Employee Relations Board
Hearing Meeting Minutes
June 23, 2006 11:30 A.M.
Harrigan Centennial Hall Building - Maksoutoff Room

A. CALL TO ORDER
Nancy Cavanaugh called the meeting to order at 11:35 A.M.

B. ROLL CALL
Members Present: Nancy Cavanaugh, Gary Paxton, and Mo McBride
Staff Support Present: Linda Johnson, and Acting Secretary Tracie Laczynski

C. WELCOME OF GUESTS
Nancy Cavanaugh welcomed the public and presenters.

D. APPROVAL OF MINUTES - JUNE 5, 2006
MOTION: by Gary Paxton to approve minutes from June 5, 2006 meeting.
Motion PASSED on unanimous voice vote.

E. ADDITIONS/DELETIONS
Cavanaugh decided to keep the order of presenters as stated on the agenda.

F. COMMUNICATIONS
Gary Paxton asked that communications be given to board members ahead of time, at least two days ahead.

Cavanaugh asked for clarification from Linda Johnson, ERB legal counsel, that the board not communicate with one another so that laws concerning public meetings not be breached.

L. Johnson commented that two or more constitutes a meeting.

Theresa Hillhouse, city attorney, addressed that e-mail also constitutes as open meetings with the exception of procedural matters. Your attorney has the right to contact, or you her, if their are issues that need to be addressed.

L. Johnson clarified that just passing documents to the board constitutes as a procedural matter.

G. OLD BUSINESS: PRESENTATIONS WITH PUBLIC PARTICIPATION
Cavanaugh explained the order of presenters and asked the organizations:

1. To discuss who they are expecting to represent
2. The compelling reasons they should be in the organizations bargaining unit
3. If the organization met with the city to resolve any issues of conflict with exempt and confidential positions
4. Any resolutions or lack of resolutions regarding these conflicts

L. Johnson furthered that the board is looking for reasons banding a unit as a community of interest separate from other groups.

1. IBEW/INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1547
Jake Metcalfe, General Counsel of IBEW, discussed that he would like to file a reply brief to the CBS brief about their position. He stated that IBEW was interested in representing 19 employees in the Electric Department (Lineman, Powerhouse Operators, Operator Dispatcher, Meter Readers, Meter Technicians). He continued that they were a craft unit different from other employees of the city. He explained that by

law a craft unit is considered an appropriate unit and that this unit has specialized skills, different wages, a separate shop, different tools and equipment no one else uses in the city. Interchange is minimal between the Electric Department and other CBS positions and that by law the city needs to make them into a separate unit.
Metcalfe stated that he does not believe there is any fragmentation, as stated in the CBS brief, due to the fact that fragmentation occurs after there are established units and another union attempts to take away and fragment the group. Metcalfe continued that IBEW had a majority of cards from the electrical department to establish their interest for representation.
He noted that the CBS considers the Electric Department's Administrative Assistant position as confidential. IBEW believes that the CBS should prove to the ERB that the position is confidential and that their citing is such that almost any position in the city would be confidential due to the broadness of their definition. Metcalfe mentioned that he had witnesses and testimony, but Cavanaugh asked that IBEW be considerate of the public attending.

Paxton asked about the IBEW card count.

Mike Notar, Assistant Business Manager in Juneau, mentioned that he was not certain of all 19 cards, but that IBEW had 90 to 95% of cards. Notar testified under oath at L. Johnson's prompt. He explained that in 1971 the city of Sitka was unified as a singled home ruled municipality. May of 1972 Sitka enacted a personnel policy ordinance. July of 1973 the Sitka Assembly passed Ordinance 73-93 which exempted them from Public Employees Relation Act (PERA). IBEW organizational efforts date back to the 1960's. In 1972 all Electric Department employees signed representation cards for IBEW. Prior to 1973 Sitka was aware of organizing effort and continued to refuse IBEW as a representative. In Aug. 1977 the IBEW filed suit, alleging that the ordinance was invalid. In 1979 there was a trial and the Superior Court ruled in IBEW favor. City of Sitka appealed the decision. In Oct. 1982 the Supreme Court ruled that the city of Sitka's ordinance validly exempted city of Sitka employees from PERA requirements. Therefore, the employees of Sitka had no right to organize and form a union. IBEW allowed members to work for the city's Electric Department without IBEW representation in hope of one day being able to organize. In Aug. 1990 IBEW Local 1547 and the city of Sitka's Electric Department executed a memorandum of understanding to augment workforce with IBEW represented Journeymen and Apprenticed Linemen, recognizing that they were not able to get people to perform those duties. The memorandum has been in effect and utilized since then. This concluded that there has been a relationship. When employees from Sitka called asking for representation he would explain that until they were allowed to opt back into PERA or that another ordinance was passed for collective bargaining that it was prohibited by law.

L. Johnson asked about IBEW dispatching Linemen or other workers to the city for consideration.

Notar said that linemen and apprentice linemen are dispatched to the Electric Department of the city of Sitka to augment their workforce. The city of Sitka is not required to call IBEW for workers, but does so.

L. Johnson asked if they are required to hire the people who are dispatched.

Notar replied that they are not required to hire the dispatched people as permanent employees. If the employer agrees to use the IBEW referral procedure then the employer has the right to reject that applicant for employment. They are referred to as NECA-TEMP employees (National Electrical Contractors Association). Notar discussed that NECA-TEMP workers dispatched to Sitka will be paid under the terms and conditions under the agreement of IBEW and NECA, but work under the city's personnel rules and conditions. Typically they are to help, not stay.
Notar continued that the licensing requirements in the state of Alaska separate the electric workers. There are two licenses that IBEW members are required to obtain to be recognized in a classification by the state in order to perform that specific work.
1) Electrician
2) Linemen

Notar said that there are long-term IBEW members who work in Sitka's Electric Department and that he has received calls of interest since 1995. He acknowledged that it was the workers who contacted IBEW once the ordinance had passed and that IBEW did not solicit their representation.
There was further discussion regarding the IBEW augmentation and their ability to represent general government employees.

2. ASEA/ALASKA STATE EMPLOYEES ASSOCIATION (WITH TELECONFERENCE)

Jim Duncan, ASEA Business Manager in Anchorage, introduced Sarah Josephson, attorney from the Law Firm of Jermain, Dunnagan, and Owens, and Fate Putman, staff attorney for the Alaska State Employee Association on teleconference. Duncan said that he submitted a petition to represent 73 general government positions in CBS. A formal amendment has not been submitted, but ASEA now wants to represent 72 positions. This is due to an agreement with CBS to delete the Planning Assistant and Project Manager in public works and add the Ambulance Billing Clerk to their representation, which is not yet filled. ASEA wants to represent two employees in the Electric Department in this community of interest of general government functions: Administrative Assistant and Electric Materials Specialist. He continued that an Administrative Assistant position should be able to transfer to any other department and not have to change bargaining units. Duncan acknowledged 15 positions that ASEA and CBS have not been able to reach an agreement on.

Paxton asked that if both the management and employee describe themselves in the same way and agree that the position should not be part of the union, why would ASEA disagree.

Duncan explained that ASEA believes that the ERB should decide which positions should be in the bargaining units. From there the union needs to collect the interest cards and when given a vote, majority rules. He then explained two ways to set bargaining units and representation of non-sworn officers.

Sarah Josephson discussed the community of interest of the 72 employees ASEA is asking to represent.

Duncan concluded that the positions they are asking for do have a community of interest. This gives employees the ability to move to a like position from one division to another without changing bargaining units and avoiding fragmentation. He stated that ASEA has signed interest cards of over 50% of the 72 positions.
There is discussion over the definition of confidential and how the ordinance was written.

Cavanaugh asked for public comments.

Brenda Calkins, Sales Tax Auditor, requested that the ERB look at job descriptions and remember that job descriptions may not be accurate or up to date. She continued that there are several people speaking for the employees, such as management and unions, and asked that the ERB speak to the employees since they haven't been able to speak for themselves. She discussed that the employees are concerned about the definition of confidential and hope to have a say in the whole proceeding.

Cavanaugh encouraged employees to come to the meetings, to send e-mails, and that employees seek the board out.

Paxton reminded everyone that the ERB cannot speak to employees in a non-public format, but that information can be sent.

Calkins mentioned that employees have been told that they cannot speak to the ERB and it is a problem having meetings in the middle of the work day.

L. Johnson asked her to state her opinion as to whether she considers her position confidential.

Calkins stated her opinion that her position is confidential.

Cavanaugh asked her to state briefly why she believes so.

Calkins said she agreed with management's definition that the ordinance is clear and that confidential pertains to confidential issues and not only confidentiality to negotiations. In regards to her position, she stated she deals not only with confidential sales tax issues, but also payroll, management discussions with payroll, and investment issues.

Cavanaugh agreed that confidentiality is one of the main issues and her decision to let Calkins speak about it was due to her availability at the meeting.

3. PSEA/PUBLIC SAFETY EMPLOYEES ASSOCIATION

Joe Geldhof introduced himself as the associate counsel for PSEA, a union in Alaska that represents Alaska State Troopers and municipal law enforcers in various communities throughout the state. He introduced Tim White, president of the local PSEA chapter in Sitka, and Judy Puckett who is the secretary. Geldhof discussed the community of interest of the Sitka Police Department and that PSEA agrees with the city about two exempt positions not included in the bargaining unit. Further discussion was whether or not the Police Administrative Assistant should be included. PSEA concluded that this position, on a purely functional level and its involvement within the Police Department, with its involvement with labor relations, would not be appropriate to include in their bargaining unit. He continued that, in all other respects, the people who work in the Police Department should be allowed to have an agent and be represented as a strong and separate community of interest due to the licensing that many are required to obtain. Geldhof stated that PSEA has 93.65% of interest cards, 29 out of 31 individuals that should be allowed to bargain in their own unit.

There was discussion about the difference between the Police Department and the Fire Department. There was discussion about striking options of the Police Department, but Hillhouse stated that there is no strike option for anyone.

L. Johnson asked about whether there is federal or state law that requires police officers to do something specific that does not require non-sworn officers or others to do.

Geldhof answered that there are specific Alaskan regulations for Law Enforcement people, such as the Police Standards Council. Geldhof concluded that CBS had no dispute towards granting the Police Department as a separate bargaining unit and that there has been a strong interest with the personnel. He asked that the ERB do a sufficiency check and that there be no election, but for the ERB to facilitate a discussion between CBS and PSEA for mutual recognition. He then asked for a posting for the sufficient amount of time as required by the ordinance if there was a mutual recognition. Geldhof continued that if there is no rejection that PSEA be considered the agent for collective bargaining purposes. Geldhof urged the ERB not to take what PSEA decided for the Police Department Administrative Assistant as an admission or as something the ERB could apply across the board to other Administrative positions in other departments. He said that this position was discussed very narrowly based on what PSEA understands as the duties of said position in the Police Department.

4. CBS/CITY AND BOROUGH OF SITKA

Rob Johnson introduced himself as outside counsel for CBS assisting with collective bargaining matters. He stated that CBS wants clarification to avoid future arguments, such as unit clarifications, proceedings, disputes, or any other similar issues. He continued that management has two issues.

1) How many units should the CBS have?

He stated that, in theory, one unit is easiest to bargain with, but not practical. Management does not believe that three groups of bargaining units are appropriate, instead CBS believed the following communities of interest:

I) Hospital employees, which do not want to be represented by collective bargaining and there is no petition for that group at this time
II) Certificated Police Officers, which has been traditional and is the single largest department in the CBS.
III) General Government/Public Works, which would include the Electric Department.

R. Johnson continued that management will consider the option of mutual recognition with PSEA if there are a sufficient number of interest cards. He stated that CBS is confident either IBEW or ASEA being able to represent the community of interest of general government employees.

2) What are the unit dimensions of the CBS?
R. Johnson discussed that unit dimensions entail what is an exempt employee and a confidential employee as defined. There was more discussion about community of interest, definitions, and the ordinance.

Paxton discussed his concern for the interest of the employees.

R. Johnson acknowledged the question and stated that the desire of the employees is one factor of a number of factors to be considered. Other factors that need to be considered are: community of interest, wages, hours, working conditions, and history of collective bargaining.

Paxton made the statement that everyone needs to live with the decisions that are made during these hearings. The outcome for the community, management, and employees is to feel good about what is decided on.

R. Johnson continued that there are two contexts to the desires of the employees.
1) Forming up a particular bargaining unit
2) After bargaining units have been set up and there is a vote, where they can essentially say, there shall be no representation.

Cavanaugh asked to hear from the CBS witness.

John Stein, Municipal Administrator for the City and Borough of Sitka, acknowledged that he is the person in charge of administrating the personnel rules and wage scales with staff assistance. He stated that the goal for the collective bargaining process was to keep the smallest number of bargaining units. He described that with more bargaining units management would have to take more time, effort, and have multiple negotiations within the calendar year. He brought up the difficulties with fringe benefits, retirement concerns, and health programs that would have to be reorganized for multiple bargaining units. Stein continued with the concerns that additional employees would have to be added to human resources and pay roll to administer to a number of units.

Metcalfe objected to Stein discussing pensions and does not think that the subject is relevant at this time.

Cavanaugh advised Metcalfe that she noted his objection.

Stein continued that CBS seeks to maintain a single wage plan and uniform benefits across all employees and the increased difficulty of maintaining that with multiple bargaining units.

Cavanaugh agreed with the comments that Stein tried to convey about the additional burden to CBS, but reminded CBS that the ordinance had been passed.

R. Johnson clarified that the more collective bargaining units, the more unnecessary expense.

Paxton contributed that mentioning units that are not part of the debate should not be brought up, such as the hospital and educational units.

5. EXECUTIVE SESSION

Cavanaugh stated that the ERB needs to go into Executive Session to look at PSEA's cards.

MOTION: by Mo McBride to go into Executive Session for the purpose of looking at the interest cards, which may effect individual's privacy, and according to the rules they need to be kept confidential.
Motion PASSED by unanimous vote.

Hearing reconvened and Cavanaugh reported that 27 names were verified out of 29 names for PSEA's cards. PSEA met over the 30% requirement.

McBride stated that the Police Department has indicated PSEA to be their representative.

L. Johnson will reseal and keep the cards in her office in Anchorage.

6. DISCUSSION OF PROPOSALS BY ERB/EMPLOYEE RELATIONS BOARD

R. Johnson stated that management still had discussions about IBEW's representation of all the Electric Department, including two electrical positions ASEA included in their petition.

Duncan discussed two positions petitioned under ASEA which CBS would like with IBEW.
1) Electric Department Administrative Assistant
2) Electric Materials Specialist
He continued that he is aware of CBS determination that the Electric Department Administrative Assistant is considered confidential. ASEA's rational for these two positions to be in the general government community of interest is that they have the experience and background to fill a different position in public works that has like duties. Duncan mentioned that lateral flexibility for these positions will be difficult if they have to transfer from one bargaining unit to another.
There is further discussion about health and retirement issues.

Metcalfe stated that IBEW has not petitioned for these positions.

R. Johnson called Charlie Walls as a witness.

Charlie Walls, Utility Director for CBS, agreed that he is the Senior Administrator/Manager for the Electric Department. Walls stated his opinion that the Electric Department operates as a stand-alone entity in the municipality and that these two positions should be included with the Electric Department's bargaining unit. He continued that two different bargaining units in one department will cause difficulty due to the different sets of rules. There is further discussion about problems that would arise with two different bargaining units in the same department. There is also discussion about the lateral movement and specific training of the Electric Materials Specialist. Walls concluded that he would like IBEW to represent the whole Electric Department and his opinion that the Electric Department Administrative Assistant is confidential.

H. NEW BUSINESS

1. ERB DISCUSSION ON EXEMPT/CONFIDENTIAL EMPLOYEE

REPRESENTATION STATUS

R. Johnson asked for some guidance concerning the debate over the confidential issue.

McBride felt the Administrative Assistant position in the Electric Department is not confidential, but Paxton disagreed.

Paxton stated that there is closure to PSEA and that there will be closure after IBEW's cards are seen. He said to go forward with three bargaining units and have management work with IBEW and ASEA on the confidential positions and come back to get clarity on a shorter list.

McBride asked that IBEW clarify their unique commonalities about what would keep them from being in a larger group and why they should be separate.

Metcalfe talked about federal law and National Labor Relations Agency's case law where they will make craft units when there is a unique set of facts showing that you are a trade, such as licenses, and there are apprenticeship programs. There was further discussion about craft units and IBEW.

2. ERB DISCUSSION ON EMPLOYEE GROUPINGS

Cavanaugh stated that she would like to move forward on PSEA. She continued that she is not ready to adjudicate the issue of exempt and nonexempt and that there has been no time to discuss definitions or the 15 disputed positions between ASEA and CBS. Cavanaugh stated that three bargaining units are not unreasonable to bring forth to the employees. Cavanaugh stated her reasoning for IBEW's representation of the Electric Department, but that the ERB is not ready to establish the two disputed electrical positions as being part of IBEW.

McBride explained that Metcalfe made it clear about the uniqueness of the Electric Department and that the ERB needs to review the IBEW cards.

Duncan said ASEA is willing to continue efforts towards resolving conflict with CBS. He does not want PSEA's resolve to give up the Police Department's Administrative Assistant as precedent setting for other department's Administrative Assistants.

Cavanaugh explained the compelling evidence that convinced her that the Electric Materials Specialist position should be a part of the Electric Department's bargaining unit, but not the Electric Department Administrative Assistant.

3. MOTION ON PSEA

L. Johnson said that there is a community of interest in the Police Department that PSEA has put forward. Cavanaugh stated that R. Johnson said he would forego an election if there were compelling numbers, which there are.

MOTION: by McBride to recognize the Police Department as a distinct bargaining group.
Motion PASSED on a voice vote.

L. Johnson asked if management is ready to discuss whether there will be a vote.

Hillhouse explained that management is willing to do mutual consent with PSEA.

L. Johnson stated that a recognition agreement should be filed with the board 30 calendar days before its effective date. Citing under F) Recognition Under Mutual Consent L. Johnson asked CBS if they agree.

R. Johnson said that they agree to whatever documents should be posted.

L. Johnson said that it required the board to post the Recognition Agreement at least 20 calendar days before the effective date. She stated that the ERB needed the recognition agreement from both parties. She continued that it does provide for intervention.

Cavanaugh stated that they'll post it and send it to the clerk.

L. Johnson said that it directs the ERB to do the posting, but they can do it for you.

I. NEXT MEETING:
Monday, June 26, 2006

Cavanaugh discussed the agenda: exempt, nonexempt, and confidential definitions and the 15 disputed positions dealing with confidentiality.

Duncan said he would like the opportunity to discuss the language of their ordinance with the ERB.

MOTION: by McBride that the ERB have an additional meeting on Monday, June 26 with the purposes of hearing both sides in relationship to that issue of exempt, non-exempt, confidential and their definitions.
Motion PASSED on a unanimous vote.

L. Johnson explained that IBEW needs to know what bargaining unit the ERB sets for the two disputed electric positions, so they can make a decision if they are going to represent those positions or not.

Cavanaugh said that those two disputed positions will be discussed on Monday.

J. ADJOURNMENT

MOTION: by McBride to adjourn.
Motion PASSED on a unanimous vote; meeting adjourned at 3:45 P.M.

Respectfully submitted by
Tracie Laczynski, Acting Secretary