



representative." See Exh. C.

2. On June 23, 1994, Public Employees Local 71 filed a petition for certification as bargaining representative of a law enforcement unit consisting of all police and dispatcher/jailer employees of the Bristol Bay Borough. Local 71 demonstrated interest in support of its petition from at least 30 per cent of the members of the proposed unit, as required under AS 23.40.100
3. On July 8, 1994, the Agency asked that notices of the petition be posted in the work sites of affected employees, and on July 15, 1994, the fire chief posted a notice of Local 71's petition in the fire station in King Salmon and the police station in Naknek and the E.M.S. coordinator posted it in the police office in South Naknek.
4. On August 1, 1994, the Borough objected to the composition of the bargaining unit. More specifically, the Borough's objection states, in part,

The unit proposed by the union is not appropriate under AS 23.40.090. The proposed unit includes individuals who are not "public employees" under AS 23.40.250(6), inappropriately seeks to combine supervisory personnel with nonsupervisory personnel, inappropriately seeks to combine confidential employees with other employees, and excludes many other Borough employees that should be included in any unit found appropriate.

W. Mede, letter to J. DeYoung (Aug. 1, 1994).

5. The parties stipulated that the police chief should be excluded from the unit.
6. The Bristol Bay Borough is in the southwest part of Alaska and includes three communities: Naknek, King Salmon and south Naknek. Naknek and King Salmon are separated by a highway approximately 15 miles long. South Naknek is separated from Naknek and King Salmon by a river and is accessible only by plane or boat. The Borough staffs and operates a number of facilities in the region, including the main administrative office, the library, and public works facilities in Naknek; two parks, the land fill, animal control, waste water treatment, and voluntary fire station facilities between Naknek and King Salmon; the police department facility in King Salmon; and an administrative office, including a police office and a sewage facility in South Naknek.
7. There are approximately 10 Borough employees under the supervision of the police chief: three full time police officers, a seasonal/part time officer in the summer, the dispatch superintendent, four dispatcher/correctional officers, and a part time animal control officer.
8. The Borough employs three police officers, excluding the police chief. Two officers are stationed in the King Salmon facility. Alan Gilliland, who testified, works the night shift. The second officer works the swing shift. The third officer works in the South Naknek office. The police chief works the day shift. An officer may be required when off shift to be available for back-up. The dispatchers work in the King Salmon facility in eight hour shifts around the clock.
9. The police officers serve patrol and customary law enforcement duties. They face the risk of injury and of assault associated with these duties. They have specialized law enforcement training and are certified by the Alaska Police Standards Council.
10. The dispatchers provide dispatch services in addition to performing clerical duties, such as typing reports for the police officers. The dispatchers also perform computer research to assist the officers in their investigations. The dispatchers serve as the jailers or correctional officers for prisoners detained in the Borough and receive specialized correctional training.
11. The police department employees have the customary interactions of employees in any governmental offices. Police department employees may conduct business with employees in the administration building, such as payroll. A Borough custodian cleans the King Salmon facility twice a week. The dispatchers interact with computer staff. The public works department maintains the police vehicles. In addition, the police officers provide security for the other departments. For example, the officers check on library employees working outside of the normal work day and

provide security at the port when containers are being unloaded. The police department dispatchers maintain radio contact with some of the other departments and may be called upon to provide dispatch assistance.

12. The animal control officer position is a half time position. It was combined with the grounds keeper position to make one full-time position. The person filling the position reports to the police department in King Salmon for half of his shift and to the public works department for the other half. The animal control officer also must spend time in the land fill facility, which also serves as an animal control facility.

13. All Borough employees are subject to a personnel manual. It provides the holidays, benefits, including retirement, and pay scale for all Borough employees. Department heads, the borough clerk and the administrative assistant to the borough manager, and the borough manager are compensated on a salary scale and are not eligible for overtime compensation. The police officers, dispatcher/correctional officers, and the animal control officer are, along with other Borough employees, paid an hourly rate and eligible for overtime pay.

14. Unique among Borough employees, police officers are eligible to retire in twenty years, rather than thirty.

15. The police chief and other department heads at the Borough effectively recommend the hire, termination and transfer of employees in their departments. Ultimate authority resides in the borough manager. Department heads are responsible for evaluating employees in their departments, subject to the approval of the borough manager. Department heads assign and direct the work in their departments and attend department head meetings with the borough manager.

16. The borough manager identified his concerns about fragmenting by stating his fear that other employees would later organize to play catch-up with the represented unit and the borough would be forced to contend with a number of bargaining representatives and by stating that labor relations issues would become a time and resource drain on the Borough.

17. At a hearing on November 8, 1994, the parties presented testimony and other evidence, and the record closed on November 9, 1994.

## **DISCUSSION**

### Conclusions of Law

1. The Bristol Bay Borough is a public employer under AS 23.40.250(7) and this Agency has jurisdiction of this matter under AS 23.40.090 and 23.40.100.

2. As the petitioner, Public Employees Local 71 has the burden to prove the appropriateness of the unit by a preponderance of the evidence. 8 AAC 97.350(f).

3. To determine the appropriateness of a proposed unit, the Agency considers the factors named in AS 23.40.090:

Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising 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. The Public Employment Relations Act has a history of recognition of law enforcement or public safety bargaining units. The State Labor Relations Agency first found a public safety unit appropriate in Pertaining to a Unit Authorization Petition by the Public Safety Employees Association, Inc., State of Alaska, SLRA Order and Decision No. 28 (Jan. 3, 1977). The SLRA had found that certain state employee classifications shared a community of interest because they were sworn public safety officers, wore badges, may or may not be armed, and were in the same department under the same management. Id., at 4. In this first decision the Agency restricted placement in the unit only to those employees receiving certification from the Alaska Police Standards Council. Id., at 7. The unit was later

broadened to include motor vehicle inspectors with police powers, Pertaining to a Petition for Amendment/Clarification of the Law Employment Bargaining Unit, SLRA Order and Decision No. 30 (Oct. 17, 1977). Law enforcement units also exist among the political subdivisions as well. See Certificate of Election, City of Unalaska, Public Safety Unit (Dec. 20, 1993); Fairbanks Police Department Employees Ass'n v. City of Fairbanks, DOLLRA Decision & Order No. 88-2 (Dec. 8, 1988).

5. The facts in this case support the conclusion that the law enforcement employees on balance share a sufficient community of interest to make a separate unit appropriate under AS 23.40.090. The nature of the work, the specialized training, the risk of assault, the Borough organization, and the common supervision support a law enforcement unit.
6. The police officers and the dispatcher/correctional officers also share a work schedule requiring shift work around the clock and work on holidays. This factor supports a separate unit of dispatchers and police officers.
7. The desires of the employees is a factor considered under AS 23.40.090. Local 71 has supplied sufficient interest cards to demonstrate support from at least a third of the unit it seeks to represent. A majority of the larger unit, on the other hand, as recently as 1992, expressed its desire not to be represented.
8. Public safety officers, dispatchers, and correctional officers are generally classed for purposes of strike eligibility as class 1 employees, prohibited from striking. AS 23.40.200(a)(1).
9. The location of the work and interaction of the employees in this case are neutral factors that do not favor either the larger or smaller unit. The similarity of wages and benefits and the personnel rules of the police department with other department employees do support a single unit but do not make a law enforcement unit inappropriate.
10. We are sensitive to fears of the borough manager that a number of separate units could increase administrative costs and to the prohibition against fragmentation in AS 23.40.090. Generally, larger units are more appropriate in smaller political subdivisions. PERA, however, has a long tradition of public safety units and public safety employees do share unique working conditions and terms of employment that justify separate bargaining. A public safety unit will not, by itself, fragment the work place. Allowing one in this case should not be interpreted as approval for separate department units in other cases. Each case must be judged on its merits.
11. We find the animal control officer/groundskeeper an appropriate member of this unit due to the interaction, common supervision, and work location and the statement of the Borough that, if the Agency were to find a police department unit appropriate, the animal control officer/groundskeeper should be included. W. Mede, letter to J. DeYoung (Nov. 9, 1994).
12. Because we find the law enforcement unit appropriate and because the parties stipulated to the exclusion of the police chief from the unit, we do not need to address the question of the contours of an appropriate general unit. However, we do find evidence in the record to support the conclusion that department heads are supervisory employees that normally should be excluded from a unit of rank and file employees. 8 AAC 97.990(a)(5);<sup>1</sup> see International Brotherhood of Electrical Workers Local Union 1547 v. City of Cordova, Decision & Order No. 177, at 17 (Oct. 13, 1994). Although the department heads do not have final authority over personnel issues, each makes effective recommendations in the key areas of employing, discharging, and evaluation and each is responsible for assigning and directing the work of the department.
13. We conclude that the appropriate bargaining unit consists of all employees of the Bristol Bay Borough police department except the police chief. Specifically, the unit includes the police officers, dispatch/correctional officers, dispatch supervisor, and the animal control officer.

## **ORDER**

1. The objection of the Bristol Bay Borough to the composition of the bargaining unit as proposed in the representation petition of the Public Employees Local 71 is DENIED;
2. The appropriate unit is described as all employees of police department, including the police officers,

dispatch/correctional officers, dispatch supervisor, and the animal control officer and excluding the police chief;

3. The election shall proceed under AS 23.40.100 and the regulations;

4. The Bristol Bay Borough 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, in the alternative, serve each employee affected personally. 8 AAC 97.460.

#### THE ALASKA LABOR RELATIONS AGENCY

Alfred L. Tamagni, Sr., Chair

James W. Elliott, Board Member

Karen J. Mahurin, 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 Decision and Order No. 181 in the matter of Public Employees Local 71 v. Bristol Bay Borough, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 16th day of December, 1994.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 16th day of December, 1994, a true and correct copy of the foregoing was mailed, postage prepaid, to

Kevin Dougherty, Local 71

William F. Mede, BBB

Signature

18 AAC 97.990(a)(5) provides:

"supervisory employee" means an individual, regardless of job description or title, who has authority to act or to 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.