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YUKON-KOYUKUK EDUCATIONAL	)
SUPPORT PERSONNEL ASSOCIATION,	)
NEA-ALASKA,	)
	)
Petitioner,	)
	)
vs.	)
	)
YUKON-KOYUKUK SCHOOL DISTRICT,	)
	)
Respondent.	)

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CASE NO. 94-281-RC

**DECISION AND ORDER NO. 175**

This matter was heard on March 31, 1994, in Anchorage, Alaska, before a quorum of a panel of the Alaska Labor Relations Board, members Stuart H. Bowdoin and Sally A. DeWitt, participating, and with hearing examiner Jan Hart DeYoung, presiding. Board member Karen J. Mahurin was disqualified from participation.

**Appearances:**

Gayle Pierce, Uniserve Director, NEA-Alaska, for petitioner Yukon-Koyukuk Educational Support Personnel Association, NEA-Alaska; and Glenn Olson, Interim Superintendent, for respondent Yukon-Koyukuk School District.

**Digest:**

In a unit of classified support personnel at a school district, the accounting clerk, assistant librarian, and probationary employees share a community of interest with the unit. Confidential employees, such as the administrative assistant to the superintendent, and supervisory level employees, such as the maintenance supervisor, do not share a community of interest with members of the unit and should be excluded from the unit.

**DECISION**

**FINDINGS OF FACT**

1. The Yukon-Koyukuk Educational Support Personnel Association is a labor organization affiliated with NEA-Alaska.
2. On January 27, 1994, the Association filed a petition to represent a unit of approximately 80 classified employees at the Yukon-Koyukuk School District, specifically including administrative assistants, aides, bus drivers, clerks, cooks, custodians, maintenance workers, printer, and secretaries, who work at Allakaket, Bettles, Hughes, Huslia, Kaltag, Koyukuk, Manley, Minto, Nenana, Nulato, Ruby, and the central school district office.
3. On February 1, 1994, the Association amended its petition to include Indian education instructors, and to clarify the term "aides" to include "bilingual aides, library aides, migrant education aides, principal or principal teacher aides, special education aides, and teacher aides."

4. A notice of the petition was posted at work locations of the Yukon-Koyukuk School District on or around February 24 and 25, 1994.
5. On March 2, 1994, the District objected to placement in the unit of the positions of assistant librarian, maintenance supervisor, administrative assistant to the superintendent, account clerk, and board secretary/receptionist.
6. On March 4, 1994, a prehearing conference was held to determine the issues and schedule the matter for a hearing.
7. The hearing was held on March 31, 1994, in Fairbanks, Alaska, and the parties presented testimony and other evidence. The record closed that same day.

#### Assistant librarian.

8. The position of assistant librarian is occupied by Susan Black. She holds a bachelor of science degree in human biology and she is a certified elementary school teacher. [1a:19] The assistant librarian is assigned to the media center in the District's central office. She puts together teaching materials to send to teachers, responds to teachers' questions, prepares kits to support school district curriculum, and categorizes library materials. Her immediate supervisor is the district media specialist. She has daily contact and works closely on the same schedule with members of the classified unit.
9. The assistant librarian is paid at range 30 on the salary scale, and is ineligible for overtime. Personnel Rules (Jan. 21, 1994), Exh. 2, at 5, 7-8.
10. The assistant librarian job description states that the duties may include managing the district media center, supervising student workers, maintaining data bases and inventory, managing districtwide media programs, preparing and distributing curriculum media kits, assisting with telephone technical support, and assisting in selecting and ordering new library and media materials. Exh. E.

#### Maintenance supervisor.

11. Johnnie Earl Powell occupies the position of maintenance supervisor. He has served in that capacity for four years. Powell testified that his job description was accurate. His position description describes the duties of maintenance supervisor as establishing and implementing the District's maintenance program. His duties include overseeing all district maintenance, making budget recommendations to the superintendent, and supervising maintenance personnel, (two full-time employees).
12. The position description describes the maintenance supervisor's supervisory role as making recommendations to the superintendent for maintenance personnel appointments, transfers, suspensions, recalls, discipline, and terminations. Powell stated that he had never before seen these duties in his job description. The description, however, is accurate. Powell described his role in hiring as selecting three or four candidates from the applications submitted and making a recommendation to the superintendent, who then made the actual hiring decision, having retained final authority. Powell as maintenance supervisor does evaluate and direct the work of the two employees under him. He has not been involved in any employee discipline issues. He can and does make recommendations for promotions, if appropriate, although he noted that the opportunity for promotion was limited under the District's new personnel rules. [2b:35; 3a:1] Powell spends between 10 and 20 percent of his work time supervising and training staff.
13. The maintenance supervisor spends most of his work time performing actual maintenance work. He periodically inspects buildings and assigns work, submits orders for equipment and maintenance supplies to the superintendent, confers with the site administrators on maintenance needs, prepares reports, participates in inspections, and carries out maintenance projects as needed. "Hands on" work constitutes 60 to 70 percent of his time. Exh. A: [3a:2] The work load does change in the summer. In the summer he works at the school sites that need work. He hires temporary staff and works with them on site six to ten hours a day to complete the work.
14. The maintenance supervisor is paid on an hourly basis and does receive overtime. He reports directly to the superintendent, who evaluates him. His office is located in Nenana, although he does work at the various ten school

sites along the Yukon-Koyukuk River. He has contact with other members of the unit.

15. Powell believes he needs to be in the unit. Otherwise, he believes he would be isolated.

#### Administrative assistant to the superintendent.

16. The administrative assistant to the superintendent is responsible to assist the superintendent in implementing District procedures, policies, and directives. Exh. B. The current incumbent is Cheryl Brady. Brady stated that she had served for nine years in the position. She is responsible for legislative information, collecting mail, prioritizing the mail, and keeping personnel files. She believes that currently she is not providing confidential administrative support to the superintendent in the areas of school operation, labor relations, and legal matters, although they are included in her position description. Exh. B. She indicated, however, that under a previous superintendent she had indeed performed those duties. Brady stated that currently confidential labor relations matters are handled by the assistant superintendent, director of instruction, director of special projects, director of student affairs, and director of business services. She believes that the clerical support for these confidential matters is provided by the assistant to the director of business services but that she has not been utilized to provide any confidential bargaining support. It was apparent that the trust had not developed between the assistant and the present superintendent to enable them to work together in a confidential capacity.

17. Brady described her duties as including monitoring and filing correspondence, screening telephone calls, along with the receptionist, and overseeing personnel records, either by computer or manually, depending upon the system in place. She commented that most recently when the school district's personnel rules had changed she had not worked on the revision but had learned about it when handling a phone call for the superintendent from the printer. [3a:30].

#### Accounting Clerk.

18. The accounting clerk processes accounts payable for the District's operating fund. Exh. D. The incumbent is Holly Bungart, who has held the position for seventeen years. She does purchasing for the District and processes the Internal Revenue Services IRS 1099 forms due in January. The accounting clerk has not worked in any confidential capacity in labor relations, such as, for example, providing cost estimates for collective bargaining. Those duties have been provided by the director of business services. [2b:3] In addition, the accounting clerk did not work on any of the personnel rules revisions. Exh. 3.

19. Her job duties are described in the position description as maintaining open purchase order files for funds and invoices for payment against purchase orders; posting invoices and checking batch totals from the IBM computer system; preparing correspondence on invoices and outstanding purchase orders; processing travel authorizations for approval and payment; maintaining accounts payable files; running the encumbrance reports; and performing secretarial duties for the director of business services. However, performing secretarial duties, such as typing, for the director during the recent past has consisted only of typing a letter in January of this year and one letter in November of last year.

#### Probationary employees.

20. Jeff Cloutier testified about other school districts' classified support staff units in the state. He is employed by NEA-Alaska as a uniserve director, which he describes as the equivalent of a business agent in other unions. He has been employed in this position in Alaska for seven years. [2b:8.8] His responsibilities include assisting local organizations to organize units and providing negotiation and contract enforcement assistance for the local units. He has worked with classified employee units and is familiar with their contracts. He testified that classified employee bargaining units have a wide differential in pay and wages. As an example, he named the Kenai support unit, which has pay rates ranging between eight and nine dollars per hour to twenty-nine dollars per hour for classified unit personnel. He said there can be 17 to 18 different job descriptions in a classified unit.

21. Cloutier also addressed the inclusion of probationary employees in other bargaining units. In the organized districts, he was familiar with many of the contracts and could state that they did include probationary employees. He defined "probationary employee" to mean a person hired for a permanent or long term position who had been employed for a

short period of time. Employees during this period usually can be terminated for reasons other than for cause. In his experience all districts have probationary employees in their bargaining units. The variation between districts in employees covered is generally with temporary employees who often are not covered. [2b:13]

### Conclusions of Law

1. Yukon-Koyukuk School District is a public employer under AS 23.40.250(7), and this Agency has jurisdiction to consider the issues raised in this case under AS 23.40.090 and AS 23.40.100.
2. Under 8 AAC 97.350(f), a petitioner has the burden to prove each element necessary to its cause by a preponderance of the evidence.
3. AS 23.40.090 addresses appropriate bargaining units:

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. Applying the community of interest standard in AS 23.40.090 to the assistant librarian position, we conclude that the position appropriately belongs in a unit of classified employees. The librarian is not a supervisory or confidential employee, nor is she an appointed official. Her hours, work location, working conditions, and her interests all support inclusion of the position in the unit.
5. The argument the District makes to support excluding the position is the fact that the position's placement on the salary scale is inconsistent with placement of other members in the unit. While this factor does bear on community of interest, the difference in pay level is outweighed by other factors, such as daily contact and work location and conditions, indicating a community of interest with members of the unit.
6. Applying the factors in AS 23.40.090 to the position of maintenance supervisor, we conclude that the position should be excluded from the unit. Factors favoring placement in the unit include the work location, payment of wages on an hourly basis and overtime eligibility, and substantial time in the field spent on maintenance tasks. On the other hand, the maintenance supervisor exercises substantial managerial discretion. His duties are comparable to that of a department head. He reports directly to the superintendent. He is responsible for maintenance of the physical plant, making recommendations about needed repairs and improvements, and he has supervisory authority over staff. As a supervisor, the maintenance supervisor is responsible for the direction, training, and control of two full time employees. He also can be responsible for hiring and supervising temporary summer work crews. While he does not have final authority, he has the authority effectively to recommend and is the direct line supervisor of the two employees of his unit.
7. The maintenance supervisor wants to be a member of the unit. However, the factors weighing in favor of exclusion from the unit outweigh those factors supporting inclusion. Although the maintenance supervisor works along side unit members performing maintenance duties, his responsibility, discretion, and supervisory responsibilities make him a part of management, and he does not share a community of interest with the members of the educational support unit.
8. Our decision under AS 23.40.090 that the maintenance supervisor does not share a community of interest with the classified unit is supported by 8 AAC 97.990(a)(5), which defines supervisory employee, and 8 AAC 97.090, which prohibits including supervisory personnel with nonsupervisory personnel in State of Alaska bargaining units. While these provisions do not apply to political subdivisions or school districts, this Agency is guided by them in determining appropriate units for purposes of collective bargaining in other units. In Alaska Gateway Education Support Personnel Association v. Alaska Gateway School District, Decision & Order No. 154, at 5, (February 26, 1993), this Agency stated,

While the restriction against combining confidential and other employees in a unit in 2 AAC 10.110(a)(2) [1] does not apply to nonstate bargaining units, the reasons underlying the restriction are appropriate to consider in nonstate cases when examining the question of community of interest. . . . While a per se restriction such as the one in 2 AAC 10.110 is too inflexible for the smaller public employers, in most cases the Agency will be guided by the restriction and find that confidential employees do not as the usual rule belong in bargaining units with nonconfidential employees.

Likewise, we believe that supervisory employees as a general rule do not belong in bargaining units with nonsupervisory employees.

8. A supervisory employee in 8 AAC 97.990(a)(5) is defined to mean

an individual, regardless of job description or title, who has authority to act or recommend action in the interest of the public employer related to employing, promoting, transferring, suspending, discharging, laying off, recalling, assigning, rewarding, disciplining, or directing employees, or adjusting the grievances of other employees, if the exercise of that authority is not merely routine but requires the exercise of independent judgment.

9. The maintenance supervisor has the authority to recommend action in the interest of the Yukon-Koyukuk School District related to employing, promoting, transferring, assigning, rewarding, and directing employees. Whether he also has the authority to suspend, discharge, layoff, recall, or discipline employees was unclear from the testimony. It was clear, however, that the maintenance supervisor was the direct supervisor of two employees and, in the summer, additional employees in the maintenance unit. These supervisory duties in addition to those managerial tasks associated with the maintenance program for the District support the conclusion that the maintenance supervisor is not appropriately a member of the Yukon-Koyukuk Educational Support Personnel Association.

10. Applying the factors in AS 23.40.090 to the accounting clerk, we conclude the position should be included in the bargaining unit. The accounting clerk is a classified employee who works in the accounting and payroll office of the District. Her wages, hours, and working conditions indicate a community of interest with the other employees in the unit. The position does not supervise any other employees and an exclusion as a supervisor is inapplicable. In addition, the position appears to have no confidential responsibilities in the area of labor relations. The position does not provide bargaining support during bargaining for certified staff members. The factors in AS 23.40.090 strongly support including this position in the unit.

11. Applying the community of interest factors in AS 23.40.090 to the administrative assistant to the superintendent provides a close question. However, we conclude the position should be excluded from the unit. The administrative assistant to the superintendent principally provides clerical support for the superintendent. In the incumbent's nine year history in the position, she has been closely involved in matters of a confidential nature including labor relations and personnel matters. More recently, the incumbent testified that she has not been involved in these matters. During that time period, however, the question of her unit placement has been at issue. We draw upon her full work history and conclude that she does engage in confidential matters appropriate for exclusion from the unit. In Alaska Gateway Education Support Personnel Ass'n v. Alaska Gateway School District, Decision & Order No. 154 (February 26, 1993), we found a similarly situated employee appropriately excluded from the unit. In that case, an executive secretary was involved in a confidential capacity to a district superintendent. We believe that a chief executive officer needs a confidential assistant to provide support in confidential matters, particularly those matters concerning labor relations and personnel issues. The work history and job description provide that the administrative assistant to the superintendent functions in that capacity and should be excluded from the unit.

12. Initially, the Yukon-Koyukuk Educational Support Personnel Association sought to include and the District sought to exclude probationary and temporary employees from collective bargaining. At the beginning of the hearing, the Association stated that it was no longer seeking to include temporary employees in the unit, but that it continued to seek to represent those employees hired for permanent positions while they were in probationary status.

13. The District objects to including probationary employees on the basis that those employees do not accrue retirement

benefits during their probationary period. It is only at the conclusion of probation that District employee begins to accrue retirement benefits under the public employee retirement system administered by the State of Alaska, Department of Administration, Division of Retirement and Benefits.

14. The Association's position is that probationary employees, but for District policy, would be entitled to retirement and leave benefits under state law, which covers all permanent employees in the retirement system, including employees during their probationary period. AS 39.35.120(a) provides:

An employee of the state shall be included in this system upon commencement of employment with the state, or on January 1, 1961, whichever is later. Unless an employee has elected to participate in the optional university retirement program under AS 14.40.661 -- 14.40.799, an employee of a political subdivision or public organization that becomes an employer shall be included in the system on the effective date of the employer's participation or the date of the employee's commencement of employment with the employer, whichever is later.

In addition, AS 39.35.680(21) defines "member or "employee" for purposes of state retirement benefits to include "a person eligible to participate in the system and who is covered by the system," including nonvested members but to exclude "persons compensated on a contractual or fee basis," or "casual or emergency workers or nonpermanent employees as defined in AS 39.25.200." Emphasis added.

15. A common practice is for employees in their probationary periods to have fewer rights as employees who have served their probationary period. Whether the incumbent is a probationary or permanent employee should not dictate unit placement. Moving the position between units depending on whether or not the incumbent has fulfilled the probationary period would disrupt the unit. This disruption and confusion is detrimental to a stable labor relationship. By deciding that probationary employees belong in the unit, we do not mean that they must receive retirement benefits. The subject of retirement would be an item appropriate for negotiations if a unit is certified after election. However, because probationary employees by state law are eligible for retirement benefits, they qualify to be "employees" under the definition in 8 AAC 97.990(a)(2) which states,

"employee" means the same as "public employee" in AS 23.40.250 and is limited to a person employed by a public employer in a permanent or probationary status, including a part time or seasonal employee, who is entitled to receive retirement and vacation benefits from the public employer . . . .

Because probationary employees are eligible for retirement benefits, they should be included in the unit if their position is appropriately in the unit.

16. We distinguish the employees in this case from the nonpermanent employees in Alaska State Employees Association/ AFSCME Local 52, AFL-CIO v. State of Alaska, Decision & Order No. 170 (January 5, 1994). These employees were employed in positions ineligible for the receipt of retirement or vacation benefits under the law. See AS 39.35.680(21).

## ORDER

1. The objection of the Yukon-Koyukuk School District is granted in part and denied in part. The positions of assistant librarian and accounting clerk are appropriately within the Yukon-Koyukuk Educational Support Personnel Association, NEA-Alaska, unit and the positions of administrative assistant to the superintendent and the maintenance supervisor are excluded from the unit. Employees in probationary status who occupy positions in the unit are appropriately in the unit during the period of that probationary status.

2. An election is ordered to proceed on the question of the certification of the Yukon-Koyukuk Educational Support Personnel Association, NEA-Alaska, among the members of the unit we have found to be appropriate.

3. The Yukon-Koyukuk School District 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, to serve each employee affected personally. 8 AAC 97.460.

## ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Board Member

Sally A. DeWitt, 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 No. 175 in the matter of Yukon-Koyukuk Educational Support Personnel Association, NEA-Alaska v. Yukon-Koyukuk School District, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of May, 1994.

Victoria D.J. Scates

Clerk IV

This is to certify that on the 13th day of May, 1994, a true and correct copy of the foregoing was mailed, postage prepaid to

Glenn Olson, YKSD

Gayle Pierce, NEA-Alaska

Signature

<sup>1</sup>Effective July 22, 1993, this provision is located in 8 AAC 97.090(a)(2).