

Employment Relations Board
December 5, 2006 12:00 noon.
Harrigan Centennial Building – Rousseau Room
Minutes

A. CALL TO ORDER

Kainulainen called the meeting to order at 12:00 noon.

B. ROLL CALL

Members Present: Leigh Kainulainen, Mo McBride, Doris Bailey

Also Present: Linda Johnson (ERB Counsel), Theresa Hillhouse (CBS Attorney), John Stein (CBS Administrator), Mark Danielson (CBS HR Director), Kimberly Geariety (CBS Labor Negotiator), Judy Puckett (City employee), Kim Elliot (City employee).

Staff Support: Secretary, Cynthia Rogers

C. WELCOME OF GUESTS

Members noted that Linda Johnson, ERB Counsel is attending the meeting telephonically.

D. APPROVAL OF MINUTES – November 10, 2006

MOTION: by McBride to approve the minutes of the November 10, 2006 meeting.

Voice vote PASSED.

E. ADDITIONS/DELETIONS TO THE AGENDA

McBride added an agenda item to welcome new chair of the ERB, Leigh Kainulainen. McBride turns the meeting over to the Kainulainen.

F. OLD BUSINESS

There was no old business.

G. NEW BUSINESS

1. ERB Ordinance Review

McBride began discussion on the ordinance review by observing that there were items in the ordinance that blocked or gave difficulty to the previous members of the board in their earlier work. She noted that the board was told they were not permitted to make changes to the ordinance for one year. As of October, 2006, the one year period is up and the board is now allowed to make adjustments to the ordinance.

Bailey asked if the board was to make recommendations to the assembly for adjustments to the ordinance and McBride agreed that that would be the procedure. Bailey noted there were issues during organization involving interpretation of the language in the ordinance and that the board was asked

by employees to hold a public hearing on it in the future. Bailey would like to get input from employees, management and the general public. Bailey envisioned the board coming up with a list of revisions, and then establishing procedural steps for taking that forward to the Assembly for consideration.

As she had been a board member from the beginning, McBride was asked for ideas on how to proceed and what specific items should be addressed in particular by the board. McBride identified the definition of confidential employees as being one of two areas to be addressed.

McBride stated that the definition in the ordinance, page 11, number 4, does not include those employees that would be involved in labor relations/negotiation. She noted that state statutes and other governing bodies do include such employees in the confidential category. As the ordinance reads now, employees dealing with labor relations may not currently fall into the category of confidential.

Bailey read the definition from the ordinance.

McBride noted that the definition was broad and ended up excluding employees from the bargaining units if they fell into the definition, even if they had nothing to do with labor relations. The board wanted to restrict the definition more to those directly dealing with labor relations.

Danielson noted that he understood that to be the union's position on the definition, that only those dealing directly with labor relations should be included in the confidential employee category.

Bailey noted that may be one area where there is a difference of opinion.

Hillhouse noted that there was an extensive briefing done on that issue and that we are not subject to the State's PERA Act. Municipalities that opted out of PERA, like Sitka, frequently will have positions that are confidential where the employee does not have anything to do with labor relations. She used the Municipality of Anchorage as an example, where the Employee Relations Section is not included in the union. Many of the employees do not deal with labor relations, however, they are still considered confidential and therefore are excluded from the union. It is the city's position that it is not required to put labor relations into the definition as a determining factor in deciding if an employee is confidential. Further, Hillhouse went on to say that the city would strongly oppose such language in the ordinance and would highly suggest to the Assembly that they not pass any changes to the ordinance containing such language.

McBride reiterated that it is her understanding that the previous board members did intend to include labor relations to the confidential employee

definition. It is her recollection that they reached agreement on that after discussion and some public comment. The difficulty seemed to be that without the language being added, it would not be possible to exclude someone from the confidential category who otherwise did not deal with any aspect of labor relations.

Bailey said she can understand why you wouldn't want a confidential employee who has access to all the management information to be in the union.

McBride said the problem is that it doesn't say anything about labor relations, therefore you can have an employee involved with bargaining who is actually part of the union and not exempt under the confidential employee definition. You would not want someone with proprietary knowledge that could then use this knowledge to affect the bargaining.

L. Johnson noted that the Anchorage Municipal Code goes much farther than the Sitka Code in defining categories of exempted employees. Of the fourteen categories they have, only one discusses labor relations. Johnson then read Anchorage Municipal Code 3.70.060, Section C, number 10:

“10. Confidential employees who in the normal course of their duties have access to or assist in the preparation of labor relations materials used in negotiations, arbitrations, grievances and board meetings;”

Johnson also discussed the possibility of exempting certain other classes of employees as a policy decision, as in the case of Anchorage.

Hillhouse will make copies of Anchorage and Mat-Su's Codes and make them available to board members before the next meeting. Hillhouse noted an area of concern in this discussion should be personnel actions. Those dealing with grievances, disciplinary matters, etc. would have absolute knowledge about these situations, and therefore, should be excluded from the union and kept in the definition of confidential employee. If labor relations language is used in the definition, Hillhouse argued that the definition be expanded to be sure those key people dealing with personnel actions are counted as confidential. She noted that when you're talking about labor relations, you're not just referring to those sitting at the table to bargain, but also those who deal with the grievances coming out of how the contract/collective bargaining agreement is interpreted. People who do this kind of work should also be exempted.

L. Johnson asked Hillhouse how the definition (number 7) of management employee factors into this argument.

Hillhouse said that management employee correlates with confidential employee, because the confidential employee works under the management employee.

McBride asked for clarification from Hillhouse on how employees were categorized into the management employee category and whether or not they had to have budgetary authority and hiring and firing authority to be included.

Hillhouse responded that only a few positions had board involvement, the others were resolved between CBS and the unions. She noted that there is a good working relationship between CBS and the unions, but that she would have concerns about developing definitions, because people have already been assigned to categories.

Bailey agreed and asked if there are any bargaining units that have not been determined yet.

McBride answered that SCH employees have chosen not to do anything, but that may change in the future.

There was further discussion about adding language to include those employees dealing with labor relations specifically. McBride reiterated that doing so would be to make it easier in the future to determine employee classification, not to exclude employees who already fall under the current definition. The intent was never to go back and rescind those employees now classified as confidential.

Bailey said she would be interested in hearing what the employees' position is on the issue.

McBride suggested the board hear from the public on this issue. The second issue needing attention was the selection of board members. There was some discussion about who was able to vote on the composition of the board. Hillhouse referred all back to page 9, letter R. Employment Relations Board, number 2, "The composition of the board...." where one member is chosen by the Assembly, and one member is chosen by the CBS employees, with the third member selected by the other two.

Bailey said that the election was open to everyone to vote and that would be a valid issue. At the time, none of the employees were organized, and Bailey said she remembers she did not vote because she had an ethical problem with doing so. She felt it was inappropriate for Assembly members to vote, even though they could technically be considered CBS employees because they receive a stipend.

There was some further discussion about whether or not the Assembly was included on the CBS employee vote. McBride noted that there had been feedback from employees at the time that it was unfair that the Assembly could vote as CBS employees and also vote as the Assembly for the management representative on the board, essentially allowing them to vote for both board seats.

Bailey agreed that this issue needs to be clarified and further discussion should take place on whether or not non-union employees (SCH employees) should be allowed to vote. Bailey said that the composition of the electorate in an employee representative election needs to be examined.

Hillhouse said that only represented employees should be voting and that there will be a proposal to the Assembly that they remove SCH from the ordinance, because right now they would vote.

Bailey agreed and brought up that only the Assembly was able to vote for the management representative and that the management did not get to vote. That may also need to be discussed.

McBride said the other issues dealt with timelines. When days were used, there was a question as to whether or not they were calendar days or business days. This was confusing and needs clarification.

Hillhouse commented that Title I of the code does say that if day is not specified to mean calendar versus business day, then it shall mean calendar day. However, she felt it would be good to clarify this for consistency.

McBride added that other changes needed had to do with permissive language and where to use "may" versus "shall." It would be good to go through the document and clarify where you want to be permissive and where you do not. The other issue was required timeframes and waiting periods before the board could take action.

Bailey asked if this might be an analysis that Linda Johnson, as board counsel could perform. The board would like to know where the inconsistencies lay.

L. Johnson agreed to do this.

Kainulainen asked whether the other members would like to schedule public hearings on the issues that had been identified. McBride and Bailey agreed.

Bailey asked Danielson if "partially exempt" employee classification was eliminated. Danielson said yes. Bailey asked to add to the list of possible changes the deletion of all references to partially exempt employees. McBride added that deletion of temporary and seasonal positions also be included.

There was also some discussion about contract employees, and that it should be clarified that they also would not be covered in the ordinance.

Bailey asked L. Johnson about the last sentence of number 4, under letter I. Impasse submitted to an arbitrator. She read, "The City and Borough shall submit the financial aspects of the negotiated agreement or of the arbitrator's decision to the Assembly for approval and funding." She then asked if the Assembly could throw out the arbitrator's decision.

L. Johnson said yes, the Assembly could not approve the arbitrator's decision, but this can be appealed by the union. The only way the Assembly could appeal an arbitrator's decision would be for abuse of discretion (item 5). However, an arbitrator could not force the Assembly to fund a decision that the city does not have the funding for.

Hillhouse discussed the case law surrounding this issue. She said that you cannot force a local government to fund something, but what happens is you go to court. If the court finds the arbitrator's finding was valid, the city would have other implication (inability to hire new positions, increase pay, etc.).

Bailey asked if we were stuck with this wording.

L. Johnson agreed with Hillhouse that the wording should stay as is.

McBride noted that the arbitrator is given the financial picture before rendering a decision, and therefore is not permitted to exceed what can reasonably be met. She also said it is her understanding that if the Assembly decides not to accept the arbitrator's decision, it goes to Superior Court. More discussion followed by Hillhouse and L. Johnson.

Bailey asked the other point of discussion should be letter R, number 3. She would like to delete the words "...but shall be paid an appropriate per diem..."

Kainulainen asked what the reasoning was behind that.

Bailey responded that no other board or commission at the city level is paid any kind of stipend or per diem. Kainulainen asked if the per diem had to do with travel. McBride responded that it is paid \$25 per meeting. More discussion followed about the appropriateness of the per diem versus reimbursement of other expenses, such as childcare.

L. Johnson questioned whether or not childcare would be an acceptable expense. Hillhouse responded that a flat fee could be used to cover expenses, so that receipts do not have to be submitted for every meeting. More discussion followed about childcare expense of board members.

Danielson added that the board may want to reconsider the language in the ordinance where the sole provider of arbitration services is AAA (American Arbitration Association). He noted that other services are available that are certified, bonded, etc. Using AAA as a sole provider of services may limit us to timeframe, as they are located in the lower 48. Additionally, there may be other service providers more closely associated with municipalities. Danielson agreed to bring a list of other providers to consider.

Bailey said that the board should invite employees, the Assembly, and management to come to a public meeting to submit items they wish to have changed on the ordinance.

H. PUBLIC PARTICIPATION (each to be less than 10 minutes)

Puckett asked that the email announcing the meeting be sent earlier. It was clarified that the agenda and next meeting date are posted on the web site and published in the newspaper and sent to the radio station. Union representatives should also be notified by email.

It was agreed that in addition to publishing in the newspaper, sending into the radio station, and posting on the CBS web site, an email announcing the meeting with an agenda will be sent out to all CBS employees, to the SCH employees, to the ERB, other interested parties, and to the Union representatives at least 7 days before the scheduled meeting.

Hillhouse suggested that the board set a standard day and time, as is done with other boards, so that a standing meeting would be set up ahead of time, instead of varying from month to month. That may clear up some confusion.

I. NEXT MEETING – The next meeting will be on January 15 from 6-8 pm and January 16 from 12-2 pm.* The purpose of both meetings will be to take public comment on any changes to the ordinance. ERB counsel, Linda Johnson will be present for both meetings. The date for a third meeting to compile the results of the public hearing will be determined at a later date.

The ERB has identified the following areas for examination, however comment will be taken on all other areas of the ordinance:

1. Definition of confidential employee, page 11, number 4.
2. The composition of the board, page 9, number 2.
3. Timelines, specify calendar days versus business days, throughout.
4. Permissive language, analyze “may” versus “shall,” throughout.
5. Examine required timeframes and waiting periods, throughout.

6. Deletion of language, “partially exempt, seasonal, temporary” classes of employees, throughout.
7. Board member compensation, page 10, number 3.
8. Examine AAA as sole provider of arbitration services.

*Because of scheduling conflicts in using the Maksoutoff room in Centennial Hall, the secretary contacted board members via email in order to reschedule the meeting dates to the following:

January 17, 5-8 pm and January 18, 12-2 pm.

J. ADJOURNMENT

MOTION: by Bailey to adjourn.

Voice vote PASSED.

Respectfully Submitted by,

Cynthia Rogers, Secretary