share a community of interest, wages, hours and other working conditions, and are appropriately included with the supervisory and/or managerial employees in the MUS Supervisory/Managerial Personnel unit.

6. The MAINTENANCE & OPERATIONS ENGINEER shares a community of interest, wages, hours and other working conditions, and is appropriately included with the supervisory and/or managerial employees in the MUS Supervisory/Managerial Personnel unit.

ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, the Agency orders and decides that:

1. The MUS Supervisory/Managerial Personnel unit certified by this Agency on April 26, 1989, be clarified by the addition of the job classifications of:

1. PURCHASING AGENT
2. BUDGET DIRECTOR
3. COMMERCIAL MARKETING SUPERVISOR
4. DRAFTING & SYSTEMS CONVERSION SUPERINTENDENT
5. REVENUE & SEPARATIONS ANALYST
6. TEST AND PROTECTION SUPERINTENDENT
7. MAINTENANCE & OPERATIONS ENGINEER

2. Petition for the job classification of DEPUTY CITY ATTORNEY/UTILITIES was properly withdrawn and dismissed without prejudice.

Signed this 12th day of February, 1990

DEPARTMENT OF LABOR, LABOR RELATIONS AGENCY

JIM SAMPSON, CHAIRMAN
LABOR RELATIONS AGENCY

JAMES R. CARR, MEMBER

THOMAS E. STUART, JR., MEMBER, did not participate in the decision making process.

[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 by 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 Number UC F89-1, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 15th day of February, 1990.

Clerk

[Signature On File]