

## **City and Borough of Juneau Personnel Board**

Tuesday, January 10, 2012, Noon

City Hall Conference Room 224

### **I. Call to Order**

Chair Nicki Neal called the meeting to order at 12:05 p.m.

Members Present: Brett Allio, Max Mielke, Nicki Neal, Donna Pierce, Rob Weber.

Members Absent: None.

Others present: Corey Baxter, District 8 Representative, International Union of Operating Engineers; Dick Roblee, Legal Counsel for IUOE; Mila Cosgrove, Human Resources-Risk Management Director; John Hartle, City Attorney, Patty DeLabruere, Deputy Airport Manager; Laurie Sica, Municipal Clerk.

### **II. Approval of Minutes**

*MOTION, by Allio, Seconded by Mielke, to approve the minutes of the May 10, 2011 Personnel Board Meeting. Hearing no objection, the minutes were approved.*

### **III. International Union of Operating Engineers - LOCAL 302 Request**

Chair Neal said the primary purpose of the meeting was to review the International Union of Operating Engineers - LOCAL 302's request to petition the Juneau Personnel Board for creation of a separate bargaining unit for the Airport Field Maintenance Workers. She said there was a similar petition filed previously and the packet included the Personnel Board's decision and the Assembly's Decision on Appeal of the Personnel Board's decision. Chair Neal asked Mr. Roblee what had changed since the July 2009 petition was heard by the Personnel Board.

Mr. Roblee said that the ordinance, which underlies how the board applied the laws and the facts of that case, had changed and under the new law, the Personnel Board could arrive at a new conclusion. Mr. Roblee said he had not conducted a detailed interview of the employees but it was not their contention that the facts were different, but that the law was changed. For instance, the Board's earlier decision rested substantially on an observation that the same job classifications existed throughout city government, not just at the airport, and it would be our contention that that would no longer be a valid consideration in determining community of interest. The Board would have to focus on the employees at the airport specifically.

Chair Neal asked for confirmation that the code section change that Mr. Roblee referenced was CBJ 44.10.040. Mr. Roblee said he believed so.

Chair Neal asked Ms. Cosgrove for the CBJ's position on whether or not the code change affected the decision previously made. Ms. Cosgrove said as Mr. Roblee pointed out, the underlying facts of the situation have not changed, in the sense of wages, hours, terms and conditions of employment for the Airport Field Maintenance Workers, which are largely if not identical to those presented to the Personnel Board when it reached its previous decision. Under the rules, there is a bar to reconsideration. She gave the example of the CBJ Records Unit, which the city argued should be moved from PSEA to MEBA, but because the underlying facts had not materially changed, CBJ was barred from bringing the matter before the Board. She said that is no different from what is occurring in this situation. The change to CBJ 44.10.040 was to clarify that the term Community of Interest (COI) was now synonymous with Bargaining Unit (BU). Under the previous ordinance, there was a unique definition of COI that translated to the work group. This definition was eliminated and it was determined that COI was synonymous with BU. That was not a substantive change to the law but a clarification, and was the same basis upon which the Board reached its decision to say no to the Airport Field Maintenance Workers before. Ms. Cosgrove referred to the Board's Decision on page 14, and said the conclusion of law addressed the issue and used the same language that is now in the ordinance, referencing "as large as is reasonable and avoidance of undue or unnecessary fragmentation. Those are the same points that are also included in the Assembly's Decision on Appeal, page 3. Ms. Cosgrove said proceeding further was barred, but if the Board decided to move forward, she requested that the question be limited to whether the ordinance change changed the definition of BU.

Mr. Hartle said he was filling in for Amy Mead, CBJ Assistant Civil Attorney, who was unable to attend. In response to Ms. Neal regarding how reconsideration could take place, he said the Assembly could be asked to reconsider its decision on the appeal, and to relax its time restriction on the reconsideration. Both are discretionary questions of the Assembly. The question identified, "Does the ordinance change make a material difference to the previous decision of the Board." The second route is to have the Personnel Board to make this decision. A two step-process – is the change in the legal landscape enough to change a decision previously made by the board, and if so, what should the proper decision be. His view was that it was a better route for the Personnel Board to review the matter. The parties could brief the matter.

Mr. Mielke said Central Labor Council (CLC) approached the Assembly with the issue that employees could opt out but they could not opt back in, and changes were made in which he thought it was the full intention that these employees could enter back in to a BU. Mr. Hartle said that the opt-in provision is in the code, but in a different code section, and there is a change to the definition of BU, which is the point of this. Mr. Roblee said the argument would be based on the new code

supports the union's petition and a brand new backdrop to how the matter was reviewed before. They believe the history of the changes make it clear that the legal landscape has changed in CBJ 44.10.040 and 050 concerning the right of this opted out unit to form a new unit, and that colors the issue of fragmentation, and how closely or not the work of the airport workers is from similar positions city wide. They are not asking for a reconsideration of an earlier decision under the old code, which is a settled legal matter. The union filed this petition because it believes that the airport workers have rights that they did not possess before. Their expectation is that it will follow its rules, to determine if the petition is appropriate, the arguments would be heard, and the Board would make its decision. This could be done in one hearing in order to expedite the matter. The proposal of a legal determination, which may be appealed, is an impact on the right of the employees to have this matter resolved.

Chair Neal said if the code change does not materially change the "legal landscape," then there would be no need for a hearing. Mr. Hartle said this is a threshold question, deciding whether the Board is barred from reconsideration, as the matter was previously decided, and this could be determined in one hearing or bifurcated.

Chair Neal said that CBJ 44.10.040 designates the Board as having the authority to determine a separate BU and defines BU. CBJ 44.10.050(2) indicates that a group that has been excluded (this group previously elected to be excluded from MEBA) is asking to be included by the IUOE – 302. Ms. Cosgrove it gets confusing in that the term "employee representative" and "bargaining unit" often get used synonymously and they are two separate things. A Bargaining Unit is solely in control of the Board to determine what group of people is appropriate for the purposes of collective bargaining, and then it is up to the employees to determine what employee organization should be the representative. In this case, the Airport Maintenance workers voted out of their collective bargaining relationship with MEBA, but they cannot vote themselves out of a bargaining unit, as that is determined by the Board. Under that odd "opt-out provision" which no longer exists, in part based on the influence of the CLC and the change to the ordinance, that group of employees can still opt back in to collective bargaining, back into that unit. Ms. Neal clarified that the airport workers could go back in and be represented by MEBA if they elected to do so. Ms. Cosgrove said yes, and Rule 4.10 in the Personnel Board Rules of Procedure says that "any group of employees may elect to be reincluded in a collective bargaining unit from which the group had previously elected to be excluded according to the following procedures..." Once back in, the representative can be changed if there is a representation of the full bargaining unit and the election process is held.

Chair Neal said she was interested in determining if the change to the CBJ Code changes the definition of BU, in order to determine if a hearing is necessary. She understood this creates an additional step in the process.

Ms. Pierce agreed that the question should be bifurcated. Mr. Weber agreed.

Mr. Mielke asked about the 12 signature cards attached to the petition and asked how the Board takes those into consideration. Chair Neal said that the signed cards show that there is at least 30% of their membership interested in the petition, and if they had not obtained those signatures, the union would not be at this step of a petition. Ms. Cosgrove said that procedurally, when considering the propriety of a BU, the desires of the employees is one of the things that is considered, but not the sole determining factor. There are 100% of the employees in this case.

Mr. Allio said it would be good to review the change to the CBJ code and its effect on the decision.

*MOTION, by Pierce, to hold a meeting to perform an initial review of the changes to CBJ 44.10 and the Personnel Board Rules of Procedure to determine whether it would be proper to review the previous decision or whether the Board is barred from considering the matter. Hearing no objection, it was so ordered.*

The Board set the following briefing schedule:

January 31, 2012 – Simultaneous Initial Briefs from both IUOE and CBJ

February 10, 2012 – Simultaneous Reply Briefs

*(Briefs will be filed with the Municipal Clerk and may be filed electronically.)*

**IV. Agenda Items and Schedule for Next Meeting** – Thursday, February 23, 2012, 4 – 6 p.m., with time allowed for each party to present information.

**V. Adjournment** – 12:50 p.m.