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INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS,)
 Petitioner,)
vs.)
FAIRBANKS NORTH STAR BOROUGH)
SCHOOL DISTRICT,)
 Respondent,)
and)
EDUCATION SUPPORT STAFF)
ASSOCIATION,)
 Intervenor,)
_____)
TEAMSTERS LOCAL 959,)
 Petitioner,)
vs.)
FAIRBANKS NORTH STAR BOROUGH)
SCHOOL DISTRICT,)
 Respondent,)
and)
EDUCATION SUPPORT STAFF)
ASSOCIATION,)
 Intervenor,)
_____)
CASE NOS. 91-033-RC & 92-052-RC (CON)

DECISION AND ORDER NO. 153

This matter was heard on January 13-16, 1992, in Fairbanks, Alaska, with Hearing Officer Jean Ward presiding. The record closed on January 27, 1992. In issuing this decision and order, the Alaska Labor Relations Board Members considered the record of this hearing.

Appearances:

William F. Morse, Associate General Counsel, for petitioner International Brotherhood of Electrical Workers; James A. Witt, General Counsel, for petitioner Teamsters Local 959; William D. Bennett, Perkins Coie, for respondent Fairbanks North Star Borough School District; and Robert M. Johnson, Wohlforth, Argetsinger, Johnson & Brecht, P.C., for intervenor Education Support Staff Association.

Digest:

Under AS 23.40.090, based on such factors as community of interest and the prohibition against unnecessarily fragmenting bargaining units, the unit appropriate for collective bargaining for the classified employees of the Fairbanks North Star Borough School District is the wall-to-wall unit of classified employees currently represented by the Education Support Staff Association.

DECISION

The International Brotherhood of Electrical Workers (IBEW) and Teamsters Local 959 (Teamsters) filed petitions to represent two groups of employees currently represented by the Education Support Staff Association (ESSA). These petitions seek to carve two groups of classified employees of the Fairbanks North Star Borough School District (District) from the wall-to-wall unit that has been represented by ESSA¹ since 1972.

In determining the appropriate unit for collective bargaining purposes, AS 23.40.090 requires consideration of community of interest, wages, hours, other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees involved. In addition, the statute mandates that bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided.

Community of interest refers to what the employees have in common. Among the factors considered in determining an existence of community of interest are (1) whether the employees perform similar types of work and have similar training and skills; (2) whether they work in the same location and have regular contact with each other; (3) whether they perform integrated production or service functions; (4) whether employees enjoy similar working conditions, such as working the same hours or shift schedules, using the same locker or cafeteria facilities, or being subject to the same personnel policies or work rules; (5) whether they have similar wage and benefits schedules; and (6) whether the employees have common supervision or whether there is centralized control over personnel policies or day-to-day operations. Bruce S. Feldaker, *Labor Guide to Labor Law*, 39-40 (3rd ed. 1990).

In addition to applying the factors in AS 23.40.090, when deciding whether a unit of employees should be severed from an existing unit, the Agency must consider the five following factors: (1) why the employees in the proposed unit are not receiving adequate representation in the existing unit; (2) whether the employees in the proposed unit are employed in jobs which have traditionally been represented by their own representative; (3) why the employees in the proposed unit have a community of interest which is not identical with that of the existing unit; (4) how long the employees in the proposed unit have been represented as a part of the existing unit; and (5) why granting the petition will not promote excessive fragmentation of the bargaining unit. 2 AAC 10.020(b).

The former State Labor Relations Agency² gave weight to NLRB precedent when it decided whether carve-out petitions should be granted. Like the former SLRA, we believe it is appropriate to consider NLRB precedent in cases similar to the instant ones. The NLRB, in Mallinckrodt Chemical Works, 162 N.L.R.B. 48, 64 L.R.R.M.(BNA) 1016 (1966), declared that craft severance would be based on all relevant factors, including the following:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.

6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

Since some of the Mallinckrodt factors are similar to the factors in AS 23.40.090 and 2 AAC 10.020(b), they will not be discussed separately.

Upon consideration of the above factors and the record, the Alaska Labor Relations Board adopts the following findings of fact and conclusions of law.

Findings of Fact

1. On May 28, 1991, the IBEW filed a representation petition that did not conform to the requirements of the regulations. 2 AAC 10.020.
2. On July 8, 1991, the IBEW filed a substantially complete petition to be certified as the collective bargaining representative of a group of approximately 32 classified employees of the District. Job classifications included in the IBEW's petition are mechanic I, mechanic II, carpenter, mechanic, locksmith, auto mechanic, mechanic technician, electrician, plumber, control technician, audio visual technician, p.m. technician, warehouseman, and electronic technician. In some instances, these job titles differ from the official titles used by the District.
3. On August 7, 1992, the Teamsters filed a petition to be certified as the collective bargaining representative of a group of approximately 130 custodial employees of the District. Job classifications included in the Teamsters' petition are day custodian, categories I, II, III and IV; custodian; and lead custodian, categories I, II, III and IV. Some custodial employees use working titles that differ from the official District titles listed in the petition.
4. By filing these petitions, both the IBEW and the Teamsters seek to sever the job classifications described above from a unit consisting of approximately 500 to 550 classified District employees and decertify ESSA as the collective bargaining representative of these employees.
5. On September 6, 1991, the IBEW amended its petition to include two members of the carpet crew.
6. Upon investigation, the Agency determined that a question of representation existed for employees included in the petitions filed by both the IBEW and the Teamsters. The Agency found that the IBEW and the Teamsters satisfied the requirement of a 30 percent showing of interest in the respective proposed bargaining units. 2 AAC 10.020(a)(3) and (c). There was no contract bar in effect at the time the petitions were filed.
7. On September 16-17, 1991, copies of the IBEW and Teamsters' petitions, notices of petition, and the amended petition were posted at 35 work sites in the District. No objection was made concerning the sufficiency of the posting.
8. On July 26, 1991, before the documents listed above were posted, the District notified the Agency it objected to the IBEW's petition on the basis of bifurcation of the bargaining unit. The District requested a hearing to address the appropriateness of the bargaining unit.
9. On August 21, 1991, again prior to the posting of the petition and notice of petition, the District notified the Agency it objected to the Teamsters' petition on the basis of unnecessary fragmentation of the bargaining unit. The District requested a hearing on this matter also.
10. On September 26, 1991, ESSA objected to the petitions filed by the IBEW and the Teamsters on the following grounds: (1) the employees in the proposed bargaining units share a community of interest with all other classified, nonteaching employees, who have been represented in a single wall-to-wall unit since 1972; (2) granting the petitions would cause unnecessary fragmentation of the existing bargaining unit; (3) the IBEW and the Teamsters failed to file petitions properly pursuant to PERA statutes and regulations, including failure to provide a sufficient number of interest cards for each of the classifications contained in the petitions. The issue concerning the adequacy of the interest cards was not raised at hearing.

11. Scott Bidwell, an individual ESSA bargaining unit member, objected to the IBEW's petitions on September 27, 1991. Bidwell's opposition to the bargaining unit proposed by the IBEW was heard through his testimony as a witness.
12. On October 24, 1991, the Agency issued a prehearing order and notice of hearing, providing notice of a hearing January 13-17, 1992. The parties filed prehearing briefs and at the hearing presented evidence in the form of exhibits and witness testimony.
13. The District employs approximately 1500 employees, 42 of whom are not represented for collective bargaining purposes. The remaining 1,458 employees are included in three collective bargaining agreements.
14. The principals and assistant principals are represented by the Fairbanks Principals Association, which is not affiliated with any other group. Fewer than 50 employees are included in this bargaining unit.
15. The teachers are represented by the Fairbanks Education Association, which is affiliated with the National Education Association (NEA). Approximately 1,000 teachers are included in this bargaining unit. Substitute teachers are not represented and are excluded from the unit.
16. The remaining employees are represented by ESSA. They support education and are known as classified employees. The classified service consists of noncertificated, nonmanagerial, nonconfidential, permanent employees who work 15 or more hours a week. Examples of classified positions include such positions as nurses, maintenance mechanics, custodians, secretaries, library assistants, food service workers, accounting clerks, teachers' aides, and data entry operators. Exh. 301.
17. ESSA affiliated with the NEA in January, 1989, after establishing the ESSA Affiliation Research Committee, which investigated affiliation. A member of the unit proposed by the IBEW, maintenance mechanic Simmons, served on this committee. Exh. 217, p.5. ESSA considered affiliation with the Teamsters, among other possibilities. The Executive Board recommended affiliation with the NEA if the members decided to affiliate with another organization. Reasons for recommending the NEA affiliation, rather than affiliation with another labor organization, included similar needs and interests; a healthy working relationship; beneficial programs and services offered by the NEA; and the school board's recognition of the Fairbanks Education Association/NEA. (Exh. 217, p.5) The membership voted to affiliate with NEA. As a group, neither maintenance mechanics nor custodians opposed the NEA affiliation, although some individuals expressed opposition.

AS 23.40.090 FACTORS

18. Community of Interest: Similarity of work performed and similarity of training and skills.

- a. All classified employees in the wall-to-wall ESSA unit perform similar work in the sense that they all work together to support education at the District. They insure the school facilities and support operations are functioning smoothly, thereby allowing the District's mission of educating students to proceed.
- b. In order to support education, classified employees perform many types of work. The training and skills required for the different jobs varies. The same pattern exists in the unit proposed by the IBEW and, to a lesser extent, in the unit proposed by the Teamsters.
- c. In the wall-to-wall unit, examples of work performed include, among others, clerical, food service, accounting, custodial, mechanical, teaching assistance, warehousing, nursing, and printing. The District classifies its support positions in pay grades one through nine. Examples of training and skills needed for various job classifications in the wall-to-wall unit follow. The community school clerk monitor, grade one, is required to have good oral communication skills, basic inventory capabilities, the ability to formulate and interpret time and location schedules, simple mechanical skills, and the physical strength to perform moderate lifting and movement of equipment. On the other hand, the fixed asset/accounting technician, grade eight, must have a bachelor's degree in accounting or finance. Nurses, grade nine, must have a State of Alaska nurses' license, a BS degree in nursing, and two years experience in nursing. In grades two through eight, for instance, some job descriptions require individuals to have a high school diploma, while others require applicants to have knowledge of computer systems or office machines and procedures. Exh. 301.

d. Similar variety exists in the jobs performed by individuals in the proposed IBEW unit and in the training and skills required for these positions. Warehousemen supply parts and materials, auto maintenance mechanics maintain District vehicles, maintenance mechanics in the trades perform routine and emergency repairs to District buildings and equipment, and carpet crew employees clean and repair carpet. The mechanics I, grade 8, are learning a trade or craft while working with journeymen craftsmen. They are not required to be licensed, but must possess adequate physical stamina to do the job. Mechanics II, grade 9, must be experienced journeymen in one or more trades, or they must have successfully completed vocational or technical school, or an apprenticeship program. Like the mechanics I, they must have physical stamina to perform the job. In this classification, the plumbers, electricians, and boiler operators must be licensed, whereas carpenters, locksmiths, preventive maintenance mechanics, audio-visual personnel, and other mechanics are not licensed. The level of license required can vary. For example, there are four levels of boiler licenses. Although the District's maintenance mechanic II job description does not include a licensing requirement, mechanics are verbally advised of licensing requirements. Exh. 301, p. 68. The warehouseperson position, grade 6, has less rigorous qualifications imposed. Warehousepersons must have the ability to interpret shipping documents, purchase orders, and computerized ordering and inventory documents; maintain accurate records; and skillfully operate vehicles and warehouse equipment. The carpet lead custodian, grade 6, is required to have knowledge of custodial cleaning and the physical strength to carry equipment and lift 50 pounds waist high. One year of commercial carpet cleaning experience and some supervisory experience is also desired.

e. In the unit proposed by the Teamsters, employees also perform a variety of work, such as cleaning, minor maintenance, grounds work, painting, boiler care, and snow removal. These and other tasks are performed by day custodians; custodians, who are also known as night custodians; and lead custodians. Although there are some similarities in the work performed by day and night custodians, there are differences. Day and night custodial positions are similar in that they both involve cleaning and snow removal, for instance. Examples of differences follow. Day custodians are responsible for an entire building, whereas night custodians are generally responsible for a specific section of a building. Day custodians perform quite a bit of minor maintenance, such as unclogging toilets and fixing jammed lockers. Other day custodial duties include emptying lunch room trash, setting up for and removing equipment for special events, maintaining cleanliness in the entire building and grounds during the day, and assisting nurses by getting bandaids for students. Since night custodians typically clean a specific section of the building, they have limited contact with students. Due to the fact that twenty-six of the twenty-seven day custodians are employed in nine or ten month positions, they do not perform some other duties, such as painting. The same is true for approximately one-third of the night custodians who are employed in nine or ten month positions. During the summer, night custodians in twelve month positions are responsible for painting and they perform minor maintenance almost exclusively, since daily cleaning of most buildings is not required.

The skills and training required by the job descriptions for day and night custodial positions are similar in that they both state that one year heavy industrial, hospital, or school cleaning experience is desirable and individuals must have the ability to follow and understand instructions. The day and night custodian job descriptions differ somewhat in the skills, knowledge, and abilities required. To work as a day custodian, individuals must have minor maintenance experience in category I, with increasing knowledge of minor maintenance and building environmental systems needed in each higher level; physical strength to perform manual tasks for prolonged periods; the ability to work well with children and others; and self-motivation. Exh. 301, pp. 41-42. To work as a straight, or night custodian, individuals must have the physical stamina to work off ladders and roofs; lift 50 pounds waist high; stand for long periods of time; and do light to medium manual tasks. Exh. 301, p. 33. Lead custodians are expected to have one year of industrial cleaning experience, with emphasis on tile and carpet care, and must have good working relationships with others, minor building maintenance skills, and record preparation skills. Exh. 301, p. 59.

f. Some building maintenance is performed by both custodial and maintenance personnel. Custodians have a clearly delineated line that they do not cross when doing electrical, plumbing, and boiler work. In other trades, such as carpentry, the lines are less distinct and custodians perform varying degrees of work depending on their skill levels.

19. Community of Interest: Work location and regularity of contact.

a. Employees in the wall-to-wall unit work in various locations throughout the District. The amount of contact with other employees in the wall-to-wall unit varies within a classification as it does between the numerous classifications.

b. The same pattern exists in the units proposed by the IBEW and the Teamsters.

c. In the unit the IBEW seeks, mechanics such as plumbers and electricians report to the physical plant although they perform most of their work in other buildings located throughout the District. The physical plant is divided into a maintenance and a warehouse section. Even though the locksmith performs manual duties, his shop is located in the administrative area. The amount of time the different types of maintenance mechanics spend at the physical plant varies by craft.

<u>Craft</u>	<u>Time at Physical Plant</u>	<u>Other Buildings</u>
Carpenter	20 percent	80 percent
Locksmith	25 percent	75 percent
Preventive maintenance	10 percent	90 percent
HVAC	20-25 percent	75-80 percent
Plumbing	5-10 percent	90-95 percent
Electrician, high voltage	5 percent	95 percent
Electrician, low voltage	30 percent	70 percent
Auto Mechanic	95-100 percent	0-5 percent
Audio Visual	40-50 percent	50-60 percent

d. The two members of the carpet crew perform ninety-nine percent of their work in buildings located throughout the District. When handling a job that exceeds one day, they report directly to the job location rather than the physical plant after the first day.

e. Many of the employees in the proposed IBEW unit do not have regular contact with each other, just as they may not have regular contact with some of the other employee classifications in the wall-to-wall unit. For example, HVAC mechanic Johnston could not recall the last time he worked with a carpenter. He has never worked with a locksmith or a member of the carpet crew. He works with audio-visual mechanics about 10 times a year, computer mechanics less than 8 or 10 times a year, and does not often work with an auto mechanic.

Similarly, maintenance mechanic Hermes works more frequently with electricians and carpenters than he does with other classifications in the proposed unit or with some classifications in the wall-to-wall unit.

f. The two warehousemen included in the proposed IBEW unit service the mechanics. The remaining warehousemen, who are excluded from the proposed IBEW unit, handle custodial and paper supplies. The mechanics have very little contact with the warehouse employees.

g. Mechanics have regular contact with custodians. Most of the mechanics' contact with custodians consists of finding out about the problem, what the custodian did, the length of time the piece of equipment has been inoperative, and the location of the problem. Custodians sometimes call the physical plant to place a work request. Some mechanics, such as Hermes, provide training to custodians.

- h. Most maintenance mechanics have regular contact with secretaries. For security reasons, upon arriving at the building to make repairs, maintenance mechanics check in with a secretary at the front desk. Secretaries sometimes relay the maintenance mechanic's location to the physical plant. Maintenance mechanics can also use vehicle radios to communicate with the physical plant. They leave messages on a tape recorder, which is monitored by Len Mackler's secretary, who works at the physical plant and is excluded from the proposed IBEW unit.
- i. Since the two carpet crew employees work at night, they have little contact with other employees in the proposed unit. However, they have regular contact with the custodians. Custodians move furniture in and out of the rooms, assist with carpet cleaning if the carpet crew is short staffed, and do clean-up work. Custodians do not repair carpet unless they have the necessary skills.
- j. In the unit proposed by the Teamsters, custodial personnel work all three shifts in an assigned building during the school year. Beginning and ending times are scheduled based on the hours schools are in session. The amount of contact custodians have with each other and with other members of the support staff varies. During the summer, custodial personnel employed in twelve month positions work at various District buildings. Working different shifts in separate buildings for varying numbers of months limits the amount of contact custodians have with other custodial personnel, as well as with classifications in the wall-to-wall unit.
- k. Typically, one day custodian is assigned to each school, except at smaller schools. Due to the shift they work and the nature of the duties performed, day custodians have more interaction with certain other members of the ESSA unit, such as food service employees, secretaries, or nurses, than they do with other custodians.
- l. Even though night custodians usually work swing or graveyard shifts, they still have a substantial amount of interchange with other classified employees, such as secretaries, maintenance mechanics, and custodians. For example, when lead custodian Ferrell reports to work at 3:30 p.m., other classified employees present include a secretary and two custodians. Although she is not assigned to work with any noncustodial District employees, she must have contact with other classified and nonclassified employees to perform her job. Ferrell talks with teachers and the assistant principal every couple of days to insure their needs are being met. She communicates through memos as well as in person. She talks with secretaries to obtain print outs of work orders, which list the jobs the custodians handle. When emergency repairs are required, Ferrell contacts the physical plant directly. Both Ferrell and the secretaries send work orders to the maintenance section in nonemergency situations. Ferrell orders equipment and supplies through a requisition she prepares and gives to the roving custodial supervisor, who is not in the ESSA unit. Shipping and receiving employees deliver supplies and equipment to the school. Occasionally mechanics are present during Ferrell's shift. She shows them where the problems are located. Ferrell has regular contact with the two custodians she supervises.
- m. Night custodians on swing and graveyard shifts come to work or leave work at the approximate time other employees come to or leave work. There is usually some overlap between employees, even if it is just in passing. However, the overlap of custodians with other custodians can be as much as four hours at two schools. Custodians who work swing shift generally start work within 15 to 30 minutes after a section of the building is vacated for the day. Graveyard shifts usually end about an hour before the morning bell rings. However, because secretaries are required to be there an hour before the bell rings, custodians have regular interchange with them.

20. Community of Interest: Integration of production or service functions.

- a. The District has integrated education support services in a manner that requires its classified personnel to cooperate and interact not only with each other, but also with other employees of the District, students, and the public. For example, teachers depend on the custodial staff to provide clean classrooms, restrooms, and hallways. Food service workers rely on day custodians to remove lunch room trash and, at the smaller schools, handle the entire food service duties in the absence of food service personnel. Maintenance mechanics perform both preventive maintenance and emergency repairs to the buildings' mechanical systems and the structures themselves, thereby allowing other District employees to do their jobs. Audio-visual mechanics work on computer equipment. Custodians help set up for and clean up after special events. Teachers' aides support the teachers in their classroom endeavors. Office personnel, such as secretaries, relay work orders and the mechanics' location to the maintenance department. Warehouse personnel order and deliver necessary supplies and equipment, not only for the custodial and mechanical personnel, but also for the

teaching and office personnel. Principals discuss sanitation needs with the day custodians. Custodians assist librarians by returning books to the shelves.

b. Since all classified employees are represented by ESSA, there are no jurisdictional disputes between crafts or between members of the custodial staff and the various crafts regarding who performs what task. Custodians follow District guidelines concerning the complexity of maintenance work they can perform in the various crafts.

21. Community of Interest: Benefits.

a. All classified employees share the same benefits, based on eligibility requirements such as the number of hours worked.

b. All eligible District employees, including teachers and principals, are covered under the same health insurance plan.

22. Community of Interest: Common supervision and centralized control over personnel policies or day-to-day operations.

a. Classified employees in the wall-to-wall do not share common supervision. Rather, supervision is performed by various section heads, just as it is within the units proposed by the IBEW and the Teamsters. For example, in the wall-to-wall unit, accounting clerks are supervised by the payroll supervisor; administrative secretaries, teachers' aides, and nurses are supervised by the individual building principals; and the central kitchen aides are supervised by the central kitchen supervisor. Exh. 301.

b. Employees in the unit proposed by the IBEW are supervised by Dave Feree, except for the auto mechanics and carpet crew employees, who are supervised by John Gillen, the custodial grounds manager.

c. Employees in the unit proposed by the Teamsters are supervised by a variety of individuals. For example, night custodians are supervised by lead custodians, who are supervised by roving custodians. Gillen is the ultimate supervisor for night custodians, who are described as custodians under Gillen's supervision, even though some night custodians work the day shift rather than swing or graveyard shifts. Day custodians are supervised by the building principal/administrator, who is responsible for hire, discharge, and discipline decisions for day custodians.

d. The District's personnel policies are centrally controlled.

23. Wages.

a. All classified employees in the ESSA unit are paid on an hourly basis.

b. They all share a common wage classification system which consists of grades one through nine. Grade 1 is the lowest paid classification and grade 9 is the highest paid classification. Each pay grade consists of at least two job classifications. Exh. 205, p. 30.

24. Hours.

a. Classified employees in the wall-to-wall unit work a variety of hours and shifts. The same pattern exists in the units proposed by the IBEW and the Teamsters. Classified employees in the existing unit and the proposed units work day, swing, or graveyard shifts. Shifts begin and end at different times, depending on the hours the various schools are in session. Some employees are subject to call out in emergency situations while others are not. Some positions are 9 month positions, while others are 10 or 12 month positions.

b. Most classified District employees work in nine or ten month positions. Examples of these types of employees include food service workers, some secretaries and custodians, and special education and regular aides. Other classified employees, such as those employed in shipping and receiving, purchasing, individual food service positions, maintenance mechanic positions, and some secretarial and custodial positions, work in 12 month positions. Most of the employees who work twelve months work in the central office or the physical plant.

c. In the proposed IBEW unit, most maintenance mechanics work the day shift but at least one carpenter works the swing shift. The two carpet crew employees work at night. Hours worked by the different mechanics vary. Some of them work from 7 a.m. to 3 p.m. while others work from 8 a.m. to 4:30 p.m.. One individual works from 6 a.m. to 2 p.m. and another one works 3 p.m. to 11 p.m. or 4 p.m. to 12 a.m. When the temperature is lower than 20 degrees below zero, maintenance mechanics perform building checks on weekends to insure all systems are running. When the temperature drops to 30 degrees below zero, maintenance mechanics are on emergency callout status. During the summer, mechanics can work four ten hour days or five eight hour days.

d. Hours worked by custodial personnel listed in the Teamsters' petition vary, partially because custodial personnel are employed in 9, 10, and 12 month positions. Additionally, custodians work three shifts that are arranged around the hours each school is in session. Day custodians work while school is in session, most night custodians on swing shift begin work after school has ended for the day, and most custodians on the graveyard shift finish work before classes commence the next day. During the summer, some custodians can choose to work four ten hour days or five 8 hour days. The District changes the hours some custodians work during christmas and spring breaks.

25. Other working conditions of the employees involved, such as work rules, uniforms, and keys.

a. All classified employees work under the same work rules and personnel policies.

b. Although some employees in the unit proposed by the IBEW testified that they wore uniforms, had keys to many District buildings, and were required to have a driver's license, these differences are not unit wide or of great significance. For instance, maintenance mechanics and the groundsperson wear uniforms while carpet crew members are not uniformed. Maintenance mechanics and the carpet crew employees are in the proposed unit, but the groundsperson is not. The employees who wear uniforms do so because of the District's concern for student safety. Uniformed employees can be more readily identified by other District employees as they move to various work locations throughout the District. Although maintenance mechanics in the proposed IBEW unit are required to have drivers' licenses, so are warehousepersons, expeditors, and groundsmen in the wall-to-wall unit. Exh. 301, pp. 46, 55, 106, 108.

c. Three secretaries in the physical plant, all of whom are excluded from the unit proposed by the IBEW, have access to the same breakroom used by members of the proposed unit.

d. In the proposed Teamsters' unit, custodians use a time clock that is located in the custodial break room. However, use of time clocks is not of great significance or unique to custodial positions since the custodian and mechanics at the physical plant use a time clock.

26. History of collective bargaining and length of time employees have been represented in the existing unit.

a. ESSA has had collective bargaining agreements with the District for a twenty year period, commencing in 1972. Exh. 201-211.

b. Custodial employees were instrumental in forming ESSA. Custodial and maintenance personnel have consistently and actively participated in ESSA from its inception.

27. Desires of the employees involved.

a. Some employees in the unit proposed by the IBEW wish to be represented by the IBEW, while others want to continue being represented by ESSA. IBEW witness Johnston testified that an overwhelming majority of the employees in the proposed unit submitted interest cards.

b. In the unit proposed by the Teamsters, some employees wish to be represented by the Teamsters, while others want to continue being represented by ESSA.

2 AAC 10.020(b) FACTORS

28. Adequacy of representation in existing unit.

- a. Employees in the proposed units have been adequately represented by ESSA in the wall-to-wall unit. Although there have been disagreements between some classified employees and ESSA, occasional disagreement over issues does not prove that the overall representation is inadequate.
- b. ESSA has consistently allowed all employees the opportunity to be heard, present opposing viewpoints, and serve on its committees, boards, and as officers. ESSA seeks input through an individual survey process and classification group meetings.
- c. ESSA has not neglected the needs of the employees in either of the proposed units. Maintenance mechanics have fared well, demonstrated in part by the fact that they occupy the top two pay grades. During the last set of negotiations, the District proposed the addition of pay grade nine to the salary schedule. The addition of grade nine to the negotiated agreement gave maintenance mechanics II and nurses a substantial salary increase and was accomplished without ESSA agreeing to the District's proposed wage reduction for custodial personnel. Other examples of the adequacy of ESSA's representation for maintenance mechanics include a negotiated provision for additional pay when acting as leads and intervention on their behalf with the school board when the District considered placing the maintenance mechanics under the control of the Fairbanks North Star Borough, a move that could have resulted in loss of employment for some or all mechanics.
- d. One former maintenance mechanic and several current maintenance mechanics testified regarding the willingness of ESSA to listen to and act on concerns voiced by maintenance mechanics. Included among the mechanics who believe ESSA has adequately represented their interests are Larry Brown, Sam Brown, Dave Simmons, and Scott Bidwell. Reasons given for desiring continuing representation by ESSA include bargaining strength in numbers; support for the grass roots union started by classified employees 20 years ago; maintaining the advantages gained by NEA affiliation; and interest in maintaining the current retirement and benefits system. Exh. 224.
- e. At the time the IBEW filed its petition, some members of the proposed unit began seeking other representation because they had been working without a contract for about a year. The previous contract expired in July, 1990. The current contract was signed by ESSA and District representatives on September 18, 1991, which was after the petitions were filed, but prior to the hearing.
- f. HVAC mechanic Johnston is representative of employees included in the IBEW's petition who are interested in being represented by the IBEW. In addition to working without a contract for a year, Johnston raised concerns about being on frozen salary from 1986 to 1991 and the manner in which ESSA representative Beltz handled the District's proposal to add grade 9 to the pay scale. All classified employees, including maintenance mechanics, were on frozen salary from 1986 to 1991. Frozen salary occurred at a time when the District sought significant pay decreases. No attempts were made to decertify ESSA during the time salary was frozen. Johnston's conflict with Beltz appears to be more in the nature of a personality conflict, heightened by the fact that Johnston was actively involved with the IBEW's petition at the same time he was serving on ESSA's executive board.
- g. IBEW's representative, John Giuchici, and the District's representative, Len Mackler, gave conflicting testimony about whether the maintenance mechanics were paid below or at market rates. Due to variables, such as benefits, duration of employment, employment at worksites away from home, and the type of work performed, the market rate cannot be determined from the evidence in the record.
- h. Like the employees included in the IBEW's petition, the cumulative weight of the evidence shows that the custodial personnel included in the Teamsters' petition have been adequately represented by ESSA. In 1987 and 1988, ESSA opposed the District's consideration of contracting for custodial services, rather than continuing to use in-house custodians. Exh. 217. In the last two contract negotiations, ESSA fought for across the board salary increases for all classified employees while the District sought to decrease pay for custodial personnel, whom it believes are overpaid as a result of a District ordered study. ESSA was able to prevent a salary decrease for custodial personnel during the last two contract negotiations. Exh. 201, p. 30, Exh. 202, pp.42-43, Exh. 203, unnumbered page after 29. Custodial personnel at the District are currently paid between \$13.13 and \$19.26 per hour. (Exh. 201, p.30)

i. ESSA addresses concerns raised by a particular classification in a general manner that benefits the entire bargaining unit, when appropriate. If the issue is relevant to one classification only, then ESSA negotiates language for the single classification, as demonstrated by a negotiated pay adjustment for day custodians.

j. Donna Byrd, Joan Peoples, and Kenneth Dickey are representative of custodians who are satisfied with the manner in which ESSA represents custodial personnel.

k. Lead custodian Ferrell is representative of custodial employees who are dissatisfied with ESSA. Concerns which prompted some custodians to investigate separate representation include the length of time it took ESSA to negotiate the last contract, working five years without a step increase, increasing workloads, positions being cut, insufficient efforts to gather public support for ESSA's bargaining position, the dues structure, and the contracting for services language in the management rights clause of the contract. No testimony was presented regarding the number of custodial positions that had been cut or the amount by which workloads had increased. The last two contract negotiations were particularly difficult, prolonged in part because ESSA insisted that custodial pay should not be decreased, not only for existing employees, but for new hires that the District proposed to start at 85 percent of the appropriate pay grade. ESSA solicited public support for its negotiating position by placing a newspaper ad which showed the raises received by other groups of District employees. Exh. 1. The District adamantly refuses to change the contracting for services language in the management rights clause of the collective bargaining agreement.

Ferrell works in a twelve month position and believes that dues paid by employees in nine and ten month positions are insufficient to pay those employees' share of dues owed the national organization. She believes dues paid by the twelve month employees are used to help pay national dues for nine and ten month employees. The amount of dues collected from twelve month employees, if any, that is forwarded to the national organization for 9 and 10 month employees cannot be determined from the record. However, custodians are among the classified employees who work in nine and ten month positions. Approximately one-third of the custodial positions are nine and ten month positions. No evidence was presented that established that the dues structure would be any more equitable if custodians were represented by the Teamsters.

l. Two custodians expressed dissatisfaction with the manner in which ESSA handled their grievances. Both custodians felt that they did not have adequate time to meet with the representatives prior to the hearing or arbitration and one custodian was concerned about the representative's degree of knowledge and depth of experience. There is no evidence in the record concerning the type of information these custodians felt they had inadequate time to present, nor was there any indication that the employees had ever advised ESSA that they felt the time allocated was inadequate. ESSA pursued the grievance through arbitration for the one individual, despite recent evaluations noting job deficiencies and the employee's admitted derogatory remark about his supervisor.

m. Although ESSA does not prevail in all the grievances it files, it has won seventy percent of the grievances filed since 1979. No internal charges have been filed through ESSA's internal union procedures regarding failure to represent members, nor have any duty of fair representation charges been filed.

n. When the current contract was ratified, most ESSA members received a step increase and a one time bonus payment.

o. ESSA typically negotiates contracts that are 2 years in duration, although there has been a three year contract. For the last six years, ESSA's contracts have expired at the same time as the teachers' contracts. Teachers have typically been able to conclude negotiations before the classified employees and have received larger increases.

p. When the current contract was ratified, approximately 42 percent of the ESSA membership was present. The number of members present represented a significant increase over the number present in the past. The vote was overwhelmingly in favor of ratification. Approximately 50 to 60 percent of members in the custodial classifications were present and about 30 percent of the maintenance mechanics were present.

29. Employment in jobs which have traditionally been represented by their own representative.

a. There is no tradition of separate representation for the District employees in either the unit proposed by the IBEW or the Teamsters. Both groups of employees have been represented by ESSA since 1972.

30. Reasons the employees in the proposed units have a community of interest that is not identical with that of the existing unit.

a. The IBEW and the Teamsters did not present evidence concerning any significant differences in community of interest between employees in the units they seek to represent and the community of interest shared by the employees in the wall-to-wall unit. All classified employees in the wall-to-wall ESSA unit and in the proposed units work in or around District facilities; they all support education; they work under the same work rules; they are eligible for the same benefits; they share a common classification, pay, seniority, and benefit system; and they share a common career ladder which is available because they are all in the same unit.

31. Excessive fragmentation of bargaining unit if the petition is granted.

a. Granting either of the petitions would result in excessive and unnecessary fragmentation of a bargaining unit of employees who share a community of interest. Classified employees in the wall-to-wall unit currently have a smooth working relationship, free from craft jurisdictional disputes, which could change with the addition of one or two more units.

b. Classified employees can transfer to and from the various positions in the wall-to-wall unit without loss of seniority or benefits as a result of collectively bargained rights. Adding one or two more units, which could be subject to hiring hall agreements, would likely decrease transfer opportunities in the classified service. The IBEW and the Teamsters would likely propose hiring hall agreements. The IBEW has only one collective bargaining agreement statewide that does not contain a hiring hall arrangement. In its collective bargaining agreements with the Anchorage School District, the Teamsters negotiated language which requires the employer to first go through the Teamsters' hiring hall.

c. Employees have historically exercised transfer rights, utilizing the existing career ladder to better themselves, without loss of seniority or benefits. Exh. 305. For example, during the 88/89 school year, one individual transferred from food service to custodial; during the 89/90 school year, two individuals transferred from food service to custodial and one other individual transferred from custodial to a mechanic I position; in the portion of the 91/92 school year that had been completed at the time of hearing, two individuals had transferred from custodial to special education aides.

d. Thirteen of thirty maintenance mechanics currently employed transferred to maintenance positions from custodial positions. Another individual transferred from the warehouse to a maintenance position. Exh. 304.

e. Not only would granting the IBEW's or the Teamsters' petition result in excessive fragmentation of an existing bargaining unit, it would result in approving units that are not as large as is reasonable. For example, in the unit proposed by the IBEW, some warehousemen are included while others are excluded. Larry Eisgreg, who works at the physical plant between the auto mechanics' bay and the carpenters' bay, is not included in either of the proposed units. He works as a custodian 50 percent of the time and as an equipment repair person the remaining portion of the time. The grounds technician, who reports to the physical plant, is not included in either petition. He places gravel on roads in the winter, and, like some of the maintenance mechanics, spends almost all of his time out of the building. The District considers the lead carpet crew members to be part of the custodial staff, yet they are included in the IBEW's petition rather than the Teamsters' petition.

f. Since neither the IBEW nor the Teamsters currently represent any employees at the District, allowing one or both of the petitions would result in the creation of one or two new bargaining units and the addition of one or two bargaining representatives at the District, as opposed to a "carve-out" petition seeking to remove employees from an existing unit and place them in another existing unit at the District.

Mallinckrodt Factors

32. Skilled journeymen craftsmen performing crafts on a nonrepetitive basis; or functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.

a. Although some employees in the proposed IBEW unit are skilled journeymen craftsmen, others are not. Maintenance

mechanics II are journeymen, whereas maintenance mechanics I, warehousepersons, and carpet crew employees are not. Employees included in the IBEW's petitions do not work in a functionally distinct department, since all employees in the physical plant are not included in the proposed unit. School district employees who support education in Alaska are typically represented in wall-to-wall units, similar to the one at the District. The IBEW does not qualify as a traditional representation of mixed units like the one it seeks to represent at the District, although it does represent some public and private mixed units in Alaska.

b. Custodians are not skilled journeymen craftsmen. They do not constitute a functionally distinct department since some custodians are supervised by Gillen and others are supervised by the building principal/administrator. The Teamsters do not qualify as a traditional representative of custodians, although Teamsters represent some custodial personnel in mixed public and private units.

33. Stability in labor relations based on existing pattern of bargaining, affect on labor relations if existing pattern is disrupted.

a. ESSA and the District have negotiated eleven collective bargaining agreements over a twenty year period. To a large extent, they are aware of each others' negotiating strategies, financial constraints, and priorities as a result of the time spent negotiating contracts. They appear to have an amicable working relationship. Employees involved in negotiations have worked for ESSA and the District for some time and consequently know each other professionally. Because a core contract has existed since 1972, the parties do not have to begin negotiations anew each time. Examination of the eleven contracts reveals many similarities over the years, which leads to stability in labor relations. While the past two or three contract negotiations were difficult due to decreasing revenues, resulting in part from a 10 percent decrease in state funding for education in 1986, the parties have been able to mutually resolve the problems and negotiate contracts that were ratified by the membership.

b. Even though some positions were reduced from 12 months to 9 months, support jobs must still be performed. Consequently, the lines between some types of maintenance and custodial work are grayer. Accommodation between these types is smoother if all employees are in the same bargaining unit, functioning under the same contract and work rules. The addition of one or two more bargaining units could result in increased competition between competing unions as they seek to preserve and add bargaining unit jobs.

c. The District spends a significant portion of its time and resources conducting negotiations and administering the three contracts for the existing bargaining units. Fragmenting the classified unit will increase the time and resources utilized for collective bargaining purposes.

d. If the existing pattern of bargaining is disrupted, different collective bargaining agreements would likely impact transfer rights, seniority, and health and retirement benefits. Based on the desires of the employees in the proposed unit, the IBEW may propose a different pension plan than the one currently utilized by the District. The IBEW administers other trusts, such as the legal trust and health and welfare, which are negotiated as a total package. The employer typically pays the costs of the plan. The Teamsters administer some Anchorage School District contracts which allow employees to participate in the Public Employees Retirement System.

In the Anchorage School District, where custodians and maintenance personnel are represented in different units, at least three custodians have left the custodial unit to join the maintenance and warehouse unit in the past five years. They did not carry seniority with them to the new positions and they were not grandfathered into the unit.

e. IBEW witness Brinkley, personnel officer at Golden Valley Electric, administers three different bargaining contracts. The units have different work rules, seniority lists and benefit plans. Employees do not transfer from one bargaining unit to another. Hiring is done by the hiring hall for the particular union. Brinkley spends more time administering three different contracts than he would spend administering one.

34. Separateness of identity maintained while represented as part of the larger group, participation in establishing and maintaining representation in the larger group, and prior opportunities for separate representation.

- a. Custodians and maintenance mechanics have not maintained a separate identity while being represented in the wall-to-wall unit.
- b. Custodians were instrumental in establishing ESSA. Custodians and maintenance mechanics have actively participated in the organization since it was formed. Numerous examples of custodial and maintenance participation exist. Larry Brown, a former District mechanic, actively advocated positions favorable to maintenance mechanics during his 12 years on the bargaining team. He held every office in ESSA except that of vice president. Sam Brown, a maintenance mechanic II, has been employed by the District for sixteen and one-half years. He has been on the negotiating team and a member of most of the delegate assemblies. Dave Simmons, a maintenance mechanic II, has been employed by the District for twenty years. He served as treasurer for two years, was on the affiliation committee, and is currently on the negotiating team. Scott Bidwell, a maintenance mechanic II, has worked for the District since 1976. He is on the executive board and the employee rights committee. Five maintenance mechanics currently serve on the bargaining committee. Johnston, a District employee since 1984, served on the executive board and the budget committee in 1990-1991. He has been on the negotiating committee for the last three contracts. Maintenance mechanic Hermes was vice-president of ESSA in 1979. Maintenance mechanics who have served as president include Larry Phillips, Ben Olds, Harvey Kurzbard, Larry Brown, and Bruce Riddle. Custodians who have served as president include John Boulette, Jessie Scott, Nancy Phillips, and Charles Pate. Custodian Mike Mickelson and day custodian Al Reynolds have served on the bargaining committee. Custodian Joan Peoples is on the Executive Board and has served on the bargaining support and employee rights committees.
- c. Prior to the filing of the IBEW's and the Teamsters' petitions, no attempts had been made to carve bargaining units from the wall-to-wall unit.

35. History and pattern of collective bargaining in the industry.

- a. On a statewide basis, with the exception of the Anchorage School District, support personnel in school districts throughout Alaska who are represented for collective bargaining are represented in wall-to-wall units. The Anchorage School District is the largest District in the state. It employs approximately 4,622 employees who are represented for collective bargaining purposes.
- b. The Anchorage School District administers eight collective bargaining agreements consisting of the following units and number of employees: principals, 112 employees; teachers, 2,761 employees; technicians and supervisors, 171 employees; clerical and support, 805 employees; custodians, 323 employees; maintenance and warehouse, 163 employees; bus drivers and attendants, 106 employees; and cafeteria managers, bakers, student nutrition assistants, 181 employees. Exh. 120.
- c. The various units at the Anchorage School District were not established by carving units from a wall-to-wall unit with a long history of collective bargaining.
- d. Custodians at the Anchorage School District are represented by Public Employees Local 71.

36. Qualifications of the IBEW and the Teamsters to represent like employees.

- a. Although the IBEW has some experience representing mixed public and private units similar to the one it seeks to represent at the District, it does not have any experience representing a similar unit of school district employees.
- b. The Teamsters have some experience representing custodial employees in mixed public and private units. However, the Teamsters do not represent any units consisting solely of custodial employees in Alaska. The Teamsters represent three units of public employees at the Anchorage School District. None of these units contain custodial employees.

Conclusions of Law

1. Respondent North Star Borough School District, is a public employer under AS 23.40.250(7)(1992 Sup.).
2. The Alaska Labor Relations Agency has jurisdiction under AS 23.40.090 to determine the appropriate unit for

collective bargaining.

3. AS 23.40.090 provides:

Collective bargaining unit. 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.

4. Petitioners have the burden to prove the truth of each element necessary to their cause by a preponderance of the evidence. 2 AAC 10.430. Thus, the IBEW and the Teamsters must establish the appropriateness of the units they have proposed at the District.

5. Since both petitions seek to carve employees from an existing unit of employees, the petitioners must prove the five additional elements under 2 AAC 10.020(b). 2 AAC 10.020(b) provides:

In the case of a petition for certification which will sever a bargaining unit from an existing bargaining unit, the petition must also state

- (1) why the employees in the proposed bargaining unit are not receiving adequate representation in the existing unit;
- (2) whether the employees in the proposed bargaining unit are employed in jobs which have traditionally been represented by their own representative;
- (3) why the employees in the proposed unit have a community of interest which is not identical with that of the employees in the existing unit;
- (4) how long the employees in the proposed bargaining unit have been represented as a part of the existing unit;
- (5) why the grant of the petition will not promote excessive fragmentation of the existing bargaining unit.

6. The former SLRA has addressed "carve-out" petitions on several occasions. Alaska Correctional Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order and Decision No. 105 (May 14, 1987); Public Safety Employees Ass'n, Inc. v. Alaska Public Employees Ass'n, SLRA Order and Decision No. 106 (May 14, 1987); and Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order and Decision No. 112 (Mar. 22, 1988). Order and Decision 112 establishes a conservative reading of AS 23.40.090. In this decision the former SLRA found,

The provisions of AS 23.40.090 contain certain unique requirements. No other state labor code, where collective bargaining for economic issues is permitted to public employees, provides that "bargaining units shall be as large as is reasonable." The Agency is persuaded that the legislature in enacting such a unique provision intended a petitioner in a subsequent severance election to carry a significant burden in establishing that substantial reasons exist to carve out and make bargaining units smaller than those initially put into place. While clearly fragmentation is permissible when "necessary", AS 23.40.090 seeks to avoid unnecessary fragmentation.

Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order and Decision No. 112 at 8 (Mar. 22, 1988). We also conclude that AS 23.40.090, when read in conjunction with 2 AAC 10.020(b), requires the petitioner to carry a significant burden in carve-out situations to show why its petition should be granted.

7. The NLRB in Mallinckrodt Chemical Works, 162 N.L.R.B. 48, 64 L.R.R.M.(BNA) at 1016, listed six factors that it considers in craft severance cases:

1. Whether or not the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a nonrepetitive basis, or of employees constituting a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether the existing patterns of bargaining are productive of stability in labor relations, and whether such stability will be unduly disrupted by the destruction of the existing patterns of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

8. Under AS 23.40.090, the employees in the units proposed by the IBEW and the Teamsters share a community of interest with the other classified employees represented by ESSA. Like the employees in the wall-to-wall unit, the employees in the proposed units perform a variety of work requiring different training and skills (although this is true to a lesser extent in the unit proposed by the Teamsters); they all work in or around District buildings; they have regular contact with other employees in the wall-to-wall unit, which sometimes exceeds the amount of contact they have with other employees in the respective proposed units; they perform work that is integrated into the District's support functions to the extent that it would be difficult to continue running support operations smoothly if the District had to administer two or more collective bargaining agreements for classified employees; they work a variety of hours and shifts; they do not share common supervision but are instead supervised by various department heads; they have a common classification, pay, and benefits system; and they work under the same work rules and personnel policies.

ESSA and the District have a long, stable, bargaining history spanning twenty years. The employees' desires concerning the collective bargaining representative differ. However, the cumulative weight of the testimony established that much of the employees' discontent was focused on the length of time they had been without a contract, rather than on their desire to be represented by either the IBEW or the Teamsters. Interest in getting a contract is demonstrated in part by the unusually high number of employees who attended the ratification meeting for the current contract.

9. Under 2 AAC 10.020(b), neither the IBEW nor the Teamsters met its burden of proof concerning four of the factors. The cumulative weight of the evidence showed that the employees in the proposed units (1) are being adequately represented by ESSA; (2) they have not traditionally been represented by their own representatives; (3) they have a community of interest that is identical with that of the employees in the existing unit; and (4) granting one or both of the petitions would result in unnecessary and excessive fragmentation of a unit of employees who share a community of interest. Maintenance mechanics are in the two top pay grades at the District. Custodial pay has not been reduced in the last two contracts even though the District has attempted to obtain a custodial pay decrease during that time. The evidence shows NEA-affiliated teachers received a raise when NEA-affiliated classified employees did not. The evidence did not explain the reason for the distinction. No evidence was presented concerning whether the teachers were overpaid, underpaid, or paid at market rate. Standing alone, the fact that teachers received a raise while classified employees did not does not prove that ESSA's overall representation of the employees in the proposed units has been inadequate. ESSA has successfully pursued seventy percent of the grievances it filed since 1979. All employees are given the

opportunity to participate in the ESSA organization and to offer individual and group input concerning individual and group needs and priorities.

10. Applying the Mallinckrodt factors, we conclude that neither the IBEW nor the Teamsters met its burden of proof in five of the six factors. Neither of the proposed units consists of all journeymen craftsmen, although the proposed IBEW unit contains some journeymen craftsmen. There are no journeymen craftsmen in the proposed Teamsters unit. The employees in both proposed units do not work in functionally distinct departments. Some employees in the proposed IBEW unit, such as electricians and plumbers, work in trades or crafts for which a tradition of separate representation exists. However, they are not separately represented at the District. The existing patterns of bargaining are conducive to stability in labor relations, which would be unduly disrupted if the existing patterns of representation were altered. The employees in the proposed units have been very active in ESSA from its creation to the present. They have not maintained a separate identity while included in the larger unit. With one exception in Alaska, school district support personnel who are represented for collective bargaining purposes are represented in wall-to-wall units. Continuation of the District's support and education functions is dependent upon the performance of the assigned functions of the employees in both of the proposed units. While the IBEW and the Teamsters have some experience in representing the types of employees in the proposed units is not enough to overcome the other factors which support dismissing the petitions.

11. Applying the criteria in AS 23.40.090, 2 AAC 10.020 (b), and Mallinckrodt to the facts in this case, we conclude that both petitions must be dismissed.

ORDER

The wall-to-wall unit of classified employees of the Fairbanks North Star Borough School District is the appropriate unit for collective bargaining. The petitions filed by the IBEW and the Teamsters to carve out segments of the wall-to-wall unit are **DISMISSED**.

ALASKA LABOR RELATIONS AGENCY

B. Gil Johnson, Chairman

Darrell Smith, Board Member

Board Member Elliott dissenting:

I respectfully dissent from the majority holding in this case. This matter is principally an issue of whether the existing wall-to-wall bargaining unit, formed before classified employees of the Fairbanks North Star Borough School District were granted rights under PERA, is the appropriate bargaining unit. Based on the criteria of AS 23.40.090, the majority determined the current bargaining unit, whose members are presently represented by ESSA, was the appropriate unit. I disagree. When established initially, the current ESSA unit was not subjected to scrutiny under the requirements of PERA. This fact makes the FNSBSD representation case somewhat unique. Inasmuch as the ESSA bargaining unit predated PERA coverage, the Agency's review of the IBEW's and the Teamster's petitions to represent groups of employees presently represented by ESSA should have precipitated a completely fresh analysis regarding the appropriate unit question; it did not.

In determining the appropriate unit for collective bargaining purposes, AS 23.40.090 requires consideration of community of interests, wages, hours, other working conditions, history of collective bargaining, and desires of the employees involved. Moreover, the statute states that bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided. Regarding these criteria, the majority, in my judgment, erred in its analysis regarding the appropriateness of the existing unit by assigning too much weight to ESSA's grandparent status, thereby misapplying the criterion of collective bargaining history in this case.

Employees' right to choose whom will represent them in bargaining with their employer is a fundamental right guaranteed public employees under the statute. This right of employees is of greater importance than the issue of whether the existing unit, primarily because of the union's grandparent status, ought to be retained as the appropriate

bargaining unit. There had been no opportunity since the passage of PERA for classified employees of this school district to decide through a representation election whom would represent them. Where no contract bar existed, several groups of employees within ESSA had expressed an interest in being represented by two unions other than ESSA. The majority, however, chose to place greater weight on factors supporting retention of the existing bargaining unit and union, instead of subjecting the question of whom should represent custodians and personnel in the skilled trades to a fresh analysis. Contrasting the existing wall-to-wall unit represented by ESSA in Fairbanks to Anchorage School District's eight (8) collective bargaining units, including separate bargaining units for custodians and persons in the skilled trades at issue here, the majority wrote: *The various units in Anchorage were not established by carving units from a wall-to-wall unit with a long history of collective bargaining.* In other words, since Anchorage's custodial and maintenance/warehouse bargaining units existed as separate units before PERA coverage was extended to classified employees of school districts, separate bargaining units for these two employee groups are appropriate, but not for their counterparts working for the Fairbanks North Star Borough School District, where custodians and maintenance personnel have been represented historically by ESSA. Rather than relying principally upon what historically differentiated the affected employees of these two school districts, i.e., pre-PERA separate or wall-to-wall bargaining unit, the representation issues in the Fairbanks' case ought to have been looked at anew, with no weight whatsoever given to ESSA's grandparent status.

One union, the IBEW, seeking to be certified as a bargaining agent for persons in skilled trades currently being represented by ESSA, had a seventy percent (70%) showing of interest from employees in those job classifications. How can this fact be overshadowed totally by pre-PERA history? If so, is the Agency not denying maintenance workers, as well as custodians, in Fairbanks their *fullest freedom in exercising the rights guaranteed by AS 23.40.070 -- 23.40.260?*

It would appear that the majority has eroded the right of some employee groups whose present wall-to-wall bargaining unit was formed before PERA coverage was extended to them to choose a different bargaining representative during a window period. In this particular instance, it seems to me this agency has misapplied criteria for deciding what is the appropriate bargaining unit, assigning the greater weight to factors heavily favoring the interest of the current union over the fundamental right of employees to choose for themselves whom will represent them. For this reason, I cannot support the decision of the majority in this case.

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 Int'l Bhd. of Elect. Workers v. Fairbanks North Star Borough School District, case no. 91-033-RC, and Teamsters Local 959 v. Fairbanks North Star Borough School District, case no. 92-052-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 24th day of March, 1993.

Norma Wren

Clerk IV

This is to certify that on the 24th day of March, 1993, a true and correct copy of the foregoing was mailed, postage prepaid, to

William F. Morse/IBEW

James A. Witt/Teamsters

William D. Bennett/FNSBSD

Robert M. Johnson/ESSA

Signature

¹Prior to the 1985-1986 school year, ESSA was known as the Classified Personnel Organization. Although the name changed, the function of the organization did not change.

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).