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UA CLASSIFIED EMPLOYEE	)
ASSOCIATION/APEA/AFT	)
Petitioner,	)
	)
vs.	)
	)
UNIVERSITY OF ALASKA	)
Respondent.	)
CASE NO. 92-086-UC	)

**DECISION AND ORDER NO. 148**

This matter was heard on June 16-18, 1992, in Anchorage, Alaska, with Hearing Officer Jean Ward presiding, before board members Gil Johnson and Darrell Smith. Member James W. Elliott did not participate. The record closed on August 10, 1992.

**Appearances:**

Ron Melton, National Representative, American Federation of Teachers, for petitioner UA Classified Employees Association; C. Ann Courtney, Owens & Turner, P.C., for respondent University of Alaska.

**Digest:**

Applying such factors as community of interest, wages, hours and other working conditions, the history of collective bargaining and the desires of the employees, we find that a statewide unit of blue collar trades, maintenance, and custodial employees is appropriate at the University of Alaska.

**DECISION**

The UA Classified Employees Association, APEA/AFT (UA CEA), filed a petition with the Alaska Labor Relations Agency for certification as the bargaining representative of a statewide unit of all general maintenance and custodial University of Alaska employees listed on an addendum. The University objected to the petition, claiming that the unit is inappropriate because it includes supervisory personnel and causes unnecessary fragmentation between employees who share a community of interest.

**Preliminary Matter: Timeliness**

On April 15, 1992, UA CEA filed a motion to dismiss the University's objection to the petition on the basis that it was not timely filed. The Agency, through its hearing officer, denied the motion on April 21, 1992, issuing a corrected order on April 30, 1992. The hearing officer found that (1) notices of the petition were posted between March 13 and March 30, 1992; (2) the University filed its objection on April 1, 1992; (3) the 15 day period for objections ended on April 14, 1992, which was 15 days from the last date of posting; and (4) 2 AAC 10.070 provides 15 calendar days from the date of posting of the notice to file objections.

UA CEA again raised the timeliness issue at hearing, arguing that the University did not complete posting within the three to five days originally anticipated by the hearing officer in her March 9, 1992, posting instructions. UA CEA's objection has no legal basis. 2 AAC 10.070 does not specify a time limit for posting a petition.

The date of posting is important, however, because it establishes the time to file any objections to the appropriateness of the bargaining unit or to the conduct of an election. Such objections must be filed within 15 calendar days from the date of the posting of the notice. In its March 9, 1992, posting instructions to the University, the Agency notified both the University and UA CEA of the requirement, stating that "the 15 day time period for filing objections will begin on the last date of posting." J. Ward, Letter to Owens at 2 (Mar. 9, 1992). The University certified that it posted the notices in 74 locations throughout the state between March 13, 1992, and March 30, 1992. Master Affidavit of Posting (April 7, 1992). The University filed its objection on April 1, 1992, 2 days after the last day of posting and within the required 15 days.

Because the University's objection was timely filed, the motion to dismiss the petition is denied.

### Findings of Fact

1. On January 21, 1992, UA CEA filed a petition for certification as public employee representative of a unit of University classified employees. UA CEA is an affiliate of the Alaska Public Employees Association and the American Federation of Teachers.
2. Respondent University is a constitutionally established land grant university. The University consists of three main campuses, eight satellite campuses, and numerous remote sites located throughout Alaska.
3. The University is centrally administered on a statewide basis by a unit known as the Statewide System located in Fairbanks.
4. The University employs approximately 3200 employees statewide whom it divides into three main categories: faculty; administrative, professional, and technical; and classified. There are approximately 1800 classified employees.
5. In its petition, the UA CEA described the unit it seeks to represent as "all general maintenance and custodial personnel as listed on the attached addendum." The addendum includes 157 job titles. The approximate size of the unit is 450 employees. UA CEA excluded from its proposed unit all supervisory employees, confidential employees, APT employees, teaching and research faculty, students, and all other classifications.
6. On March 9, 1992, the Agency found the UA CEA had met the threshold requirement of a 30 percent showing of interest under AS 23.40.100.
7. Because the petition met the requirements for filing under 2 AAC 10.020, the Agency caused a notice of the petition to be posted. 2 AAC 10.060 & 2 AAC 10.070. Between March 13 and March 30, 1992, the University posted the petition and notice of petition on employee bulletin boards in 74 locations throughout the State of Alaska.
8. On April 1, 1992, the University objected to the bargaining unit, claiming that the unit was inappropriate because it contains supervisory employees and unnecessarily fragments a group of employees who share a community of interest.
9. The positions UA CEA proposes to include in the unit appear in appendix A, attached to this decision. They include maintenance, custodial and building trades workers, such as mechanics, carpenters, carpet layers, operators, custodians, electricians, laborers, grounds workers, painters, plumbers, roofers, and sheetmetal workers. In addition, they include bindery workers, bookstore clerks, cashiers, electronics technicians, media services technicians, and office equipment operators, among others. The University no longer lists in its job class master list some of the job titles contained in the UA CEA's proposal. Exh. 200. However, employees sometimes use working titles that differ from the University's job class master list.
10. At hearing, UA CEA and the University stipulated to exclude the following positions from the proposed unit:

<b><u>University's Job Title</u></b>	<b><u>Title on UA CEA's Addendum</u></b>
A. Agricultural Supervisor	Agricultural Supervisor I and II
B. Maintenance Supervisor	Assistant Maintenance Supervisor
C. Building Maintenance Supervisor	Building Maintenance Supervisor
D. Facilitator	Central Animal Facility Supervisor
E. Custodial Supervisor	Custodial Supervisor I and II
F. Facilities Supervisor	Facilities Supervisor
G. Grounds Supervisor	Grounds Supervisor II
H. Herder Supervisor	Herder Supervisor
I. Laborer Supervisor	Labor Supervisor
J. Mail Services Supervisor	Mail Services Supervisor
K. Maintenance/Custodial Supervisor	Maintenance/Custodial Supervisor and Maintenance/Custodial Supervisor III
L. Mechanical Maintenance Supervisor	Mechanical Maintenance Supervisor
M. Painter Supervisor	Painter Supervisor
N. Shift Engineer Supervisor	Shift Engineer Supervisor
O. Electrical Supervisor	Supervisor-Electric Shop
P. Food Service Supervisor	Supervisor-Food Service
Q. Housing Maintenance	Supervisor-Housing Supervisor
R. HVAC Supervisor	Supervisor-HVAC
S. Warehouse Supervisor	Supervisor-Warehouse
T. Carpenter Supervisor	
U. First Mate	
V. Auto Shop Equipment Supervisor	
W. Custodial Maintenance Supervisor	
X. Field Operations Assistant	

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11. In addition to positions traditionally classified as trades, maintenance, or custodial, UA CEA included in its petition some clerical or technical positions, while omitting other clerical or technical positions.
12. All classified employees at the University, *i.e.*, all employees who are not categorized as faculty, administrative, professional or technical employees, share a single classification system; share a compensation system; receive the same core fringe benefits; operate under the same personnel regulations and policies; have a common grievance procedure; and work under other similar polices, rules, and procedures, such as a drug free workplace.
13. Public safety employees, such as emergency dispatchers and public safety officers, do not share a community of interest with maintenance and custodial employees. Public safety officers must be trained in a civil police academy, must pass a psychological and physical exam, and must meet certain moral standards. Recently the public safety officers were given full general police powers to enforce state and local laws. Public Safety employees work different hours and shifts and have public safety as their primary focus. Public safety officers do some incidental maintenance or custodial work, such as placing a garbage can under a leaking ceiling or turning a valve. Testimony of Robert F. Bachand.
14. University employees assigned to the Alpha Helix, a research vessel owned by the National Science Foundation, do not share a community of interest with maintenance and custodial employees. The marine employees who serve in such positions as able seaperson, engineer, and steward are sailors first, although they may perform some maintenance or custodial duties to maintain the vessel in a clean and seaworthy condition. The marine employees work different hours and shifts (six hours on/six hours off and four overtime hours a day); they live and work in a different environment than maintenance and custodial employees; they are subject to random drug testing mandated by federal law; they must pass an annual physical exam; and they are subject to Coast Guard safety standards. Testimony of Tom Smith.
15. Although trades, maintenance, and custodial employees share the same benefits and work under the same polices as other classified employees of the University, their working conditions are sufficiently different to justify placement in a separate unit. Work performed by trades, maintenance, and custodial employees is primarily of a manual or physical nature and is performed in a field, shop or outdoors environment as opposed to an office setting. Tools used by carpenters, plumbers, electricians, mechanics, custodians and farm workers are substantially different from the machines operated by office or technical workers. Special licenses are required for certain trades workers, such as plumbers and electricians. Electricians and other trades employees work with hazardous materials, such as electricity, propane, and methane. Testimony of Darrell Earnshaw. These employees are more likely to be called in to work on weekends or in the evenings than clerical or office workers. Testimony of Colin Claussin.
16. Due to the manual and physical work they perform, non-supervisory agricultural employees have a greater community of interest with the trades, maintenance, and custodial employees than they do with the clerical and technical classified employees. The herder cares for the animals and handles artificial insemination duties. Since it only takes the herder a few days each year to complete artificial insemination duties, the remaining time is spent caring for the herd. Research assistants perform such duties as planting, weeding, and feeding. The agriculture helper performs similar duties. Milkers are responsible for milking a herd of 100 to 125 animals, using mechanical milking machines. They are responsible for the milk up to the point where it is sold. Testimony of Charles Hartman. Examples of nonsupervisory agricultural positions with duties that are primarily manual or physical in nature include agricultural laborer, farm maintenance mechanics, and laboratory helper or helper aide.<sup>1</sup>
17. The maintenance and trades employees testifying desire a unit that is strictly blue collar because they believe they have a stronger bond with other craftsmen, similar interests in collective bargaining, common backgrounds, little interchange with office workers, and different needs concerning such matters as safety. Testimony of Earnshaw, Heidorn, and Orbeck. Scott Heidorn, for example, expressed a desire for a strictly blue collar unit that would not include technical and clerical employees. Heidorn works as a roofer and does not deal with clerical employees. Testimony of Heidorn. Colin Claussin, electrician, testified that he did not work near clerical workers, cashiers, bookstore clerks, mail clerks, compositors, and media service personnel. Based on his collecting interest cards, Claussin believes the blue collar employees want their own unit and the white collar employees want a separate unit. Testimony of Claussin.

18. There is no history of collective bargaining among the classified employees at the University.

## DISCUSSION

The University argues that the UA CEA has petitioned to represent a group of employees that defies definition and is not distinct from the larger group of classified employees. It argues that UA CEA may not include some clerical and technical positions while omitting others. Likewise, the University argues that the UA CEA must include all maintenance and custodial positions. The University argues that the truly appropriate unit is a unit consisting of all classified employees and that the proposed unit causes unnecessary fragmentation.

The UA CEA, on the other hand, argues that a general maintenance and custodial unit, consisting of the positions in appendix A, is appropriate. It bases its argument on decisions rendered by the former State Labor Relations Agency<sup>2</sup> (SLRA) in Order and Decision Nos. 34, 90, and 94.

### Conclusions of Law

1. The Alaska Labor Relations Agency has jurisdiction under AS 23.40.100 over the petition for certification as bargaining representative filed by the UA CEA.
2. As the petitioner, the UA CEA has the burden to prove the truth of each element necessary to its cause by a preponderance of the evidence. 2 AAC 10.430. Thus, the UA CEA must establish the appropriateness of the unit it has proposed at the University of Alaska.
3. PERA describes the factors used to determine whether a unit is appropriate in AS 23.40.090:

Collective bargaining unit. The Labor Relations Agency shall decide in each case, in order to assure to employees the fullest freedom in exercising their rights guaranteed by AS 23.40.070 -- 290, 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.

The question is whether the employees in the proposed unit share enough of these factors to be represented together without causing unnecessary fragmenting.

4. The former SLRA has addressed collective bargaining at the University in at least four instances: Order and Decision Nos. 3, 34, 90, and 94.
5. In Order and Decision No. 3, it rejected a proposed bargaining unit of approximately 17 employees at the College, Alaska heating and power plant because the unit did not contain other skilled craftsmen, custodial workers and equipment operators who worked at other physical plants in the University system. The former SLRA found that the unit would have consisted of approximately two percent of the full-time classified employees and would have resulted in excessive fragmentation.
6. In Order and Decision No. 34, the former SLRA rejected a "unit consisting of all support secretarial, clerical, custodial, and regulatory (all classified) employees of the University of Alaska who are employed at least 50 percent of their employment by Alaska Community Colleges at various locations throughout the state, but excluding supervisory and confidential employees." Order & Decision 34 Pertaining to a Petition by the Professional and General Employees Council for Certification of a Proposed Bargaining Unit at the University of Alaska, SLRA at 1 (undated). It found that chaos could result from attempting to determine which employees met the "50 percent or more" definition alone. *Id.* at 5. It suggested that

either a unit of all non-supervisory, non-confidential classified employees of the over-all University system or two units, one of all maintenance and custodial employees of the over-all University system and the

other of all clerical, technical and administrative employees of the over-all University system, would most likely be appropriate. The latter alternative would be parallel to the structure of bargaining units in the Executive branch of the State government.

Id. at 6.

7. In Order and Decision 90, the former SLRA dismissed petitions that proposed a unit of approximately 90 building maintenance department employees at the Fairbanks, Anchorage, and Juneau campuses. It found, as it did in Order and Decision Number 34, that either one unit of all nonsupervisory, nonconfidential employees for the overall University system would be appropriate or that two units would be appropriate: one consisting of all maintenance and custodial employees of the overall University system and the other consisting of all clerical, technical and administrative classified employees. Additionally, the SLRA recommended that the historical precedent established in the State's blue collar unit should be followed. Following precedent would have the effect of combining such employees as electronics techs, custodial workers, vo-tec type mechanics, sign painters, stock handlers, store keepers, groundsmen, engineering techs and similar positions with building and construction trades positions. International Bhd. of Elec. Workers, Local 1547 v. University of Alaska, SLRA Order & Decision No. 90, at 5 & 7 (June 8, 1984).

8. The unit UA CEA currently seeks to represent includes the same types of classifications named in Order and Decision 90. Like the former SLRA, we believe that permitting one unit of nonsupervisory, nonconfidential clerical, technical and administrative employees and another unit of trades, maintenance, and custodial employees will not result in unnecessary fragmentation and will meet the legislative criteria for bargaining units. International Bhd. of Elec. Workers, Local 1547 v. University of Alaska, SLRA Order & Decision 94 at 6-8 (April 25, 1985). Based on the testimony and evidence presented in this case, we include in the bargaining unit those positions that are more clearly trades, maintenance, and custodial than clerical or technical in nature, along with the nonsupervisory agricultural employees who perform predominately manual or physical work. Excluded as clerical or white collar are such positions as cashiers, mail carriers, bookstore clerks, bindery workers, media services technicians, photocopy machine operators, network communications specialists, microfilm equipment operators, and production control technicians.

9. Despite the interests shared by all University employees, we find significant differences between trades, maintenance and custodial workers, on the one hand, and clerical and technical positions, on the other. Similarly, the SLRA in Order and Decision No. 1 established separate bargaining units for confidential employees and for general government employees. SLRA Order and Decision No. 1 Concerning Petitions Nos. 1-72, 2-72, 3-72, 4-72, & 5-72, at 6-15 (Feb. 2, 1973). Furthermore, it set forth reasons for excluding the building and construction trades from other government workers. These differences principally are the skills and training required and the working conditions. In addition, in the trades, advancement is usually limited to the particular trade. The former SLRA also relied upon the community of interest among the trades in the private sector not shared with "white collar, professional or technical employees." Finally, the former SLRA states the bargaining objectives differ for the two groups. Id. at 11-15. We find that those reasons are equally applicable to the University and provide a compelling basis for establishing a blue collar trades, maintenance, and custodial unit that is separate from a white collar classified unit.

10. Although all classified employees at the University share many interests, those trades, maintenance, custodial and agricultural employees described below share working conditions that are sufficiently different from other classified employees in the statewide University system to warrant placing them in a separate bargaining unit.

11. A statewide University trades, maintenance, and custodial unit, consisting of nonsupervisory and nonconfidential trades, maintenance, and custodial employees, including agricultural employees who perform work that is predominately manual or physical in nature, is appropriate under AS 23.40.090. Using the UA CEA's list of classifications, examples of positions appropriately included in the unit are

agricultural assistant I, II, & III

agricultural helper

\*agricultural laborer I

\*animal caretaker II

appliance mechanic

\*assistant grounds worker

\*auto mechanic

barn worker

boiler firer I & II

boiler firer trainee

carpenter I, II, & III

carpenter/glazier

carpet layer/tile setter

coal unloader operator

custodian I, II, & III

custodian maintenance worker II

\*electrician trainee

electrician II and III

electrician/ref. mechanic

equipment operator/mechanic

\*farm maintenance mechanic

general laborer I & II

grounds worker

\*helper aide

herder

HVAC technician I, II, & III

laborer/light duty equip. operator

\*leadperson-paint shop

\*light duty mechanic

locksmith I & II

machinist

maintenance mechanic I, II, & III

maintenance worker

mason/carpenter

\*mechanic welder

mechanic/operator

mechanical maintenance mechanic

milker I & II

painter I, II, & III

plumber I, II, III, IV

roofer/carpenter

\*sheet metal helper

sheet metal mechanic

warehouse I & II<sup>3</sup>

12. Public safety employees do not share a community of interest with trades, maintenance, and custodial employees and should be excluded from the unit.<sup>4</sup>

13. Because public safety employees are excluded from the unit due to an insufficient community of interest with trades, maintenance, and custodial employees, it is not necessary to determine whether the Public Safety Officer II position should be excluded from the unit based on supervisory status.

14. Maritime employees on the research vessel Alpha Helix do not share a community of interest or other factors with trades, maintenance, and custodial workers and should be excluded from the unit.

15. There is insufficient evidence in the record to determine the community of interest for the following positions listed in the UA CEA's addendum:

athletic equipment maint. repair

\*electronic technician I

\*expediter II

facility support services specialist

\*instrument mechanic I & II

preventive maintenance inspect.

\*scenic shop foreman

shift engineer I

\*shop assistant

truck driver

\*warehouse records clerk

If the UA CEA and the University are unable to agree whether the positions are appropriately included in a maintenance and custodial bargaining unit, employees in these 11 position classifications, regardless of current position title, may vote a challenged ballot. Upon the request of a party, the Agency will schedule a unit clarification hearing to decide whether these positions are appropriately included in the unit.

## ORDER

1. The University's objection to the unit proposed in UA CEA's petition is granted in part and denied in part.
2. A bargaining unit of trades, maintenance, and custodial employees, as further described herein, is appropriate.
3. The parties are directed within thirty days of the effective date of this decision to meet and discuss whether the position classifications named in paragraph 15, Conclusions of Law, should be included in a trades, maintenance, and custodial bargaining unit. This Agency reserves jurisdiction to decide this issue if the parties fail to agree.
4. The Agency is directed to determine whether UA CEA has a sufficient showing of interest for the trades, maintenance, and custodial unit.
5. If appropriate, the election shall proceed under AS 23.40.100 and the regulations.

Date: November 18, 1992.

## THE ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Board Chairman

Darrell Smith, Board Member

Not participating

James W. Elliott, Board Member

## APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court brought by a party in interest against the Agency and all other parties to the proceedings before the Agency, as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

## CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of UA Classified Employee Ass'n/APEA/AFT v. University of Alaska, Case No. 92-086-UC, dated and filed in the office of the Labor Relations Agency in Anchorage, Alaska, this 25th day of November, 1992.

Norma Wren

Clerk Typist IV

This is to certify that on the 25th day of November, 1992, a true and correct copy of the foregoing was mailed, postage

prepaid to

Ron Melton, UA CEA

C. Ann Courtney, U of A

Signature

1Although the University no longer has in its job class master list the job titles agricultural laborer I, farm maintenance mechanic, and helper aide, Charles Hartman, manager of the cooperative extension service and cooperative forestry service, testified that there were agricultural laborers, farm maintenance mechanics and helper aides currently employed.

2Before July 1, 1990, the Department of Administration, State Labor Relations Agency, administered the Public Employment Relations Act for the State. On July 1, 1990, the Alaska Labor Relations Agency assumed administration of the Act for the State, municipalities and school districts. Executive Order 77 (eff. July 1, 1990).

3Those positions denoted by an asterisk are job titles that the University no longer uses in its job class master list. University posthearing brief, p.40.

4The University, in establishing that public safety and maritime employees do not have a sufficient community of interest with maintenance and custodial employees to be included in a trades, maintenance, and custodial unit, presented reasons that could suggest the appropriateness of separate bargaining units for its public safety employees and its maritime employees. Public safety employees and maritime employees were not shown to have any greater community of interest with a white collar unit consisting of clerical, administrative, and technical employees than with a blue collar unit consisting of trades, maintenance, and custodial employees. However, we will not decide the appropriateness of separate public safety and maritime bargaining units in this decision because that question is not before the Agency.