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BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 302, AFL-CIO,

Appellant,

vs.

CBJ DIVISION OF HUMAN RESOURCES AND  
RISK MANAGEMENT,

Appellee.

**DECISION ON APPEAL**

Background

This is the Assembly’s final decision in an appeal from the CBJ Personnel Board (“Board”), timely filed by the International Union of Operating Engineers, Local 302, (“Union”), regarding the formation of a separate bargaining unit for the Airport Field Maintenance employees at the Juneau International Airport. The Board denied the Union’s petition, and the Union appealed to the Assembly.

The Board found, after hearings and briefing, that the Airport Field Maintenance employees could not form a separate bargaining unit under the CBJ Code and Board Rules, despite the fact that the same group of employees had been earlier found by the Board to have a “community of interest” sufficient to allow them to withdraw from representation by their former union, MEBA, in 2008.

For the reasons outlined below, and those to be found in the Board’s decision and arguments on appeal, the Assembly upholds the decision of the Board. The Union has failed to meet its burden of proof in this appeal to show that the Board’s decision was not supported by substantial evidence as defined in the Appeals Code.

Standard of Review

Under the CBJ Appeals Code, particularly CBJ 01.50.070, the Assembly’s review of a board decision is limited. If substantial evidence supports a board decision, the Appeals Code requires

1 that it be upheld; “substantial evidence” is broadly defined, and in this case it is the Union that  
2 bears the burden of proving that the Board’s decision was not supported by substantial evidence.

3 The Board made detailed findings of fact and conclusions of law on every aspect of the case.  
4 The Union’s argument points to no specific finding or conclusion adopted by the Board as lacking  
5 substantial evidence. Rather, the Union challenges the result, and makes its argument to the  
6 Assembly.

7 Even if the Assembly might reach a different result itself, if hearing the case directly, that is  
8 not the role of the appeal agency which is directed by the Appeals Code. The Personnel Board has  
9 expertise in administering its own rules and the CBJ labor relations ordinances, and it provided  
10 both parties a full and fair opportunity to offer evidence and argument. Under the Appeals Code,  
11 the Assembly must defer to that process.

#### 12 Arguments of the Parties

13 The Appellant Union argues:

- 14 ▶ The Airport is administratively separate from other parts of the CBJ, and the Airport  
15 Field Maintenance employees have virtually no cross-over with other CBJ equipment  
16 operators, mechanics, or laborers.
- 17 ▶ The field maintenance work is substantially different from other CBJ work because of  
18 airport safety and security issues, unique equipment used on the airport to clear the  
19 runway, and the extensive employee orientation required for on-field airport work.
- 20 ▶ Airport employees must get specialized training that other CBJ employees do not require  
21 in radio communications, access to the runway, fire, wildlife hazards, perimeter security,  
22 detaining and questioning suspicious persons, and recognizing specialized credentials.
- 23 ▶ The Personnel Board has recognized, most recently in September, 2008, that this specific  
24 group of employees has a “community of interest,” sufficient to withdraw from  
25 representation by MEBA.

- 1 ▶ Forming a bargaining unit for the Airport Field Maintenance employees will not result in  
2 “unnecessary fragmentation” as prohibited by CBJ 44.10.040.  
3 ▶ The employees have submitted signed Bargaining Authorization Cards, and, under CBJ  
4 Policy set forth in the CBJ Code at 44.10.040, they should be allowed to be represented  
5 by a representative of their own choosing.

6 Appellee CBJ Division of Human Resources and Risk Management argues:

- 7 ▶ The Union has not met its burden of proof under the Appeals Code.  
8 ▶ The Board’s decision is supported by substantial evidence.  
9 ▶ “Community of interest” is not the same as “bargaining unit” under the CBJ Labor  
10 Relations Code and the Personnel Board Rules of Procedure.  
11 ▶ The CBJ Code and Rules are unique, and use the terms “community of interest” and  
12 “bargaining unit” differently than other codes (e.g., the State ALRA, and the Federal  
13 NLRA).  
14 ▶ Treating the two concepts, “community of interest” and “bargaining unit” as the same  
15 would result in unnecessary fragmentation as prohibited under CBJ 44.10.040.  
16 ▶ The Airport Field Maintenance employees group is not sufficiently different from other  
17 similarly-classed employees to justify a separate bargaining unit.

18 Discussion

19 The Appeals Code standard of review essentially dictates the result in this appeal. The Board  
20 has done an excellent job, applying its expertise and providing the union a proper opportunity to  
21 make its case.

22 The Labor Relations Code requires that bargaining units shall be “as large as is reasonable  
23 and unnecessary fragmentation shall be avoided.” This Code admonition works against the  
24 Appellant Union in this case. The Airport Field Maintenance employees, before they withdrew  
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from representation, shared a unit – across all CBJ agencies – of employees in the same job classes.

The Board found that, if the Union’s Petition were to be granted:

The proposed unit would consist of only a fraction of the CBJ employees engaged in similar work in the same job classifications. *See Findings of Fact 10 and 23.* It would not be appropriate to have a bargaining unit comprised of just the equipment operators, mechanics, and laborers who work at the Airport, and another larger bargaining unit (GGU) that includes all the other equipment operators, mechanics, and laborers in collective bargaining who work at all other CBJ departments. To do so would result in a small unit with significantly less bargaining power than the larger unit that already exists and includes the same position classifications, and create an undue burden on the CBJ given the time and expense associated with contract negotiation and management for a like group of workers. The Board concludes that the proposed unit would not be as large as is reasonable.

This conclusion is supported by substantial evidence.

Appellee CBJ Human Resources points out that the CBJ Labor Relations Code, unlike the state and federal codes, does not use the terms “community of interest” and “bargaining unit” interchangeably. The distinction between the two terms shows up, for example, in the definition of “community of interest” in Board Rule 2.06:

Community of Interest – Means a group of positions that share a common work location and general body of work within the same department. A community of interest may not include employees from two or more departments. *A bargaining unit may be comprised of one or more communities of interest.*

(Emphasis added).

As can be seen from this definition, the two are not the same; a bargaining unit encompasses communities of interest; it is a broader term appropriate, as the Board found, to be applied across departments.

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