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GENERAL TEAMSTERS LOCAL 959, )  
INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS (Public Works Dept.), )  
 )  
Petitioner, )  
vs. )  
 )  
CITY OF KODIAK, )  
 )  
Respondent. )  
 )

\_\_\_\_\_ )  
CASE NO. 16-1699-RC

**DECISION AND ORDER NO. 313**

We heard this petition, by the General Teamsters Local 959, to represent a bargaining unit of employees at the City of Kodiak’s Public Works Department, on March 7, 8, and 9, 2017 in Anchorage.<sup>1</sup> Hearing Examiner Mark Torgerson presided. The parties filed post-hearing briefs by March 20, 2017, we completed hearing deliberations on April 6, 2017, and the record closed that day.

**Digest:** The petition by the General Teamsters Local 959 is granted. A separate bargaining unit of Public Works Department employees at the City of Kodiak is the unit appropriate for collective bargaining under AS 23.40.090. The City of Kodiak’s request that the board panel include one of the management members who recused themselves is denied.

**Appearances:** Nancy Shaw, attorney for General Teamsters Local 959; William Mede, attorney for the City of Kodiak.

**Board Panel:** Jean Ward, Board Chair; and Matthew McSorley, Board Member.<sup>2</sup>

<sup>1</sup> The hearing for this case was consolidated with Case No. 16-1697-RC, a petition also filed by the Teamsters, to represent the City of Kodiak’s Police Department employees. We are issuing a separate decision and order for Case No. 16-1697-RC.

<sup>2</sup> Management member Tyler Andrews was appointed to hear this case, but recused himself. Management member Elizabeth Pierce was then appointed to hear the case, but likewise recused herself. The remaining two-member panel proceeded under the authority of AS 23.05.370(b).

## **DECISION**

### **Statement of the Case**

On November 23, 2016, the General Teamsters Local 959 (Teamsters) filed a petition to represent a bargaining unit comprised of employees who work for the City of Kodiak's Public Works Department. On December 29, 2016, the City of Kodiak (City) filed an objection. The City argues that the community of interest supports a wall-to-wall unit comprised of all non-excluded city employees. The City contends, among other things, that a wall-to-wall unit is required because AS 23.40.090 requires that unnecessary fragmenting shall be avoided.

### **Issues**

1. Should the board panel that decides this matter include one of the management members on the agency Board, despite the fact both management members recused themselves from the matter?
2. Is the Teamsters' proposed bargaining unit at the City's Public Works Department the unit appropriate for collective bargaining under AS 23.40.090?
3. If the Teamsters' proposed bargaining unit is not appropriate, what is the unit appropriate for collective bargaining?

### **Findings of Fact**

1. The Teamsters Local 959 is an organization under AS 23.40.250(5).
2. The City of Kodiak is a public employer under AS 23.40.250(7).
3. On November 4, 2016, the Teamsters filed a petition to represent employees at the City's Public Works Department. The petition described the proposed unit as "all employees of the City of Kodiak Public Works Department."<sup>3</sup>
4. On December 14, 2016, the City filed an objection to the proposed bargaining unit. (Objection of City of Kodiak to the Appropriateness of the Proposed Bargaining Unit, December 14, 2016). The objection stated in part: "The bargaining unit proposed by Teamsters Local 959 is inappropriate because other city employees share a community of interest with employees in the Public Works department and have similar wages, hours, and other working conditions." (City's Objection at 2).
5. The proposed unit would include the Public Works employees, including the Administrative Specialist (1), Water Wastewater Treatment Plant Operator II (2),

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<sup>3</sup> See Finding of Fact Number 5 for the parties' stipulated exclusions of positions from the bargaining unit.

Water/Wastewater Treatment Plant Operator I (3), Equipment Operator (5), Maintenance Technician (3), Fleet Mechanic Supervisor (1), Heavy Fleet Mechanic (1), Fleet Mechanic (1), Water/Wastewater Treatment Specialist in compost facility (1), and Maintenance Specialist/Equipment Operator in compost facility (1), for a total of 19 employees. (Exhibits 12 and 13). The parties stipulated that the Director of Public Works, the Water/Wastewater Treatment Manager, the Building Official, and the Maintenance Manager would be excluded from the proposed bargaining unit.<sup>4</sup>

6. The Agency scheduled a prehearing conference on January 19, 2017. At that conference, a hearing was scheduled for March 7 – 10, 2017, in Anchorage.<sup>5</sup>

7. The City of Kodiak is run by a City Council that sets policies and hires a City Manager to execute its policies. The City Manager is head of the City's administrative branch. (Exhibits A, C-2, and Exhibit 1). The City Manager must have a degree in Public Administration and at least five years' municipal government experience. The City Manager has direct supervisory responsibility over the heads of the City's departments, and "through the department heads", overall responsibility for all City personnel and functions except for the City Clerk and Deputy Clerk. (Exhibit C-2; E, pp. 13-14; Exhibit D-117). Aimee Kniazowski is the current City Manager.

8. The City's departments include engineering, finance, fire, harbor and cargo, library, parks and recreation, police, and public works. (Exhibits 1 and A). The heads of each city department are directors under the city's class specification titles. (Exhibit D-1). Incumbents in these positions are given broad responsibility "for overall objectives, staffing and resource allocation." (*Id.* at 1-3). They direct the activities of their assigned department and oversee professional and managerial staff. (*Id.*).

9. With the exception of the library director, each department director must have a special licensure related to their area managed. (Exhibit D-4). The Public Works Director, for example, must have a State Water/Wastewater License." (*Id.*).

10. All city employees are currently subject to the same city personnel rules and regulations contained in a 122-page manual. (Exhibit E).<sup>6</sup>

11. The Public Works department employees are paid on the same wage scale and with the same frequency as other city employees. All city employees are paid an hourly rate that is based on their position title. (Exhibit E, pp. 19, 106-108; Exhibit O).

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<sup>4</sup> There is also a Deputy Building Official position, but that position is not currently filled. (Testimony of Christopher Dolph).

<sup>5</sup> The hearing testimony was completed on March 9, 2017.

<sup>6</sup> However, police department employees are also bound by an internal department-specific policies and procedures manual. (Exhibit 8). This manual contains more than 700 pages of orders and regulations applicable only to Police department employees. These regulations cover a wide variety of issues specific to the police department.

12. There is no common thread for hours of work among City employees. The hours of employment and work weeks of Public Works department employees are similar in some respects to those of other city employees, but they are substantially different in other respects. Generally, the hours of work for city employees are 8:00 a.m. to 5:00 p.m., Monday through Friday. (Exhibit E at 22). However, three departments are open 24-hours per day: the Police Department, Fire Department, and Harbor. In the police department, employees in dispatch and the police officers work three eight-hour shifts. Corrections officers work 12-hour shifts.

13. Generally, the Public Works Department employees work an 8:00 a.m. to 5:00 p.m. shift. However, they must also be on call and available during evening hours and on weekends. For example, an alarm may be triggered during nighttime or weekend hours in the wastewater plant. When this occurs, the police dispatcher will check a call-out list and contact the next Public Works employee on the list. (Mark Kozak testimony). Essentially, employees are on call all the time. (Carroll Dean Foxworthy testimony). In addition, during the winter time, road crew employees work a 3:30 a.m. to 12:00 p.m. shift for two-week periods. This shift rotates through all employees. (Carroll Dean Foxworthy testimony). On weekends, an employee must check the pump house once or twice. (Mark Kozak testimony).

14. The Public Works Department consists of five buildings, each separate and apart from all other city buildings. The shop and warehouse buildings are separate but adjacent to each other. The shop building comprises two floors, with the shop, breakroom, parts room and shop supervisor's offices on the first floor. The second floor contains the Director's office, the Maintenance Manager's office, and an engineer's office.<sup>7</sup> The three other buildings, some distance away, include the Water/Wastewater Plant, a compost facility, and a chlorinator plant. The Public Works employees work at facilities dedicated to their specific job functions.

15. No other city employees are located in the Public Works department buildings except an engineer in one building. Other city employees visit the Public Works department, as necessary, to drop off vehicles or other items for service or repair, or fuel up their vehicles.

16. There are 19 employees in the proposed Public Works Department unit, all under the supervision of Public Works Director Mark Kozak. (Exhibit 12; Testimony of Aimee Kniazowski). Under Director Kozak is Anthony (Craig) Walton, the Maintenance Manager. Walton supervises 13 of the 19 employees in the proposed unit. Constantino Bormuel, the Water/Wastewater Treatment Manager, supervises the other six employees, who work in the Water/Wastewater Treatment Plant. (Exhibit 12, Exhibit B).<sup>8</sup>

17. The Public Works employees must, depending on their position, have specialized training and experience, knowledge, and skills that qualify them to perform their duties. For example, fleet maintenance employees must have the training and experience to repair and

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<sup>7</sup> The Teamsters are not seeking to represent the engineer position.

<sup>8</sup> There are 125 employees working for the City of Kodiak. Of the 125, 45 employees work in the Police Department and 28 employees work in the Public Works Department. (Aimee Kniazowski testimony).

maintain multiple types and sizes of vehicles and other machinery, from small items like lawnmowers, to larger items like generators and dump trucks.

18. As an example of knowledge required, the mechanics who repair and maintain vehicles must have, among other things, a Class A Commercial Driver's License, knowledge of such matters as engine repair, automotive maintenance and repair, heavy equipment and diesel engines, applicable tools of the trade and diagnostic devices, and computers and related software applications. (Exhibit D at 60-68; testimony of Christopher Dolph and Ishmael Vaudrin). They must have the skills necessary to read and comprehend technical repair manuals, use applicable tools and equipment of the trade, repair diesel engines and related heavy equipment, detect and diagnose vehicle and equipment malfunctions, and use computer and related software applications, among other skills. (Exhibit D at 60-68).

19. Maintenance Specialist/Equipment Operators must have up to one year of specialized or technical training beyond high school, plus five to seven years of progressively responsible maintenance, utility or trades experience, including three years of operating a broad range of heavy equipment at journey level. (Exhibit D at 70). They must have knowledge of applicable maintenance procedures and methods, applicable system and structure repair techniques, and applicable tools, equipment, and materials. They must also have knowledge of applicable Federal, State, and local codes and regulations related to assignments, applicable safety requirements, and computer and related software applications. (Exhibit D at 70). They require many skills, some of which include reading blueprints and schematic drawings, troubleshooting systems related to area of assignment, and inspecting facilities, equipment and other structures.

20. Water/Wastewater Treatment Operators must have the training and experience, knowledge, and skills that enable them to competently operate treatment equipment by adjusting flow rates and chemical feeds, repair, replace and calibrate motors, pumps, testing, and metering equipment, conduct standard water quality testing and analyses, maintain lift stations, operate a belt press, and prepare daily operations logs. (Exhibit D at 75-80).

21. Public Works employees will, if capable, repair a wide variety of items for other City employees. (Mark Kozak and Christopher Dolph testimony).

22. No other city employees have the necessary training and experience, knowledge and skills possessed by the Public Works Department employees; nor are they required to get it.

23. The Public Works employees have a significant degree of functional integration. They meet each morning in a common break room to discuss what needs to be done for the day, and receive assignments from the Maintenance Manager. Sometimes an employee will report extra hours worked on a repair job. (Christopher Dolph testimony).

24. In addition to the daily meetings, department employees help each other where needed. The maintenance mechanics sometimes help the road crew, for example with flagging, hauling rock, and snow blowing. (Christopher Dolph and Ishmael Vaudrin testimony). The

Wastewater crew is sometimes asked to drive truck for snow removal. In the shop, employees other than the mechanics often help with cleaning and repair. If the road crew needs something to do, there is always work to do in the shop. (Christopher Dolph testimony).

25. The Public Works Department shares an Administrative Assistant position with the Engineering Department. (Mark Kozak testimony).

26. The Public Works Department does have some interaction with other departments. Besides snow and ice removal of all City department areas, they also vacuum storm drains at the Harbor, interact with the Police Department on such tasks as vehicle repairs and manhole repairs. They also interacted with the Police Department on the handling of a homeless camp. (Mark Kozak testimony).

27. Public Works Department employees sometimes receive reports from the Police Department dispatchers, who notify them of conditions or situations that may require their expertise. For example, dispatchers may call a public works employee from a call-out list, after regular work hours, if an alarm goes off at the water plant. The public works employees may also get notice of road conditions that need their attention, or other public works-related issues that require immediate attention.

28. Public Works employees have received first aid and CPR training from Fire Department employees. (Mark Kozak testimony). This training consumes a relatively small percentage of their time on the job.

29. The Public Works Department employees maintain the City's roads throughout the year. In the wintertime, they plow and remove snow throughout the City, including city-owned parking lots. (Mark Kozak and Christopher Dolph testimony).

30. Public Works employees may on occasion go to another department at the City to repair a vehicle on the other department's premises, or they may take the vehicle to their shop for the repair. Between 80 and 90 percent of the work is done at the Public Works shop. (Christopher Dolph testimony).

31. The Public Works Department nonsupervisory employees who testified at the hearing, all expressed a desire to be represented exclusively by the Teamsters, in a bargaining unit separate from other city employees. They asserted that they should be placed into a separate unit because their job duties and work conditions are unique and different from those of other City employees. (Testimony of Christopher Dolph, Ismael Vaudrin, and Carroll Dean Foxworthy).

## ANALYSIS

1. Should the board panel that decides this matter include one of the management members on the agency Board, despite the fact both management members recused themselves from the matter?

AS 23.05.360(f) provides:

For purposes of holding hearings, the members of the board sit in panels of three members. The chair designates the panel that will consider a matter. Each panel must include a representative of management, a representative of labor, and a representative from the general public. A member of one panel may serve on the other panel when the chair considers it necessary for the prompt administration of AS 23.40.070—23.40.260 . . . .

In this case, the Board Chair, in accordance with AS 23.05.360(f), appointed three members to the panel to hear this matter, including a public member, a labor member, and a management member. However, the management member, Tyler Andrews, recused himself from hearing the case. The Chair then appointed Elizabeth Pierce, the Board's other management member, to sit on the panel. Pierce also recused herself.

When notified that the Agency panel would consist of a public member and a labor member, the City asked for clarification. The hearing examiner notified the parties via email that both management members had recused themselves, and the Agency would hold the hearing under the authority of AS 23.05.370(b), which provides in pertinent part: "Two members of a panel constitute a quorum for hearing cases. Action taken by a quorum of a panel in a case is considered the action of the full board." The Agency then proceeded to hear the case with the remaining two appointed panel members.

The City, at the hearing, renewed its request – despite the recusals – that the Agency nevertheless appoint one of the recused management members to listen to the hearing recording, review the evidence, and deliberate with the two remaining board members. The City indicates the Agency must do this in order "to fulfill the requirements of AS 23.05.360(f)," even if one of the three board members recuses himself or herself because of a conflict of interest or other reason.

We find this makes little sense. As shown above, AS 23.05.370(b) provides clear guidance and authority to proceed, in situations such as this, when recusal prevents hearing a case by a three-member panel. It would be inconsistent with the fair hearing process to hear a case with a board member who has recused herself or himself when AS 23.05.370(b) grants the Board authority to hear a case with a two-member panel.

We have on occasion looked to the Alaska Administrative Procedure Act (APA) for guidance. The APA provides for recusal of agency members when they "cannot accord a fair and impartial hearing or consideration." AS 44.62.450(c). This subsection further provides that, "[a]n

agency member may not withdraw voluntarily or be disqualified if the disqualification would prevent the existence of a quorum qualified to act in the particular case.” Applying this provision here, we need not force one of the recused board members to hear the case, because their absence does not prevent the existence of a valid quorum in this case.

The City’s request that we require one of the recused management members to hear and deliberate this matter is denied.

2. Is the Teamsters’ proposed bargaining unit at the City’s Public Works Department the unit appropriate for collective bargaining under AS 23.40.090?

The Teamsters have petitioned to represent a bargaining unit consisting of all Public Works Department employees except the Director of Public Works, the Water/Wastewater Treatment Manager, the Building Official, and the Maintenance Manager. The Teamsters argue that the Public Works Department employees are functionally integrated. (Teamsters Post-Hearing Brief at 22). The Teamsters further argue that the proposed Public Works unit is “cohesive, integrated, and . . . unique in city government. The employees . . . enjoy a community of interest in the wages, hours, and conditions under which they work . . . .” (Teamsters Post-Hearing Brief at 32).

The City, on the other hand, argues that a wall-to-wall bargaining unit, consisting of all city employees, is the appropriate unit at the City. The City maintains that the evidence presented “makes it clear that unnecessary fragmenting would result if employees in the City’s police and public works departments were placed into their own, separate bargaining units, apart from the other approximately 60 City employees.” (City’s March 20, 2017 Post Hearing Brief at 44).

In this petition, the Teamsters has the burden of proving “the truth of each element” of their case by a preponderance of the evidence. 8 AAC 97.350(f). To determine the appropriateness of a proposed bargaining unit, the Agency considers the factors listed in AS 23.40.090, which provides:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 – 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

In *Alaska Nurses Association v. Wrangell Medical Center*, Decision and Order No. 296 (November 30, 2011) (D&O 296), we stated:

We have previously concluded that in applying the factors and in determining the unit appropriate under AS 23.40.090, “[t]his statute does not require we give more weight to any one factor over other factors. Our responsibility



is to insure that employees are placed in a unit that results in a community of interest based on the case's particular facts, and the factors outlined in AS 23.40.090." *Public Safety Employees Association v. City of Wasilla*, Decision and Order No. 286 (June 3, 2008) (D&O 286), at 18, citing *Alaska Correctional Officers Association v. State of Alaska*, Decision and Order No. 284, at 22 (February 28, 2008) (D&O 284).

Put another way:

There are no per se rules to include or exclude any classification of employees in any unit. Rather, we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the Employer's organization and supervision, and bargaining history, if any, but no one factor has controlling weight. (citations omitted).

D&O 286 at 18, citing D&O 284 at 22, and *Airco, Inc. and Chauffeurs & Sales Drivers, Local Union No. 402*, 273 NLRB No. 348, 118 L.R.R.M. (BNA) 1052 (1984). We make unit decisions on a case-by-case basis.

(D&O 296 at 13).

We find that the facts and testimony in this case supports a separate bargaining unit of Public Works Department employees. There is a strong community of interest among all Public Works Department employees. Although they train on infrequent occasion with primarily fire department employees, the amount of time spent training with fire department and other city employees is relatively small and infrequent. It amounts to a small percentage of Public Works department employees' total work time. They also interact with Police Department employees for vehicle repair or dispatch communications, and with Harbor employees on occasion. However, the Public Works Department employees' working conditions require that they work primarily with each other, to serve other city departments, in the pursuit of the Public Works Department's unique mission.

The City contends that a wall-to-wall unit is warranted, in part, because all city employees are subject to the same personnel policies and procedures, and Public Works department employees train with other city personnel. It is true that all city employees are subject to the city's personnel policies and procedures. However, we do not find that this factor necessarily favors a wall-to-wall unit. Nor do we find that occasional training is significant in supporting a wall-to-wall unit.

We find the unique skills of the Public Works employees are important here. "The most reliable indicium of common interests among employees is similarity in their skills, duties, and working conditions." *Pacific Southwest Airlines v. N.L.R.B.*, 587 F.2d 1032, 1042 (1978). In the case before us, it is apparent that the Public Works Department employees have unique skills,

duties, and working conditions. They must know how to repair a wide variety and size of machinery and vehicles. They must maintain, repair, and keep the roads in good condition in summer and winter. They must also keep the Wastewater plant and the compost facility running. No other city employees have anywhere near similar duties or skills to those of the Public Works Department employees. These factors weigh in favor of a separate bargaining unit.

In addition to its arguments that some city employees train together periodically and all city employees are subject to the same policies and procedures, the City's primary argument is that creating a separate Public Works unit – and therefore disallowing its request for a wall-to-wall unit – would result in unnecessary fragmenting. Admittedly, in some cases wall-to-wall units are warranted because the facts support avoidance of unnecessary fragmenting. However, we do not find that to be the case here. In fact, we find that fragmenting is necessary here because of the unique skills and abilities required of Public Works Department employees in getting their jobs done. The evidence also reflects a high degree of functional integration and community of interest among the Public Works employees.

Public Works Department employees meet before the start of every shift, every day. Employees meet with the Maintenance Manager and coordinate what must be done that day. This shows employees working together to get their duties done. Although Public Works Department employees' skills vary according to their specific job titles, their interests, duties and working conditions all focus on the Public Works Department's mission.

We agree with the City that “[n]o department, including the . . . public works departments, is autonomous . . .” (City's Post Hearing Brief at 36), but we disagree with its contention that “employees [do not] fulfill their daily job duties independent of other City employees.” (*Id.*). The Public Works department employees are for the most part independent from other City departments in going about their daily activities. There is some necessary interaction between departments, but each pursues its own mission while working with other departments. For example, Public Works employees interact with other City employees when the City employees drop off vehicles for maintenance or repair. But this interaction is normally brief, and afterward, the Public Works employees will apply their unique skills to get the vehicle running again. There is no ‘working together’ between employees of different departments.

The City also argues that this case has similarities to *Petersburg Police Association v. City of Petersburg*, Decision and Order No. 297 (January 23, 2012) (D&O 297). The City contends that, like the police department employees at the City of Petersburg, the Public Works Department employees “have a community of interest with their fellow City employees in a wall-to-wall bargaining unit proposed by the City.” (City Post Hearing Brief at 34). We disagree that the scenario in D&O 297 supports the City's argument that the Public Works employees at the City of Kodiak should be in a wall-to-wall unit. In D&O 297, the police department employees had been part of the City of Petersburg's wall-to-wall unit since its inception, for a period of 24 years. (D&O 297 at 3). The Petersburg Police Association sought to sever the police department employees from the long-established wall-to-wall unit. As we stated in D&O 297:

However, once a bargaining unit has been certified, a “petitioner seeking to sever a group of employees out of an existing unit has a heavy burden to carry under the factors established by this Agency’s predecessor and the National Labor Relations Board and applied by this Agency . . . . It is not an easy burden to satisfy . . . .” *Public Safety Employees Association v. State of Alaska*, Decision and Order No. 201, at 10 (April 4, 1996) (D&O 201).

(D&O 297 at 9).

Moreover, a party seeking to sever a proposed bargaining unit from an established unit must also meet the requirements for severance contained in 8 AAC 97.025(b). So, not only is the factual scenario in D&O 297 distinguishable from the facts before us here, but the legal analysis required is also distinguishable. In this regard, we find D&O 297 inapplicable to the scenario in this case, including its applicability to the Public Works Department employees. These employees do not have the legal burden required of the employees in D&O 297.

Finally, we note that the Public Works Department employees have expressed a desire to have representation by the Teamsters in their own separate bargaining unit. We believe that at the onset of collective bargaining, where employees are considering the pros and cons of forming a bargaining unit, desires are related to employee freedom of choice. AS 23.40.090 requires that when determining the unit appropriate for collective bargaining, we must “assure to employees the fullest freedom in exercising the rights guaranteed” by the Public Employment Relations Act. The Alaska Legislature, in declaring its policy on joint decision-making by public employers and public employees, “[recognized] the right of public employees to organize for the purpose of collective bargaining.” (AS 23.40.070 and 070(1)). We believe this policy recognizes the importance of, and obligation to consider employee choice and desires in initial organizing campaigns.

In *Pacific Southwest Airlines v. N.L.R.B.*, 587 F.2d 1032 (1978), the Ninth Circuit Court of Appeals considered the application of employee choice under the National Labor Relations Act (NLRA).<sup>9</sup> The Court stated:

The [NLRA] favors freedom of choice. *See International Ladies’ Garment Workers’ Union v. NLRB*, 366 U.S. 731, 81 S.Ct. 1603, 6 L.Ed.2d 762 (1961); *NLRB v. Horn & Hardart Co.*, 439F.2d 674, 682 (2d Cir. 1971). The wishes of the employees therefore must be considered. *NLRB v. Ideal Laundry & Dry Cleaning Co.*, 330 F.2d 717 [sic] (remand ordered because Board excluded testimony about desires of employees). Although it may consider other factors, the Board’s discretion is broadest when exercised in favor of employee freedom. *NLRB v. Sunset House*, 415 F.2d 545 (9<sup>th</sup> Cir. 1969). Employee choice can tip the balance in determining which of two equally appropriate units should be preferred. *NLRB*

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<sup>9</sup> “Relevant decisions of the National Labor Relations Board and federal courts will be given great weight in the decisions and orders made under this chapter and AS 23.40.070—23.40.260 . . . .” We find *Pacific Southwest Airlines v. N.L.R.B.*, 587 F.2d 1032 (1978) relevant.

*v. Local 414, International Brotherhood of Teamsters*, 205 F.2d 99, 103 (1<sup>st</sup> Cir. 1953).

*Pacific Southwest Airlines v. N.L.R.B.*, 587 F.2d 1032, 1044 (1978).

We find, after reviewing all of the evidence and testimony in this matter, and after considering the parties' arguments, that the preponderance of the evidence in this case supports a separate bargaining unit of all Public Works Department employees, as proposed by the Teamsters, with the stipulated exclusions. Fragmentation is necessary under the facts of this case. The petition of the Teamsters is granted.<sup>10</sup>

### **CONCLUSIONS OF LAW**

1. The General Teamsters Local 959, International Brotherhood of Teamsters is an organization under AS 23.40.250(5). The City of Kodiak is a public employer under AS 23.40.250(7).

2. This Agency has jurisdiction to determine the unit appropriate for collective bargaining under AS 23.40.090.

3. As Petitioner, General Teamsters Local 959, International Brotherhood of Teamsters has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).

4. General Teamsters Local 959, International Brotherhood of Teamsters proved its claim by a preponderance of the evidence.

5. Based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, and also considering the factors of unnecessary fragmentation of units and desires of employees, a separate bargaining unit of Public Works Department employees is the unit appropriate for collective bargaining.

### **ORDER**

1. The petition for certification of the General Teamsters Local 959, International Brotherhood of Teamsters as exclusive representative of its proposed bargaining unit of Public Works Department employees at the City of Kodiak is granted. The unit appropriate for collective bargaining is all Public Works Department employees except the Director of Public Works, the Water/Wastewater Treatment Manager, the Building Official, and the Maintenance Manager. The election shall proceed under AS 23.40.100 and relevant regulations.

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<sup>10</sup> Since we have concluded that the Teamsters' proposed bargaining unit is appropriate, we need not address issue number three.

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

**ALASKA LABOR RELATIONS AGENCY**

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Jean Ward, Chair

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Matthew R. McSorley, 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 *General Teamsters Local 959, International Brotherhood of Teamsters vs. City of Kodiak*, ALRA Case No. 16-1699-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 30 day of May, 2017.

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Margie Yadlosky  
Human Resource Consultant

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 2017, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Nancy Shaw, General Teamsters  
William Mede, City of Kodiak  
William Earnhart, City of Kodiak

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Signature