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STATE OF ALASKA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ALASKA VOCATIONAL TECHNICAL )  
 CENTER, TEACHERS INEA, )  
 )  
 Respondent, )  
 )  
 and )  
 )  
 ALASKA STATE EMPLOYEES )  
 ASSOCIATION, AFSCME LOCAL )  
 52, AFL-CIO, )  
 )  
 Intervenor, )  
 )  
 \_\_\_\_\_ )  
 CASE NOS. 93-192-UC, 93-193-UC, )  
& 93-194-UC (Consol.) )

**DECISION AND ORDER NO. 168**

This matter was heard on May 4, 1993, in Anchorage, Alaska, with hearing officer Jean Ward presiding. Alaska Labor Relations Agency board members James W. Elliott and Stuart H. Bowdoin, Jr., participated on the basis of a review of the record. Member Darrell Smith did not participate. The record closed on August 10, 1993.

**Appearances:**

Art Chance, labor relations analyst, for petitioner State of Alaska, Department of Administration; and John B. Patterson, Kelly and Patterson, for respondent Alaska Vocational Technical Center, Teachers INEA. Intervenor Alaska State Employees Association, AFSCME Local 52, AFL-CIO, did not appear.

**Digest:**

Based on factors in AS 23.40.090, we find that the education associate III, the analyst/programmer III, and the publications specialist II positions at the Alaska Vocational Technical Center in Seward share a community of interest with members of the general government unit rather than with members of the Alaska Vocational Technical Center teachers' unit.

**DECISION**

**Findings of Fact**

1. The Alaska Vocational Technical Center Teachers, INEA, known as the Alaska Vocational Technical Center Teachers' Association, (AVTECTA) is the recognized collective bargaining representative of teachers, counselors, and administrators at the Alaska Vocational Technical Center (AVTEC). Exh. 7. Although not called a teacher, counselor or administrator, the librarian is also included in the AVTECTA unit because she works in direct educational activities

more than 50 percent of the time. All members of the unit are certificated, *i.e.*, hold a teacher's certificate issued by the Department of Education under the provisions of AS 14.20.010. Employees in the AVTECTA unit are exempt employees. AVTECTA affiliated with the National Education Association in October of 1991.

2. AVTEC is located at Seward and is part of the Department of Education. AVTEC employees who are included in collective bargaining are in one of three collective bargaining units: (1) the general government unit; (2) the labor, trades, and crafts unit; or (3) the AVTECTA unit of teachers, counselors, and administrators unit. Exh. 5.

3. The general government unit is represented by Alaska State Employees Association (ASEA). This is a statewide unit of classified nonsupervisory employees of the executive branch not included in another bargaining unit. Included in the unit are technical, professional, and clerical personnel.<sup>1</sup>

4. Department of Education certificated employees are located in various bargaining units. Those units are AVTECTA, general government, supervisory, centralized correspondence study program (CCS), and the certificated unit (Teachers' Education Association) at Mt. Edgecumbe. Those certificated employees in noncertificated units are placed there because they do not perform teaching duties. Nonteaching certificated staff in the general government unit occupy education specialists I and II positions.

5. The unit placement of three AVTEC positions became an issue during the first half of 1992. John Lohse, Director of AVTEC, required three of his certificated subordinates to complete position description questionnaires (PDQ's). The PDQ is a form that the State uses to obtain information about the work performed by an employee. It uses the information to group positions with other positions that perform similar work. Exhs. 1-3.

6. The only PDQ on file for each of these three positions is the one Lohse requested in 1992. There are no other PDQ's on file because exempt, certificated employees in the AVTECTA unit are not required to complete PDQ's. PDQ's are required for classified employees and must be updated every four years or when changed circumstances, such as a change in assigned job duties, occurs. Individuals in the three positions at issue were asked to complete PDQ's because a review of their duties established that they were not performing duties that required a teacher's certificate.

7. Bernard Ikerd, who occupies one of the affected positions, was advised personally by Lohse in the fall of 1991 that his position would be reclassified as part of a budget reduction. He received a second notification in October of 1991 when Lohse explained at a department head meeting that four positions would be reclassified. One incumbent in a targeted position subsequently left AVTEC. By reclassifying positions, AVTEC could meet its allocated budget without laying off teachers.

8. Shortly after the PDQ's were completed, David L. Stewart, human resource manager of the Department of Education, asked the Department of Administration to review and properly classify the three positions represented by the PDQ's. Stewart's reclassification request of July 22, 1992, occurred soon after the collective bargaining agreement expired on June 30, 1992.<sup>2</sup>

9. On August 17, 1992, the classification and examining section of the Department of Administration responded to the Department of Education's request for review and classification of these three positions that had been placed historically in the AVTECTA bargaining unit. It recommended that the admissions officer be reclassified to education associate III; the analyst/programmer be reclassified to analyst/programmer III; and the public relations position be reclassified to publications specialist II. In addition, it recommended that all three positions be placed in the general government unit effective September 1, 1992, and stated that it would provide notice to the respective unions. Exh. 1, at 15-17.

10. On February 9, 1993, the State filed a unit clarification petition for each of these positions, asking the Agency to decide the appropriate unit placement for each position. In each petition, the State noted that clarification of the bargaining unit was sought because the incumbent is not required to be certified as a teacher or counselor. Exhs. 1, 2, & 3.

11. The Agency consolidated the three petitions on March 15, 1993.

12. The Agency conducted a hearing on May 4, 1993, at which the parties presented testimony and other evidence. The record closed initially on July 19, 1993, upon receipt of closing briefs. The record was reopened on August 10, 1993, to provide parties an opportunity to request disqualification of a board member assigned to the panel considering the case. No request was made and the record closed on August 10, 1993.

Education Associate III, PCN 05-8537

13. Bernard N. Ikerd is the education associate III. He began working at AVTEC in 1970 as a counselor. Shortly thereafter, Ikerd applied for and received a type D teacher's certificate. Ikerd held a type D certificate until 1980, when he obtained a type A certificate, which he renewed in 1985 and 1990. A type A certificate is a standard teacher's certificate.

14. Ikerd worked as a counselor until early 1975, when he was asked to act as a job developer, traveling throughout the State to familiarize Alaskan employers with AVTEC's programs, increase student enrollment, and work with employers' personnel offices to place graduates in jobs. During this time, Ikerd continued to work as a counselor, both on the road and at AVTEC.

15. In the fall of 1976, Ikerd became an admissions officer, the position he now holds under the name "education associate III." His duties include student recruitment, job development, and financial aid.

16. More specifically, his current duties include promoting the school to prospective students, screening student applications, and scheduling students in appropriate training as it becomes available. Ikerd deals with students' travel, housing, and financial needs. While his job duties have evolved somewhat, they have not changed significantly since 1976. Ikerd testified that he spends 80 percent of his day involved with people in a manner that is similar to that of a counselor. Ikerd testified that he performs the bulk of his administrative duties after the end of the workday. Although he often works extra hours, he did not say how many. Ikerd may teach in the classroom one or two days a year. No evidence was presented concerning whether the incidental duties Ikerd performs in the classroom require him to have a teacher's certificate. Classroom teaching duties are not included in the State's classification specification for the education associate III position. Exh. 2.

17. Although Ikerd testified that he spends 80 percent of his workday dealing with people in a way similar to that of a counselor, he did not list counseling as a primary duty on the PDQ. This is a significant omission. While he may spend some time counseling students, his primary responsibility is managing the admissions office and its functions. According to the PDQ, Ikerd's primary duties as admissions officer fall into the following categories: (1) acting as AVTEC's financial aid officer; (2) managing the admissions office and supervising admissions staff; (3) recruiting responsibilities; (4) coordinating with department heads and administrators; and (5) writing or editing enrollment contracts, school forms, and the sections of the AVTEC catalog that pertain to admissions functions. Exh 2, at 13-17.

(a) Financial aid officer. Ikerd spends 39 percent of time performing financial aid officer duties, which consist of the following tasks and increments of time: (1) Ikerd spends 10 percent of his time communicating the correct cost of students' education and payment policies to students through the school catalog, instructional pages he authors, and in meetings with individuals and small groups who ask for personal help in developing an educational expense budget; (2) he spends 5 percent of his time learning about loan regulations, reviewing and commenting on proposed regulation changes, informing loan applicants about loan procedures, assisting prospective students with applications and repayment obligations, and distributing loan funds to students; (3) he spends 1 percent of his time working with the Commission on Postsecondary Education to insure that AVTEC publications meet Commission regulations and that AVTEC courses receive Commission approval; (4) he spends 15 percent of his time writing and signing agreements with funding agencies pertaining to student grants; and (5) he spends 5 percent of his time managing funds from the Office of Adult Vocational Education, determining student eligibility for these funds, and allocating the funds to meet students' expenses.

(b) Admissions office management and supervision. Ikerd spends 35 percent of the time managing and supervising the admissions office. The following tasks are included in this block of time: (1) gathering information about changes in AVTEC's educational programs and disseminating that information throughout AVTEC; (2) establishing policies and

procedures concerning the review and acceptance of applications, scheduling of new students, and the enrollment process; and (3) supervising the education assistant and clerk typist III.

(c) Recruitment. Ikerd spends 17 percent of his time performing recruitment duties, which consist of the following tasks and increments of time: (1) he spends 5 percent of the time providing information to and coordinating with Szymoniak to develop AVTEC's promotional materials and program information, insuring that the information meets state and federal regulations for true and unbiased advertising and that admissions procedures follow EEO regulations; (2) he spends 5 percent of his time representing AVTEC at approximately seven career and college fairs throughout the state and provides written and verbal information to staff members who represent AVTEC at another six career and college fairs; and (3) he spends 7 percent of his time meeting with 25 to 30 groups who visit AVTEC each year.

(d) Coordination with department heads and administrators. Ikerd spends 5 percent of his time participating in meetings and program planning sessions to coordinate enrollment of students into 50 different programs.

(e) Writing and editing. Ikerd spends 2 percent of his time reviewing, writing, and editing enrollment contracts and other forms. He spends the remaining 2 percent of his time writing and editing the annual AVTEC catalog.

18. Ikerd supervises two subordinates, an education associate I and clerk typist II. Both subordinates are in the general government unit. Exh. 2, at 10.

19. The classification specification for the education associate job series generally defines the assigned job duties in the following manner:

Under general supervision, assists Education Specialists and Education Administrators in: planning, developing and maintaining standards; evaluating educational and vocational curricula or educational programs; preparing and monitoring training contracts and funds. Duties are oriented toward extending the capabilities of higher level education personnel.

Exh. 2, at 21. The "distinguishing characteristics" section of the classification specification for the education associate III includes the following description:

This is the senior level class, typified by the complexity of the work assignments. Positions allocable to this class may: (1) administer and operate one major function of broad scope and/or complexity, or (2) direct and review the work of lower level Education Associates and/or clerical personnel.

Exh. 2, at 21. The minimum qualifications do not include a teacher's certificate. Exh. 2, at 23-24.

20. Ikerd had a certified employee's contract with the State from 1970 to 1991. Joint Exh. A, at 18-19 (sample). This contract requires qualification for or possession of a valid Alaska teacher's certificate and provides for termination for failure to possess the certificate at any time. Ikerd was not offered a certified employee's contract in 1992. Although his duties did not change from the prior year, the minimum qualifications required for the position changed significantly when the position was reclassified to education associate III, which does not require a certificate.

21. Ikerd has worked in the same location since May, 1981. Except for staff changes, he works with essentially the same people he did in 1981.

22. Ikerd has daily contact with students and AVTECTA unit instructors. He interacts with instructors an average of 30 to 60 minutes each day. He works with the publications specialist to ensure that the information concerning the school and its curriculum is accurate. He also has daily contact with AVTEC general government unit employees.

23. Ikerd is one of two education associates who works in a school. The other is an education associate II who works as the registrar at Mount Edgecumbe. All other education associates work in nonschool settings.

24. Ikerd testified that he is qualified to perform duties performed by members of the AVTECTA unit. For example, he could teach in the classroom or work as a counselor. Ikerd believes that other members of the AVTECTA unit could do

his job. For example, the counselor could perform Ikerd's job, as could teachers, depending on their respective fields of knowledge. One of Ikerd's subordinates could possibly perform his job with further development, although other general government unit employees at AVTEC could not.

25. Wages are determined by placement in the State's classification system. Wages for a classified education associate III in the general government unit are substantially less than the wages for an exempt teacher in the AVTECTA unit.

26. The pay system for classified employees, such as those in the general government unit, differs from the pay system for the certificated members of AVTECTA. Classified employees are subject to the merit system and are paid on a system that has rows and steps. The rows are spaced at approximate three percent increments. The steps are based on longevity and merit. The State assigns ranges to particular job classes without bargaining. However, the State bargains the amount of wages to be assigned to each range. With the exception of geographical pay allowances, all employees assigned to a specific range are paid at the same rate, depending upon the length and quality of service. In contrast, certificated employees subject to the AVTECTA agreement are paid on a system that has columns and rows. Column placement is determined by the teacher's education and background and row placement is determined by years of service. Thus, a teacher can be placed in one of several columns based on education and experience.

27. Ikerd's assigned work hours are similar to those worked by AVTECTA bargaining unit members. His assigned hours are 8:30 a.m. to 5 p.m., although he often works additional hours. Teachers generally work from 8 a.m. to 4:30 p.m., with the exception of the culinary instructor, who begins at 5 a.m.

28. As a certificated, exempt employee in the AVTECTA unit, Ikerd has participated in the Teachers' Retirement System since 1970. As a classified employee, he would participate in the Public Employees' Retirement System. This change will affect Ikerd. The State's contribution will be lower because his wages as an education associate III are less than his wages as an admissions officer. Future years of service will be credited to the Public Employees' Retirement System rather than the Teachers' Retirement System.

29. Employees in the general government unit and the AVTECTA unit receive the same health benefits.

30. AVTECTA unit members work five holidays that general government unit members do not. AVTECTA members receive five personal leave days instead.

31. Historically, Ikerd's position has been assigned to the AVTECTA unit and Ikerd has belonged to this unit since it was formed in 1971. He was present at the initial meeting when AVTECTA was formed and he has served as its president three times. Ikerd is AVTECTA's spokesperson in negotiations for a new collective bargaining agreement and is the current president.

32. On August 31, 1992, Ikerd was advised that he would become a classified employee effective September 1, 1992. From 1970 to August 31, 1992, he was an exempt employee.

33. Ikerd prefers to be in the AVTECTA unit.

#### Analyst/programmer III, PCN 05-8538

34. Michael S. Smith is the analyst/programmer III. Smith began working at AVTEC as a math teacher on July 1, 1980. He taught for two and one-half years. He then spent six months splitting his time between teaching math and working as a programmer.

35. In July, 1983, Smith ceased performing classroom teaching duties and began working full-time in data processing.

36. Smith has a type D teacher's certificate, which he renews every two years. The teacher's contract Smith signed annually with the State from 1980 until 1991 required him to have a teacher's certificate.

37. The main responsibility of the analyst programmer III is to provide all phases of data processing support to AVTEC and to keep its computer system and attached peripherals operating. Exh. 3, at 5. Smith's primary duties include

designing and maintaining a database on applicants and students; consulting with users to solve problems and fill needs; designing, testing, and debugging large, complex database management systems; analyzing each program's impact on computer resources; monitoring the accuracy and completeness of input data; handling all user log on procedures; designing, coding, testing, and debugging enhancements to existing programs; responding to error conditions and requests for assistance; performing daily and periodic backup, system security functions, hardware maintenance, and employee training; installing software upgrades; ordering supplies; and working on personal computers. Exh. 3, at 5-7.

38. The classification specification for the analyst/programmer job series generally defines the assigned job duties in the following manner:

Positions in this series design, implement, maintain or modify data processing systems in a specialized area of computer programming or systems analysis and design.

Exh. 3, at 18. The "distinguishing characteristics" section of the classification specification describes the analyst/programmer III position as follows:

Positions at the Analyst/Programmer III level perform a variety of tasks such as detailed program design, coding, testing, debugging, documentation, training and implementation and /or overall systems specification and design. This is the full proficiency level for positions with programming or computer systems support emphasis. Systems analysis work is under general supervision, e.g., serves as team member on large projects or is assigned small straight-forward projects.

Exh. 3, at 18. Lohse and Smith agree that Smith's duties are more complex than those allocated to the analyst/programmer III level and are requesting that a higher classification be assigned. The classification specification for the analyst/programmer series contains levels I through V. A teacher's certificate is not required for any of the five levels of analyst/programmers. Exh. 3.

39. Smith was not offered a teacher's contract in 1992. Although his duties did not change from the last time he was offered a teacher's contract, the minimum qualifications required for the position changed significantly when the position was reclassified to analyst/programmer III, which does not require a teacher's certificate.

40. Smith asked Lohse if it was possible to return to the classroom after Lohse advised him that he was going to reclassify his position. Lohse indicated that it was not possible at that time. Smith is qualified to return to the classroom to teach if an appropriate teaching position became available.

41. Smith works alone most of the time. He interacts with instructors at AVTEC less than 10 percent of the time, discussing student enrollment, the impact of overenrollment in certain classes, and the availability of equipment. He interacts with general government unit AVTEC employees approximately 30 percent of the time when writing programs and researching problems, for example. He interacts with Ikerd or Ikerd's assistant about 12 times a day. Smith does not have contact with individuals employed by the Department of Education in Juneau and his contact with other analyst/programmers III in Juneau is minimal.

42. Smith's wages are determined by placement in the State's classification system. He earned \$61,867.00 per year as an exempt teacher and would earn \$42,360.00 per year as a classified analyst/programmer III.

43. Smith works from 8:30 a.m. to 5:00 p.m., approximately the same hours teachers work.

44. Smith has been a member of the Teachers' Retirement System since 1980 and is vested. As a classified employee, he would participate in the Public Employees' Retirement System. This change will affect Smith. The State's contribution will be lower because his wages as a programmer/analyst III are lower than they were as a teacher programmer/analyst. Future years of service will be credited to the Public Employees' Retirement System rather than the Teachers' Retirement System.

45. As an AVTECTA unit member, Smith works five holidays that general government unit employees do not. He

receives five personal leave days instead of the five holidays.

46. Smith's position has been assigned historically to the AVTECTA unit and Smith has been an active member of AVTECTA since 1980. He is serving his second term as its secretary-treasurer.

47. Smith prefers to remain in the AVTECTA unit.

Publications specialist II, PCN 05-8519

48. Christine L. Szymoniak is the publications specialist II. After completing her education, Szymoniak began work as a teacher in 1979. She moved to Seward in 1985 and was hired at AVTEC to work half days in a 12 month per year teaching position. The AVTEC position was offered as a teaching job and Szymoniak was required to provide a copy of her teacher's certificate. She holds a type A teacher's certificate. Szymoniak accepted this job because it allowed her to continue her teaching career and participate in the Teachers' Retirement System.

49. Szymoniak signed a teacher's contract from 1985 until 1991. She was not offered a teacher's contract for 1992.

50. Szymoniak's primary duties include writing, editing, and collecting information for the course catalog, school newsletter, advertisements, articles and news releases, and other documents such as training applications and interest cards; developing a marketing plan for student recruitment; making a video tape; traveling statewide to give presentations at college and career fairs; and conducting on-site tours of the AVTEC facility. Exh. 1, at 5.

51. The classification specification for the publications specialist job series generally defines the assigned duties in the following manner:

Under direction according to the level, writes original material for, and assists subject matter specialists in writing and editing departmental publications, articles, documents, brochures, newsletters, pamphlets and other printed material.

Exh. 1, at 18. The "distinguishing characteristics" section of the classification specification describes the publications specialist II position as follows:

Publications specialist II- This is the full journeyman Publications Specialist class in which incumbents perform all normal writing, editing, design and layout duties for a department.

Exh. 1, at 18. The minimum qualifications section of the class specification for the publications specialist II position does not require a teacher's certificate. Exh. 1, at 19.

52. Although Szymoniak's duties have not changed since she last signed a teacher's contract, the minimum qualifications required for the position changed significantly when the position was reclassified to publications specialist II, which does not require a teacher's certificate.

53. Szymoniak's office is located in the entry of the building away from the classroom area. Other employees who work near Szymoniak are in the general government unit, except for a counselor who is in the AVTECTA unit.

54. Szymoniak is qualified to teach the following courses at AVTEC: English, English as a second language, software applications, and the GED preparation course. Szymoniak does not believe that other general government unit employees at AVTEC or other publications specialists throughout the State could do her job. She believes her educational background uniquely qualifies her for this position.

55. Szymoniak works by herself approximately 75 percent of the time. During the remaining 25 percent of the time, she interacts with both instructors and general government unit employees, having more interaction with instructors. Daily interaction with instructors allows her to accomplish such tasks as student recruitment to bolster low enrollment or to publicize special honors received by students. She does not have any contact with other publications specialists

employed by the State.

56. Like Ikerd and Smith, Szymoniak's wages are determined by placement in the State's classification system.

57. Szymoniak prefers to remain in the AVTECTA unit.

58. All other education associates III, analyst/programmers III, and publications specialists II employed by the executive branch of the State are placed in the general government unit. Exh. 4.

### Conclusions of Law

1. The State is a public employer as defined by AS 23.40.250(7).

2. The Alaska Labor Relations Agency has jurisdiction to consider and hear requests for unit clarification under AS 23.40.090 and AS 23.40.160. However, the State's classification plan and assignment of salary ranges are outside the jurisdiction of this Agency. Alaska Public Employees Ass'n v. State of Alaska, 831 P.2d 1245 (1992).

3. Petitioner State has the burden to prove each element necessary to its cause by a preponderance of the evidence under 2 AAC 10.430.<sup>3</sup>

4. The AVTECTA unit is described in the collective bargaining agreement, effective July 1, 1989, through June 30, 1992, as "teachers employed by AVTEC." It states that teachers are "exempt employees as defined by Alaskan Statute, Sec. 39.25.110, paragraph 7."

Joint Exh. 1. AS 39.25.110(7) provides in part:

**Exempt service.** Unless otherwise provided by law the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

....

(7) certificated teachers employed by the Department of Education as correspondence teachers, teachers in skill centers operated by the Department of Education, or in Mt. Edgecumbe School . . .

5. The AVTECTA unit is described in a recognition agreement dated August 19, 1991, as teachers, counselors, and administrators at AVTEC. Exh. 7.

6. The State's standard form certified employee's contract provides in part:

that the teacher and the department agree to be bound by the following conditions:

3. The term "TEACHER" as contained herein is defined in AS 14.20.207.<sup>4</sup>

4. The employment as "TEACHER" as contained herein is defined in AS 39.25.110(8).<sup>5</sup>

7. AS 14.20.207(6)<sup>6</sup> defines teacher as follows:

"teacher" means an individual who, for compensation, has primary responsibility to plan, instruct, and evaluate learning of elementary or secondary school students in the classroom or an equivalent setting and also includes individuals holding other positions as determined by the department by regulation. Joint Exh. A, at 18.

8. AS 23.40.090 lists the factors considered to determine whether a position should be included in a 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.

The question is whether the education associate III, programmer/analyst III, and publications specialist II share a greater community of interest with the members of the AVTECTA unit or with the members of the general government unit.

9. Factors in AS 23.40.090 that weigh in favor of placing the education associate III, programmer/analyst III, and publications specialist II in the certificated AVTECTA unit are the history of collective bargaining and the desires of the employees.

10. Certain factors in AS 23.40.090 when applied to the facts of this case are neutral and do not weigh in favor of either unit. Employees in both units receive the same health insurance benefits. The amount of pay, the type of pay system, the amount and type of leave, and the retirement system are determined by bargaining unit placement and thus cannot be used to determine the appropriate unit. Unnecessary fragmenting would not occur in either instance because the positions would be placed in one of two existing collective bargaining units. Ikerd and Smith, and to a lesser extent, Szymoniak, have contact with members of the general government unit who work at AVTECTA. Ikerd, Smith, and Szymoniak have contact with members of both units.

11. The factors that weigh most heavily in favor of placing the education associate III, programmer/analyst III, and publications specialist II in the general government unit are the type of work performed and community of interest. Although all three persons holding the positions are qualified to teach, they are not currently employed as teachers. Although Ikerd may perform some counseling duties, his principal duty is to run the admissions office rather than to counsel. All other education associates III, analyst/programmers III, and publications specialists II employed by the executive branch are placed in the general government unit, which includes employees who work in a variety of professional, technical, and clerical positions similar to the education associate III, analyst/programmer III, and publications specialist II positions. SLRA Order and Decision No. 1, at 2-3 and 9-15 (March 1, 1973). While Ikerd, Smith, and Szymoniak hold a certificate, it does not prepare them for or qualify them for the work they perform. Their community of interest is more closely aligned with the general government unit. This community of interest is significant and outweighs the factors that favor placement in the AVTECTA unit. Finding of fact no. 8, supra.

12. AVTECTA argues that the State, as a public employer, cannot file a unit clarification petition under 2 AAC 10.050<sup>7</sup> with the Agency because that is a right granted only to the public employee representative. Longstanding practice under the Public Employment Relations Act has been to accept employer filed unit clarification petitions. See In re Order & Decision No. 26A Pertaining to Unit Allocation of Individuals, SLRA Decision & Order No. 26A (Feb. 23, 1977).<sup>8</sup> See also In re Order & Decision No. 32, Pertaining to Petition by Department of Administration to Reallocate Two Positions from General Government Unit to Confidential Employees Unit, SLRA Decision & Order No. 32 (Jan. 23, 1978).

13. AVTECTA also argues that the State's unit clarification petition has the effect of severing positions from the unit, and 2 AAC 10.020,<sup>9</sup> which addresses representation of a unit and severance from a unit, should be applied. Because the State is not seeking to create a new unit and it certainly does not seek to represent it, however, 2 AAC 10.020 does not apply.

14. AVTECTA complains about the State's motivation for reclassifying the three positions occupied by Ikerd, Smith, and Szymoniak. These issues are not relevant under AS 23.40.090 and 2 AAC 10.220(a).<sup>10</sup> Such issues are more appropriately considered in an unfair labor practice charge.

15. The education associate III, analyst/programmer III, and publications specialist II at AVTEC are more appropriately in the general government unit than the teachers, counselors, and administrators unit at AVTEC.

16. The Alaska Supreme Court has provided broad managerial discretion to the State to create a position classification plan and classify and assign positions to it. Alaska Public Employees Ass'n v. State of Alaska, 831 P.2d at 1245. This discretion gives it some freedom to affect unit boundaries. There are limits on this authority. The State may not violate the provisions of AS 23.40.110, which addresses unfair labor practice charges.

## ORDER

1. The State of Alaska's petition to clarify the unit is GRANTED;
2. The positions of education associate III, PCN 05-8537; analyst/programmer III, PCN 05-8538; and publications specialist II, PCN 05-8519, are ordered placed in the general government unit; and
3. The State of Alaska is ordered to post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, personally serve each employee affected. 8 AAC 97.460.

## ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Board Member

James W. Elliott, Board Member

Darrell Smith, 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 State of Alaska v. Alaska Vocational Technical Center, Teachers INEA, case nos. 93-192-UC, 93-193-UC, and 93-194-UC (Consol.), dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 14th day of March, 1994.

Margie Yadlosky

Administrative Assistant

This is to certify that on the

14th day of March, 1994, a true and correct copy of the foregoing was mailed, postage prepaid to

Art Chance, State

John Patterson, AVTECTA

Signature

<sup>1</sup>State of Alaska v. Public Employees Local 71, ALRA Decision & Order No. 165, at 2, (July 1, 1993).

<sup>2</sup>Although we note that unilateral action by an employer to remove bargaining unit work without first bargaining to impasse over the removal or the effects of the removal can

be an unfair labor practice, we do not address the issue because it was not raised. See, e.g., Road Sprinkler Fitters Local 669 v. N.L.R.B., 676 F.2d 826, 110 L.R.R.M.(BNA) 2125 (D.C. Cir. 1982), after remand 789 F.2d 9, 122 L.R.R.M.(BNA) 2139 (D.C. Cir. 1986).

3Now 8 AAC 97.350 (effective July 22, 1993).

4Renumbered as AS 14.20.215 in 1987.

5The correct citation appears to be AS 39.25.110(7), which lists "certificated teachers employed by the Department of Education as correspondence teacher, teachers in skill centers operated by the Department of Education, or in Mt. Edgecumbe School."

6Renumbered as AS 14.20.215 in 1987.

7See 8 AAC 97.050 (effective July 22, 1993).

8Before 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).

9Now 8 AAC 97.025 (effective July 22, 1993) (regulation now specifically authorizes employer filed petitions).

10Now 8 AAC 97.050, effective July 22, 1993.