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PUBLIC SAFETY EMPLOYEES ASSOCIATION)
AFSCME LOCAL 803, AFL-CIO,)
)
Petitioner,)
)
vs.)
)
CITY OF UNALASKA,)
)
Respondent.)
)

_____)
CASE NO. 07-1511-SP

DECISION AND ORDER NO. 285

The Board heard this petition to determine strike classification of three job positions at the City of Unalaska on Thursday, December 13, 2007, in Anchorage. Hearing Examiner Mark Torgerson presided. This decision was based on the evidence submitted, witness testimony, and arguments of the parties, including post-hearing briefs filed on January 14, 2008. The record closed on February 27, 2008, after the Board deliberated following the filing of post-hearing briefs.

Digest: The strike petition of the Public Safety Employees Association to classify the three positions as strike ineligible (Class I) is denied. The duties of the City's Animal Control Officer, Information Services/DMV Agent, and Emergency Medical Services Coordinator do not fit within the factors required for Class I status (strike ineligible).

Appearances: Stephen Sorensen, General Counsel, Public Safety Employees Association; William Mede, attorney for City of Unalaska.

Board Panel: Aaron Isaacs, Jr., Vice Chair; Colleen Scanlon and Ken Peltier, Members.¹

¹ Member Scanlon was unable to attend the hearing in person but reviewed the record and deliberated with the other board panel members.

DECISION

Statement of the Case

The Public Safety Employees Association (PSEA) filed a petition on October 4, 2007, to determine the strike classification for three positions in the public safety bargaining unit at the City of Unalaska (City).² The positions include Animal Control Officer, Information Services/Department of Motor Vehicles Agent, and Emergency Medical Services Coordinator. PSEA requests that these positions be classified as Class I, strike ineligible, like the classifications of other employees in the City's public safety unit. The City argues that the duties of these positions do not meet the requirements necessary to be classified as strike ineligible; therefore, they should be classified as strike eligible, either Class II or Class III.

Issue

Should the City's positions of Animal Control Officer, Information Services/Department of Motor Vehicles Agent, and Emergency Medical Services Coordinator be classified as Class I, Class II, or Class III for strike classification purposes?

Findings of Fact³

1. Effective December 20, 1993, the Alaska Labor Relations Agency ("ALRA" or "Agency") certified PSEA as the exclusive bargaining representative of a bargaining unit of City of Unalaska Public Safety employees. The bargaining unit currently includes the classifications of First Sergeant, Sergeant, Police Officer, Lead Communications Officer, Communications Officer, Corrections Officer, Fire Fighter, EMS Coordinator, IS/DMV Agent, and Animal Control Officer. There are currently 28 employees in the City's public safety bargaining unit.

2. When PSEA was certified by the Agency in 1993, the Animal Control Officer was in the bargaining unit, [but] the positions of IS/DMV Agent and EMS Coordinator were not in the unit. The EMS Coordinator position was in existence when the PSEA bargaining unit was established but was not included in the unit. The EMS Coordinator position was added to the bargaining unit in 2000. The IS/DMV Agent position was established in 1999.

3. The City currently employs one Animal Control Officer. The incumbent Control Officer is Theresa Bindley. At no time has the City employed more than one Animal Control Officer.

² The petition was originally filed as a unit clarification but subsequently changed to a strike class petition.

³ The parties filed a stipulation of facts at hearing. The first seven findings of fact reflect the parties' stipulation.

4. The City currently employs one IS/DMV Agent. The incumbent IS/DMV Agent is John Honan. At no time has the City employed more than one IS/DMV Agent.

5. The position of EMS Coordinator is currently vacant. At no time has the City employed more than one EMS Coordinator.

6. The bargaining relationship between the City and PSEA is governed by the Alaska Public Employment Relations Act, AS 23.40.070, et seq. The first City/PSEA bargaining agreement was effective March 7, 1995 through June 30, 1996. The parties have negotiated successor agreements, the most recent of which was effective from July 1, 2003 to June 30, 2006.

7. The City and PSEA commenced bargaining for a successor agreement in June 2006. The parties were able to reach tentative agreement on some provisions, but full agreement on a successor agreement has not been reached.

8. On October 4, 2007, PSEA filed a petition to determine strike classification of three positions in the public safety unit: EMS Coordinator, IS/DMV Agent, and Animal Control Officer.

9. Ramona Thompson was the EMS Coordinator from June 1996 until September 1, 2007. She provided training for the City's approximately 30 volunteers, coordinated emergency medical and fire services, ordered supplies and made sure ambulances were fueled, assured that the City was in compliance with related OSHA (Occupational Safety and Health Administration) regulations, filed monthly reports, and responded to events as needed. Thompson considered herself the lead medic. Thompson eventually felt like she was on call 24 hours a day, 7 days a week. After she resigned the paid EMS Coordinator position, she continued to volunteer for the City.

10. Thompson was once gone "off island" for six months of training. Before she left on this trip, she gave the fire chief a work plan to implement during her absence.

11. During her 11 years as EMS Coordinator for the City, Thompson said that volunteers received better and more sophisticated training. This provided the City with volunteers who had higher-degree certifications than previous volunteers. For example, at one time Thompson was the only certified paramedic. Now the City has "a couple" of paramedic volunteers. Both of the fire fighters who cover for her position are EMT III's (Emergency Medical Technician III's), one certification below paramedic.

12. The EMS Coordinator position has been vacant since Thompson left the position in September 2007. Other City employees, especially two of the City's paid fire fighters, have stepped in to cover for the duties of the EMS Coordinator.

13. There were 250 callouts in 2006 and 284 callouts in 2005 at the City.⁴

14. John Honan is currently the Information Services/Division of Motor Vehicles (IS/DMV) Agent. He works 80 to 85 percent of the time on DMV duties and the remaining time on IS duties. He testified that his DMV duties include providing vehicle registrations, drivers licenses, taxi processing and school bus driver yearly qualifications, among other duties. (See also Exhibit C). His primary information services responsibility is to make sure that the public safety unit's local area network is functioning properly. If there is nobody at a given location that is able to fix an information services problem, they call him.

15. The DMV office is open from 10:00 a.m. to 4:00 p.m. five days per week, when DMV Agent Honan is not absent. When Honan is off island, the City closes the DMV office. For example, he was gone for a month during August 2007. During his absence, the City closed the DMV office. The public is given advance notice of these closures. Regarding IS duties, Honan testified that other employees with competence in IS issues take care of the computer system during his absence.

16. Theresa Bindley is the City's Animal Control Officer. She has worked in the position since March 2007. In her job, she deals with both domestic and ferrel animals.

17. She oversees the City's four indoor kennels and one outdoor kennel. She makes sure that kenneled animals are fed and watered, and that they have clean and sanitary conditions. She said that "quite frequently" kennel capacity is one-half full.

18. Bindley testified that if she is absent, there is no public education regarding animal control, the standard of care of animals decreases, and there is no patrolling for dogs; officers will only pick up loose dogs if the officers have time. Bindley took leave during September 2007. During her absence, "anyone they can find" cleans the kennels and feeds the animals. Her boss or the Director of Public Safety arranges to have someone cover Bindley's duties during her absence.

19. Regarding wild animals, she lets "nature take its course" most of the time. Regarding vicious animal calls, she has received four or five such calls since March 2007.

20. The City does not have a resident veterinarian. Bindley estimated veterinarian visits are sometimes six months apart.

21. Bindley does not carry a weapon and is not trained to carry a weapon.

⁴ Thompson explained that a "callout" is any emergency that dispatchers contact Emergency Medical Services to investigate – for injury, illness, fire, missing people –or similar situations.

22. Jamie Sunderland is the City's Director of Public Safety. He directs the activities of the 18 positions employed in the Public Safety Department. (Exhibit B). Included in these 18 positions are the EMS Coordinator, IS/DMV Agent, and Animal Control Officer.

23. Sunderland testified that the Animal Control Officer administers rabies shots for approximately two weeks during each year. There are currently five City employees trained to give rabies shots. There have not been any rabies cases in the 12 years Sunderland has worked for the City.

24. The police staff assumes the feeding and caring duties of animals during the Animal Control Officer's absence. Some tasks do not get done, but there is no threat to public safety, health, or welfare during the Animal Control Officer's absence.

25. Sunderland testified that the EMS Coordinator's primary duty is to train City volunteers. During the three-month absence (from the resignation of Thompson to date of hearing), this duty has been delegated to one of the paid fire fighters or the Chief of Police.

26. Sunderland testified that the City gets a couple of calls per week for an ambulance, a couple of requests a year for fire fighting needs, and less than one call per day for all types of emergencies.

27. During the three-month vacancy period since Thompson's resignation, there has been no significant risk to the public.

28. Sunderland testified that, as Honan had stated, the DMV office is closed in Honan's absence. The public takes care of DMV needs before Honan leaves or when he returns to the office.

29. Sunderland testified that people are able to fly off island without an identification card by filling out paperwork at the airport.

30. Sunderland testified there are two employees who do all the computer network duties for the City. They work on Department of Public Safety projects as needed.

31. Sunderland asserted that the public safety, health, and welfare is not affected "at all" when the IS/DMV agent is absent.

ANALYSIS

The sole issue for decision is the strike classification of the City's positions of Animal Control Officer, Information Services /Department of Motor Vehicles Agent, and Emergency Medical Services Coordinator: should these positions be classified as Class I, Class II, or Class III for strike classification purposes?

AS 23.40.200(a) divides public employees into three classes according to their services:

- (1) those services which may not be given up for even the shortest period of time;
- (2) those services which may be interrupted for a limited period but not for an indefinite period of time; and
- (3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

The employees in subsection (a)(1) above, who may not strike under any circumstances, are called Class I employees. In exchange for the loss of right to strike, employees in this class have the right to binding interest arbitration. AS 23.40.200(b); *Alaska Public Employees Association v. State of Alaska*, Decision and Order No. 143 at 12 (September 9, 1992). Those employees in subsection (a)(2) who may go out on strike for limited periods of time are called Class II employees. Finally, the employees who fit into the subsection (a)(3) classification may strike for extended periods and are called Class III employees.

Class I employees are “composed of police and fire protection employees, jail, prison, and other correctional institutional employees, and hospital employees.” AS 23.40.200(b). As AS 23.40.200(a)(1) indicates, employees in this class provide services that “may not be given up for even the shortest period of time[.]” Moreover, this Agency has held that the key to determining strike class is to establish the amount of time that a position can stop work without directly affecting the public health, safety, and welfare. *Alaska Public Employees Association v. Fairbanks North Star Borough*, Decision and Order No. 131 at 9 (March 15, 1991). Put another way, how long can the public withstand a work stoppage? (*Id.*)

In analyzing AS 23.40.200, the State Labor Relations Agency⁵ (SLRA) announced “a tentative interim position that a reading of (a)(1) together with (b) might indicate the intent of the Act was to prohibit certain employees from striking based upon *what they actually perform* rather than on the basis of an occupational description or an assignment to a particular department.” *In re Tri-Trades Public Service Council Strike Ballot Election*, SLRA Order & Decision No. 17 (1975), at 3-4, and see *In re Tri-Trades Public Service Council Strike Ballot Election*, SLRA Order & Decision No. 17A (1975) (emphasis added). The SLRA confirmed this position in *In re Alaska Marine Ferry System Workers*, SLRA Order & Decision No. 20, at 2-3 (1976), which provides:

The PERA must be read as a whole; thus it would appear that the enumeration of specific classes of employees in Sec. 200(b), (c) and (d) should be construed as

⁵ Prior to the reorganization of public sector labor relations pursuant to Executive Order Number 77, which created the Alaska Labor Relations Agency, the State Labor Relations Agency (SLRA) served as the labor relations agency for the State and state employees under the Public Employment Relations Act. The Department of Labor, Labor Relations Agency (DOLLRA) served as the labor relations agency for political subdivisions. (Executive Order 77 (effective July 1, 1990).

illustrative rather than exhaustive, and that Sec. 200(a)(1), (2) and (3) is controlling. To conclude otherwise would be to conclude that a classification title is more important than the duties performed, and such a conclusion could thwart the purposes of Sec. 200(a).

This Agency adopted the SLRA's position in Decision and Order No. 131 at 9-10. In *Alaska Public Employees Association v. State of Alaska*, Decision and Order No. 143 (September 9, 1992), this Agency expanded its analysis of AS 23.40.200:

[W]e conclude that, for those employees whose duties fall within a listed position, the legislature has conclusively presumed the effect on the public of a work stoppage and has determined their strike class. The legislature, for example, conclusively presumed that police and fire employees provide a service that may not be interrupted and classified these employees as class I. AS 23.40.200(b). For those employees whose duties are not those of a position named by the legislature in AS 23.40.200(a), this Agency will determine strike class by examining the anticipated effect of a work stoppage on the public. In making this determination the Agency will keep in mind that the legislature intended interest arbitration to be the exception to the general rule of access to strike as the tool to resolve impasse. Only those employees whose work may not be interrupted without an *immediate adverse effect* on the public health, safety, and welfare will be classified as class I.

Id. at 14 (emphasis added).

Applying this precedent to the specific facts of this case, we conclude that the positions of Animal Control Officer, Information Services/Department of Motor Vehicles Agent, and Emergency Medical Services Coordinator are Class III, strike eligible. PSEA has failed to prove by a preponderance of the evidence that the duties of these positions may not be interrupted for even the shortest period of time without affecting the public health, safety, or welfare.

There was no testimony that there would be an immediate impact on public health, safety, or welfare if the Animal Control Officer went out on strike. Although some tasks may not get done, other City employees cover the majority of the tasks, and there was no evidence that if the tasks were left incomplete, there would be an immediate adverse effect on the public health, safety, and welfare.

In Decision and Order No. 131, the board panel addressed the question whether the Fairbanks North Star Borough Animal Control Officer should be classified as Class I, II, or III for strike purposes. The panel stated: "Animal control officers may still be classified class (a)(1) if the APEA⁶ can show that their services cannot be halted for any or even short periods of time."

⁶"APEA" is the Alaska Public Employees Association.

D&O 131 at 12. In D&O 131, the panel reviewed the facts and concluded that the Animal Control Officer at the Fairbanks North Star Borough should be classified as Class III, strike eligible.

In its analysis, the Board panel in D&O 131 compared the facts to those determined in a decision of the Department of Labor, Labor Relations Agency:⁷

In Alaska Public Employees Ass'n v. Ketchikan Gateway Borough, D&O 90-2 at 8 & 23 (1990), DOLLRA concluded that a lengthy strike could affect the public health and placed the Ketchikan animal control officers in class (a)(2). However, the testimony in that case was that the supervisor in the event of a strike might have difficulty performing the functions of the animal control officers and DOLLRA concluded that there could be a resulting impact on public health and safety from rabid or diseased animals. Id. at 8-9. In contrast, the supervisor testified in this case that she could substitute for the animal control officers if they were to strike and maintain a level of service that protected the public. We therefore conclude that, because animal control officers could strike without affecting the "health, safety, or welfare of the public," animal control officers fall within class (a)(3). As class (a)(3) employees, the animal control officers have full rights to strike.

D&O 131 at 12-13.

Unlike the Ketchikan case (D&O 90-2), there was no testimony that there would be any significant impact on the City if the Animal Control Officer was absent. Testimony indicated some tasks may go undone, but there was no evidence that leaving these tasks undone for a brief or lengthy period would impact public health, safety, or welfare. On this basis, we find that the Animal Control Officer should be classified as a Class III employee, eligible to strike for an indefinite period.

The second position for determination is the Information Services/Department of Motor Vehicles Agent. Most of the IS/DMV Agent's time is spent in DMV work. The DMV office is open just six hours per day, and when the employee is off island, the office closes for the entire period of the employee's absence. There was no evidence that any emergencies have occurred in the DMV employee's absence or when the office is otherwise closed.

Furthermore, in the 15 to 20 percent of time the IS/DMV Agent performs IS duties, there was no evidence that any emergency has ever occurred, even when the IS/DMV Agent is working. When this employee is absent, two other City IS employees take care of any public safety IS issues.

There was no evidence that the public health, safety, or welfare was affected even when the IS/DMV employee was absent for up to a one-month period. There was no testimony on the

⁷See footnote 5.

long-term effect of the employee's absence from his DMV duties, and whether a long-term strike could have a negative impact on public health, safety, or welfare. Therefore, we find the IS/DMV Agent should be classified as Class III, strike eligible.

The final position for classification is the Emergency Medical Services Coordinator. This position had been vacant for a three-month period prior to the December 13 hearing. There was no evidence that leaving this position vacant for brief or extended periods would have a negative effect on the public health, safety, or welfare. To the contrary, Director of Public Safety Sunderland testified that during the three-month vacancy, the duties of the EMS Coordinator were delegated to other public safety employees, and there was no significant risk to the public. This evidence supports a conclusion that the EMS Coordinator's services may be interrupted without an effect on public health, safety, and welfare. Therefore, we conclude this position should be classified as Class III, strike eligible.

PSEA urges us to classify these three city positions as Class I employees because the State Labor Relations Agency (one of this Agency's predecessors) concluded in D&O 17 and D&O 17A that all public safety department employees at the state level should be classified as Class I.⁸ Without analyzing the possible reasons why our predecessor agency may have so concluded, we find that we would draw an overbroad conclusion from those decisions by finding that all political subdivision public safety positions should be classified as Class I merely because all State of Alaska Department of Public Safety positions are classified as Class I. To do so could result in a class status that would be contrary to class status determined by reviewing actual job duties and the affect on public health, safety, and welfare if those duties are interrupted for even the shortest period of time, in accordance with the factors applied by this Agency in previous decisions.

Accordingly, we conclude that the strike class petition filed by of the Public Safety Employees Association on October 4, 2007, to classify the three positions as Class I, should be denied and dismissed.

CONCLUSIONS OF LAW

1. The Public Safety Employees Association is an organization under AS 23.40.250(5). The City of Unalaska is a public employer under AS 23.40.250(7).

2. This Agency has jurisdiction to determine the strike classification of employees under AS 23.40.200.

⁸ Art Chance testified that there has not been a challenge to the class status of state Department of Public Safety employees. We note that in its Post-Hearing Brief (see e.g., page 7), PSEA referred to Mr. Chance as a former employee of "the ALRA." ALRA is the acronym normally reserved for this Agency, the Alaska Labor Relations Agency – a quasi-judicial neutral agency. Mr. Chance previously worked in the State of Alaska, Department of Administration's Labor Relations Agency as an advocate for the State in collective bargaining.

3. As petitioner, the Public Safety Employees Association has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).

4. The Public Safety Employees Association failed to prove each of the elements of its petition by a preponderance of the evidence.

5. The positions of Animal Control Officer, Information Services/DMV Agent, and Emergency Medical Services Coordinator at the City of Unalaska provide services in which work stoppages may be sustained for extended periods without serious effects on the public. AS 23.40.200(a)(3).

6. The employees in the positions of Animal Control Officer, Information Services/DMV Agent, and Emergency Medical Services Coordinator at the City of Unalaska are Class III employees under AS 23.40.200(a)(3).

ORDER

1. The petition of the Public Safety Employees Association to classify the City of Unalaska's positions of Animal Control Officer, Information Services/DMV Agent, and Emergency Medical Services Coordinator as Class I, strike ineligible, is denied and dismissed.

2. The City of Unalaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron Isaacs, Jr., Vice Chair

Colleen E. Scanlon, Board Member

Ken Peltier, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of the order in the matter of *Public Safety Employees Association, AFSCME Local 803, AFL-CIO vs. City of Unalaska*, Case No. 07-1511-SP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 28th day of February, 2008.

Margie Yadlosky
Human Resource Specialist I

This is to certify that on the 28th day of February, 2008,
A true and correct copy of the foregoing was mailed,
postage prepaid, to:

Stephen Sorensen, PSEA
William Mede, City of Unalaska

Signature