City and Borough of Juneau Personnel Board

Thursday, February 23, 2012, 4 p.m.
City Hall Conference Room 224
Minutes

I. Call to Order: Chair Nicki Neal called the meeting to order at 4:05 p.m.

II. Roll Call / Introductions

Board Present: Brett Allio, Max Mielke, Nicki Neal, Donna Pierce, Judy Porter

Board Absent: None.

Others Present: Amy Mead, Counsel to Personnel Board; Corey Baxter, IUOE-Local 302 Representative; Dick Robblee, Counsel for IUOE-Local 302; Mila Cosgrove, CBJ HRRM Director; Jeannie Johnson, Airport Director; Laurie Sica, Municipal Clerk; six employees from Airport Field Maintenance.

III. Approval of Minutes

1. January 10, 2012 Personnel Board Meeting Minutes

MOTION, by Mielke, to approve the minutes. Hearing no objection, the minutes of January 10, 2012 were approved.

The Board determined that this meeting was the annual meeting called for in code. Ms. Cosgrove noted that the chair and vice chair should be determined at the annual meeting.

MOTION, by Mielke, to nominate Nicki Neal as chair. Hearing no objection, it was so ordered.

MOTION, by Mielke, to nominate Donna Pierce as vice-chair. Hearing no objection, it was so ordered.

IV. International Union of Operating Engineers - LOCAL 302 Request to petition the Juneau Personnel Board for creation of a separate bargaining unit for the Airport Field Maintenance Workers

Ms. Neal summarized the issue and encouraged the parties to correct her. The IUOE-Local 302 asked for a separate bargaining unit for the airport field maintenance workers. The Board previously held a hearing on this same issue and determined that a separate bargaining unit was not appropriate. The IUOE-Local 302 believes that the circumstances have changed in that the code has changed and they believe it redefines bargaining unit. This request is before the board again. It

is the city's position that the definition of bargaining unit did not change, and therefore the board should not hold a hearing because circumstances have not changed (the work being done in the unit) – it is just the ordinance has changed. At the last meeting, we discussed this, both parties have briefed the issue and the briefs and reply briefs were mailed to the Board. Today, the decision before the Board is whether the definition of bargaining unit changed or if it was just clarified.

Ms. Cosgrove said that seemed to be an accurate summary. Mr. Robblee said he would address it in his remarks.

Ms. Neal said the meeting would proceed as follows, that both parties would summarize their positions, respond to questions from the Board, and then conclude the meeting with an executive session to include Ms. Mead and the Board members.

Mr. Robblee said that in 2009 the IUOE-Local 302, at the request of the airport employees, tried to obtain permission for a new bargaining unit. There was a hearing and Board's decision went against them. The decision was appealed to the Assembly and the Assembly affirmed the Board's decision. In 2010, there were substantial discussions at the Assembly level regarding changes to the labor relations code, to bargaining unit determinations, and to recognize the right of employees who had formerly opted out of a larger collective bargaining unit to seek representation in any bargaining unit the Board might find appropriate in the future. Upon the change to the ordinance were changes to the Personnel Board Rules and one of those are highlighted in our brief. He discussed the union's understanding that the decision before the Board was not on the merits of the union's request, but to rule on an observation of the employer that there should be no hearing at all as the decision has already been made, and there should be no hearing. The purpose of this meeting is to determine whether the matter should go to a hearing and receive full consideration of the Personnel Board or be dismissed. We believe a full hearing is in order to hear the evidence, which may not be substantially different, so the Board can apply the current law and rules to what is heard and then reach the decision. The employees deserve a hearing. There are two major changes to the law the union identified that compel further consideration. The first is the change to the ordinance, CBJ Code 44.10.040. Before the ordinance said the board should determine what units are appropriate and they shall be as large as is reasonable and unnecessary fragmentation should be avoided…there is now another element which was not before the Board in 2009. That element says that bargaining units should be primarily defined by the community of interest among the positions assigned to the bargaining unit. In the brief, we mentioned labor's dissatisfaction with the inability of an opted-out group to create a new bargaining unit. The Assembly made changes in large measure as requested by the Central Labor Council. The current ordinance is inconsistent with how the Board approached this bargaining unit determination question in 2009. In 2009, the Board did not primarily consider the commonalities among the jobs at the airport. It did the opposite. It identified what the airport jobs were about and compared and contrasted the job duties, etc., with the same classifications that exist elsewhere in the CBJ government structure.

We cited in our brief a dozen instances in the Board's decision where in their findings of fact and in conclusions of law, this proposed bargaining unit is not appropriate because of how the Board views the relationship between the job duties of the airport workers and counterpart workers in the street departments, etc. We believe that the Board must consider whether that approach is valid anymore under the new test it must apply. The new test, we would argue, would be first, it must be looked at whether there is a substantial community among these particular jobs at the airport, and if there is, that is a primary consideration in defining a bargaining unit. For instance, do we seek to put together a security guard, a clerical employee and a person who runs the snow plows? No. If that petition were made, that would be a consideration. We would argue before the Board that there is a substantial commonality among these employees and that it does not matter as it did in 2009, legally, whether we also find operating engineers or mechanics or laborers in other fields of local government. This new ordinance requires a different weighting of the facts in 2012 than in 2009 because the Assembly has given a new standard to apply. The fragmentation issue still exists and is a factor but we believe it must be weighed with the new factor of whether there is a community of interest primarily among the proposed bargaining positions. The Board did not consider this before. The second change that compels a hearing is the change to the Personnel Board Rule 4.05. In 2009, there was no direction to the Board in the forming of a new bargaining unit, or a guideline to consider the approach of the National Labor Relations Board regarding the determination of bargaining units. There is new language, which states that in reaching a Board decision, the Board shall be guided by relevant decisions of the Alaska Labor Relations Agency and the National Labor Relations Board. In 2009, the union cited NLRB doctrine to the Board, which was rejected out of hand in page 8 of the Board's decision. The Board said there are significant differences between the NLRB and CBJ code. This code still contains the element of fragmentation but it includes that the Board shall be guided by relevant decisions of the NLRB. Whether or not the Board accepts the guidance, it does mean that it must be taken more seriously. The union believes that you cannot use the 2009 decision and consider there is nothing more to do. The union is asking for a hearing that the board would normally provide when it receives a petition. We are not asking for a reconsideration of a previous decision, we are asking for a new hearing in light of new law and rules to determine there is an appropriate bargaining unit.

Ms. Pierce asked for direction in the record about the language in CBJ 44.10 regarding primary emphasis on the positions. She said the only reference she found seemed to refer to the "plugging" the opt-out provision. She did not see a discussion of how this applied to forming a new bargaining unit. Mr. Robblee said he understood what the proponents favored, i.e. Mr. Ford from the Central Labor Council, and he did not see much evidence of what the Assemblymembers were thinking when they voted to place the new language in the code. That is not unusual when looking at the record of governing bodies. He is just referring to what the proponents stated on the record. He does think it is clear in the Assembly's action and the staff report to the Assembly that one of the options now

for the airport workers is to seek their own bargaining unit. The code does not say it must be granted. It is up to the Board to make the call. We think there is a clear signal that if what this opted-out group proposes is an appropriate unit they are eligible to have that appropriate unit, not simply return to the former unit from which they opted out.

Ms. Cosgrove said she agreed with Mr. Robblee that this meeting was procedural to determine if there was a procedural bar to revisiting the issue of whether or not the airport field maintenance group is appropriate for a separate bargaining unit. Her brief outlined why she believe the changes to the Labor Management Code were not material to the extent to that it would create a new standard or definition of bargaining unit. There were several changes to the code and the one particular to this situation is the definition of bargaining unit as well as the provisions for exemption from bargaining unit. You cannot separate those two because the changes in the code are directly linked. In the 2009 hearing, one of the key elements of the discussion was "is a community of interest the same thing as a bargaining unit." If we have allowed this group of people to opt out of representation, does that defacto make them a separate bargaining unit. The Board decided and the Assembly affirmed that under the existing code those were two distinct and separate terms. The Central Labor Council came forward with the concern that CBJ was using the term "community of interest," which does have meaning in the broader labor context, in a way that was uniquely situated, and it was confusing. In addition, the fact that CBJ allowed pockets of people to opt out undermined their ability to keep people in and get them to participate in collective bargaining. The main change was to do away with the unique use of the term "community of interest." Employees can no longer opt out of collective bargaining unless they take the entire bargaining unit that they are in with them. This is a more traditional labor relations approach. In CBJ 44.10.040, community of interest is one of the primary considerations in determining a bargaining unit but there shall not be unnecessary fragmentation. She does not see this as a substantive and material change to the code and the Board applied this same standard in 2009. At the end of the day, the issue was unnecessary fragmentation, and bargaining units shall be as large as reasonable. She did not believe the Board would come to a new conclusion if a new hearing were held. It is not the case that when people opted out they could form a new bargaining unit and the police opted out from the general bargaining unit from the very beginning and then filed at some point for a unit clarification and became their own bargaining unit because the Board determined that it was a large enough group and there was a community of interest and it wouldn't be unnecessary fragmentation. The firefighters were in the general governmental unit and opted out, then petitioned the Board for a separate bargaining unit and the Board determined again, in that case, that was appropriate. That is the same process that the airport field maintenance workers went through, but the Board determined that the factors were not present to create a stand alone bargaining unit in that case and she saw nothing that had changed in the revisions to the code which would cause a different determination. The rights of employees are clearly outlined and the rights that the airport field workers have under the

Labor Management Code and the Personnel Board Rules of Procedure have been fully exercised and she believed the Board was procedurally barred from further considering the matter. In the same way, the city was barred from reviewing moving the JPD administrative assistants out of the JPD unit and into the general governmental unit. Ms. Cosgrove said she believed that the Board in making its previous decision did consider the NLRB and ALRB cases the unions cited but did not feel the cases were germane to the facts presented. If all those cases were recited, she was confident no different decision would be reached. The city has done a good job in briefing and she asked the city to consider those and the minutes of the Assembly Human Resources Committee referenced. She quoted from those, "Mr. Ford said the community of interest makes a defined bargaining unit….he thought this would help to strengthen the fact that units need to be as large as possible. They ought not be unnecessarily fragmented and this would provide the Assembly with assurance that larger unfragmented units would continue." There is a disadvantage to employees when bargaining units are too small, they have no bargaining power. It is a disadvantage to the employer as well as it takes a significant amount of administrative time to bargain with 12 – 14 units rather than 2 – 3. She asked the board to find the ordinance changes not so significant that the underlying facts needed to be reexamined.

Mr. Mielke said he believed there were only 34 members in the IAFF, and so that was not that big of a bargaining unit. Ms. Cosgrove said that was true.

MOTION, by Pierce, to enter executive session to consider the matter. Hearing no objection, it was so ordered.

Ms. Neal said the Board would issue its decision in writing as soon as was possible. Ms. Neal thanked Mr. Robblee and Ms. Cosgrove.

The board entered executive session at 4:45 p.m.

At 5:55 p.m., the Board recessed and noticed the clerk that the meeting would reconvene in executive session on Wednesday, March 7, at Noon, location to be determined.

At Noon on Wednesday, March 7, in the Assembly Chambers, Chair Nikki Neal reconvened the meeting of the Personnel Board. All members were present. Amy Mead, CBJ Asst. Attorney for the Board was present.

<u>MOTION</u>, by Mielke, to enter into executive session to continue deliberations. Seconded by Allio. Hearing no objection, it was so ordered.

The Board entered into executive session at 12:10 p.m. and returned to regular session at 12:55 p.m.

<u>MOTION</u>, by Porter, and seconded by Pierce, to find that:

1. The amended ordinance does not allow the Board to consider different or additional factors because Community of Interest as understood under both federal and state labor law was considered in the 2009 Decision and Order on this same matter.
2. Upon review of the 2009 Decision and Order and information provided by the Board's attorney, the Board did apply the Community of Interest standards as commonly defined and understood by the National Labor Relations Board.
3. CBJ Code 44.10.050 does not allow for an opted-out group to form its own bargaining unit, but rather allows the opted-out group to be included in a Bargaining Unit determined appropriate by the Board, which the Board determined in respect to these employees in 2009.
4. The Board directs the Board attorney to draft the Decision and Order of the Board and distribute it for review.

Hearing no objection, the motion passed.

V. Agenda Items and Schedule for Next Meeting – No meeting set.

VI. Adjournment: 1 p.m.

Submitted by Laurie Sica, Municipal Clerk