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PUBLIC SAFETY SUPERVISORY)
ASSOCIATION,)
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Petitioner,)
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vs.)
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STATE OF ALASKA,)
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Respondent,)
)
and,)
)
ALASKA PUBLIC EMPLOYEES)
ASSOCIATION/AFT, AFL-CIO,)
)
Intervenor.)
)
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CASE NO. 94-297-RD)

DECISION AND ORDER NO. 188

This matter was heard on October 10 and 11, 1994, and on January 30, 1995, before a panel of the Alaska Labor Relations Board, with vice chair Stuart H. Bowdoin and board members Karen J. Mahurin and James W. Elliott, participating. Hearing examiner Jan Hart DeYoung presided. The record closed on January 30, 1995.

Appearances:

Mauri Long and Ray R. Brown, Dillon & Findley, and John Glass, president, Public Safety Supervisory Association, for petitioner Public Safety Supervisory Association; Art Chance, labor relations analyst, for respondent State of Alaska; and Dennis Geary, regional manager, for intervenor Alaska Public Employees Association/AFT, AFL-CIO.

Digest:

The petitioner has not satisfied the requirements in AS 23.40.090 and 8 AAC 97.025(b) to sever the Alaska State Trooper supervisors from the State supervisory unit and represent them in a separate unit.

DECISION

This is a petition from the Public Safety Supervisory Association to represent approximately 38 Alaska State troopers employed by the Department of Public Safety at the ranks of first sergeant, lieutenant, captain, and major. These public safety officers are supervisors and are currently represented in bargaining in the State supervisory unit by the Alaska Public Employees Association. The State and the APEA oppose the petition.

A hearing was conducted on October 10 and 11, 1994, and on January 30, 1995, at which the parties presented testimony and other evidence. Upon consideration of the record, the Agency finds the facts as follows:

Findings of Fact

1. The Public Safety Supervisory Association (PSSA) seeks to represent in collective bargaining approximately 38 trooper supervisors in the Department of Public Safety, including first sergeants, lieutenants, captains, and majors, who are engaged in enforcing the State criminal code. The PSSA seeks to represent only fully commissioned supervisors with the exception of the fire marshals, who are also commissioned.
2. PSSA was originally created in 1985, and has had funds since that date. The organization was inactive until recently activated by Lieutenant John Glass for the purpose of petitioning to represent the trooper supervisors. PSSA has a constitution and by-laws. It is not affiliated with any other labor organization.¹ Articles and Bylaws of the Public Safety Supervisors Association (Mar. 31, 1994). Glass stated that he filed interest cards in support of the petition from approximately 50 percent of the members of the proposed unit. Glass serves as the head of the organization, but it has not conducted an election of officers. Glass testified that he had conducted a PSSA meeting to solicit donations from potential unit members to pay attorneys to pursue the representation petition.
3. Intervenor Alaska Public Employees Association/AFT, AFL-CIO currently represents the trooper supervisors along with other supervisors in the State supervisory unit. APEA/State Agreement, Exh. 3, at 6 (1990--1992).
4. After the expiration of the APEA/State negotiated agreement for the period ending December 31, 1992, the State and APEA negotiated a letter of agreement continuing the provisions of the previous agreement between July 1, 1993 through June 30, 1994, with some exceptions. APEA/State, Letter of Agreement (July 28, 1993), Exh. 8, at 1. The agreement was again extended, with some changes, through June 30, 1995. APEA/State, Letter of Agreement, (July 26, 1993), Exh. 8.
5. Approximately 233 of the 1000 or so members of the supervisory unit represented by APEA are Class (a)(1) employees, ineligible to strike but entitled to binding interest arbitration.
6. The APEA represents law enforcement personnel in other public employer units. For example, it represents a unit of police department employees at the City of Fairbanks. It represents in that unit classifications at or below the rank of sergeant, police recruits, dispatchers, clerical classifications, and custodians, among others. APEA/City of Fairbanks, Agreement (Mar. 1, 1991-June 30, 1993), Exh. 9, at 44. APEA also represents a unit of police and fire department supervisors employed by the City of Fairbanks. APEA Class 1 Public Safety Members, APEA/City of Fairbanks Agreement (Dec. 31, 1993-Jan. 1, 1997), Exh. 10, at 53.
7. The class specification for the Alaska State trooper series covers all ranks of State trooper through major. Exh. 5, at 1. Troopers at the rank of sergeant and below are represented in collective bargaining by the Public Safety Employees Association (PSEA) in the regularly commissioned public safety officers unit (RCPSO). The RCPSO also includes the position classifications security specialist, court service officer, constable, airport safety officer, deputy fire marshall, corporal, investigator, sergeant, staff sergeant, warrant officer and technical sergeant. PSEA/State Agreement, Art. 2, § 1 (1990-1991), Exh. 4, at 3 & 47; see also PSEA/State Agreement, Art. 2, § 1 (Jan. 1, 1992-Dec. 31, 1994, extended to Dec. 31, 1995) (unexecuted), Exh. 12, at 7 & 79.
8. The most recent State/PSEA agreement followed interest arbitration. The State and PSEA were in the process of obtaining this agreement three years. The parties took more than one hundred items to the interest arbitrator. PSEA's costs were estimated at approximately \$250,000, including \$10,000 for its one-half share of the arbitrator's cost. The arbitrator issued the interest arbitration award on January 5, 1994. Because there were problems with the legislature's funding of the agreement, the parties modified it on May 8, 1994. The term of the agreement is January 1, 1992, through December 31, 1994, extended to December 31, 1995. PSEA/State, Letter of Agreement (May 8, 1994), Exh. 6, at 2; PSEA/State Agreement, Art. 36 (unexecuted), Exh. 12, at 124;.
9. PSEA represents two law enforcement units in addition to the RCPSO -- the Juneau police department and the Unalaska police department.
10. The supervisors that are the subject of this petition have all been troopers in the PSEA unit before promotion to positions as supervisors. All Alaska State troopers, including the trooper supervisors, share common interests. They share an interest in the enforcement of the criminal laws and similar experience and training. One trooper stated that

they have pride in their work, who they are, and the division. They are loyal to one another and to the agency. Trooper supervisors testifying displayed a strong sense of community as troopers. Glass states that he is an Alaska State trooper first and a supervisor second. They take pride in the high regard Alaska troopers are held nationally.

11. The trooper class series includes all positions that supervise or perform State law enforcement work for public safety or fish and wildlife protection. Exh. 5, at 1. A working class level State trooper has successfully completed the thirteen-week public safety academy and one-year probationary period, and possesses a basic certificate as a police officer issued by the Alaska Police Standards Council. All of the higher ranks in the class series require a minimum of one year as a State trooper. *Id.*, at 6-8. The first sergeant is the first supervisory class in the series, "requiring the exercise of independent judgment in the areas: hiring, promoting, transferring, suspending and discharging of subordinate employees." *Id.*, at 2.

12. The trooper supervisors have moved for the most part beyond direct law enforcement to administrative duties, although there are differences between supervisors.

13. The Department of Public Safety has adopted an Operating Procedures Manual (Feb. 1, 1994). It covers all of the divisions of the department: Division of Alaska State Troopers, Division of Fish and Wildlife Protection, Division of Fire Prevention, Division of Motor Vehicles, and Division of Administrative Services. Exh. 1, at 1. Employees in the department are divided into four categories for purposes of application of the manual: commissioned, partially commissioned, dispatcher, and civilian. *Id.*, at 1-3. Only the commissioned trooper supervisors are at issue in this petition.

14. In addition to the training required to become a trooper, a trooper may receive additional training in law enforcement with the Federal Bureau of Investigation and other law enforcement groups to obtain higher levels of certification.

15. Trooper supervisors may specially train for supervisory responsibilities by attending the State supervisory courses. The State provides a three-day course several times per year that is open to supervisors.

16. Troopers must meet special standards for good health and physical fitness, undergoing a medical examination every other year and physical agility tests that are required of troopers regardless of supervisory status.

17. Trooper supervisors generally are not eligible for overtime, like other supervisors but unlike the troopers in the RCPSO unit that they supervise. There can be exceptions to this general rule depending on the work performed. Two supervisory troopers, for example, obtained overtime pay for overtime worked transporting prisoners after grieving the issue. The supervisory unit agreement provides overtime for employees below range 14. Eligibility for overtime for employees at salary range 14 and above, which would include trooper supervisors, is governed by the Fair Labor Standards Act. APEA/State Agreement, Art. 25, § 1 (1990--1992), Exh. 3, at 85.

18. Hazard pay is available to all members of the supervisory unit for such activities as working in low flying aircraft, working in helicopters, and working with dynamite. If the hazard is a defining characteristic of the job, the hazard is addressed in the classification system. A pilot in the low flying aircraft, for example, would not receive hazard pay, while a fish counter would. The high hazards troopers face as a normal part of their duties do not qualify them for hazard pay. APEA/State Agreement, Art. 24, § 4 (1990--1992), Exh. 3, at 75.

19. Trooper supervisors generally do not perform shift work and are therefore not eligible for shift differential as they were when they were in the RCPSO unit. A shift differential is available, however, under the supervisory unit agreement. APEA/State Agreement, Art. 24, § 3 (1990--1992), Exh. 3, at 75.

20. Glass stated that his duty hours were 8:00 a.m. through 4:30 p.m., Monday through Friday, officially, although he typically worked until 6:00 p.m. each day. Lieutenant Jay Yakopatz states the regular work hours are between 7:30 or 8:00 a.m. to 4:30 or 5:00 p.m. for the supervisors. The difference between the work weeks described by the two witnesses can be explained by a recent negotiated change to the supervisory work week from 37.5 to 40 hours. Like most supervisors, however, the trooper supervisors work longer than their assigned hours.

21. A trooper supervisor's responsibilities do not end at the end of the duty hours. Glass stated he is subject to call 24

hours per day. This does not mean he is on duty 24 hours per day but, as a supervisor, must be available to the personnel he supervises. Glass therefore wears a pager and carries a cellular telephone off duty. A former APEA representative stated that, if a trooper supervisor were required to be available for recall under the supervisory agreement, he or she could be eligible for stand-by pay. The representative had explained this contract term but knew of no supervisors that had claimed it. APEA/State Agreement, Art. 25, § 3 (1990--1992), Exh. 3, at 86. Trooper supervisors are required to provide a telephone number and travel schedule when on annual leave. Trooper supervisors are required to carry their badges and identification, even when they are not working. Their personal life can be affected. They may not associate with persons who have been involved with the criminal justice system. While trooper supervisors share these restrictions on their personal lives, the restrictions are not unique to the trooper supervisors. Other State employees are subject to call if a crisis or need arises during nonwork hours. In some lines of work this may happen more than others. It may happen, for example, in labor relations and in child protective services. Restrictions on association also are not unique to troopers. For example, the State restricts with whom correctional officers may associate.

22. Unlike other supervisors but like other troopers, trooper supervisors are armed when on duty and may carry a weapon off-duty. Depending on the supervisor, they may be required to wear a uniform. Most choose to carry their weapon.

23. Troopers, including trooper supervisors, are subject to transfer throughout the State. Glass stated that in his years of service he had served in nine locations, five as a supervisor. All of his transfers had been voluntary.

24. The trooper supervisors are all classed for purposes of eligibility to strike as Class (a)(1), ineligible, and qualify for binding interest arbitration at impasse in negotiations with the State. Trooper supervisors are not the only members of the supervisory unit who are strike ineligible. About 20 percent of the unit is Class (a)(1).

25. Trooper supervisors believe they are subject to stricter discipline than other supervisors and must respond to questions in disciplinary proceedings or be subject to termination.

26. The defining characteristic of the supervisory unit is the supervisory role of its members. The members of the unit are the State's representatives and are responsible to direct the work, hire, fire, and adjudicate grievances. These responsibilities separate these State employees from the employees in other units. The trooper supervisors that are the subject of this petition direct the work of the Department of Public Safety. Their primary duty is to supervise law enforcement officers, although they supervise civilians as well. They share their supervisory responsibilities with all other members of the supervisory bargaining unit. Each supervisor in the unit is responsible to supervise work in a department that has a special function or responsibility assigned to it. Each supervisor will be specially trained and experienced in that function and will be required to comply with rules and procedures specific to that department. All State departments have employees who specialize and include supervisors who have the same relationship with subordinates as the trooper supervisors in the Department of Public Safety. An example is the supervising nurses in the Pioneer Homes. They have special training, procedures, and rules of conduct. They must understand the work performed in the ranks and in many cases come up through the ranks themselves.

27. David R. Kaiser is a retired trooper and APEA business representative. Kaiser was a trooper between 1970 and 1987 and he was active in the PSEA, serving a term as president and on the bargaining team in 1979-1980. In February of 1986, Kaiser promoted out of the unit to the supervisory unit. After his retirement from the State, he went to work for APEA as a business representative. He has had substantial experience with both units and with the work performed by members of both bargaining units. Kaiser stated that the primary function of the trooper supervisors is to supervise. Their law enforcement responsibilities are incidental and limited to travel time and periods when the division is short handed.

28. Lieutenant Glass described his typical work day as spent on the telephone. He is the supervisor for the west coast C detachment, which consists of Kodiak, Kotzebue, Nome, and King Salmon. He supervises four subordinate supervisors in Nome, Bethel, Dillingham, and Kodiak. He has 30 fully commissioned officers under his span of control. He did not know the number of noncommissioned personnel. His supervisor is the detachment commander. His direct law enforcement responsibility typically consists of enforcing traffic laws daily while traveling to and from work. He was

last on regular patrol over the Labor Day holiday in 1993 in the Talkeetna and Trapper Creek areas. His most recent arrest before testifying in October of 1994 had been one and one-half months earlier while making a traffic stop. There was a warrant on the driver and he arrested the driver and transported him to jail. He does not remember the last time that he investigated a crime.

29. Captain Robert L. Clontz is the B detachment commander. He was promoted to first sergeant and became a member of the supervisory unit in 1990. He described his work day as typically administrative. Clontz supervises six subordinate supervisors, with 80 troopers and 30 or more civilians under his direction. He is involved with personnel matters and has fiscal responsibility for the detachment. He occasionally is involved in investigations, although never as the primary officer or investigator. He makes occasional traffic stops while he is in the State vehicle assigned to him. While he is in a State car, he considers himself on patrol.

30. The trooper supervisors testifying make traffic stops routinely. They enforce the traffic laws while operating a State vehicle, whether or not they are officially on duty. Troopers are also required to respond to emergencies, regardless of duty status. The trooper supervisor will be exposed at least incidentally to direct law enforcement and all of the risks inherent in that work, such as risks of injury, exposure to citizen complaints, and the potential emotional toll of confronting the family of an accident or crime victim. They may perform other incidental direct law enforcement responsibilities. For example, two of the trooper supervisors had been involved in serving warrants and arresting participants in an incident in Tununak.

31. This exposure may be greater for the lower level supervisors, who, more than the higher ranked supervisors, perform supervision in the field, provide back-up, and may even take calls.

32. Troopers' law enforcement duties may cause them to be involved in investigations of other State employees. Robert M. Piazza,² labor relations consultant with experience representing PSEA in collective bargaining matters, believes that law enforcement personnel should not be combined in a bargaining unit with nonlaw enforcement personnel. His reason was the conflict of interest law enforcement personnel have with all other employees whom they may be called on to investigate. Other employee classifications besides troopers, however, conduct investigations that may involve them in investigating other State employees. For example, child support enforcement personnel, child protective services employees, permanent fund investigators, and fraud investigators may investigate State employees in addition to members of the general public.

33. Other State employee classifications besides troopers enforce criminal laws. Two examples are occupational safety and health officers and alcoholic beverage control investigators.

34. Other State employees are required to follow prescribed ethical requirements of their professions, such as corrections officers and teachers. Other departments may have detailed codes that address employee conduct on such personal matters as relationships with other persons, such as the Departments of Corrections and Health and Social Services, and others may address off duty misconduct, such as Child Protective Services.

35. Trooper supervisors generally are reluctant to take grievances or complaints outside their own group. One reason for the reluctance to take complaints outside the troopers is pride in the troopers but another reason, at least in the past, has been fear of retribution. One trooper expressed a concern about forced transfer as retaliation for filing a grievance. This trooper also stated that law enforcement personnel were reluctant to take concerns to nonlaw enforcement personnel because "generally cops are the only other people besides ourselves, other cops, who understand what we go through both on and off work." They have similar problems with family, work, and supervisors, and they trust each other. APEA representatives concurred in the fact that trooper supervisors are reluctant to go public with a complaint or grievance. One noted that a bargaining representative may be unable to address a problem if the complainant is unwilling to come forward and file a grievance. Retired State trooper Kaiser did a lot of work outside of his assigned region for the supervising troopers when he worked as an APEA business representative between July of 1987 and July of 1992 because the supervising troopers were more comfortable with him.

36. Glass stated that APEA's inability to obtain parity with PSEA on contract issues and trooper supervisors' concerns about APEA's effectiveness as a representative discourage grievances. The reason apparently is that APEA's perceived

failures raise a question about APEA's adequacy as a representative in grievance proceedings. This statement, however, is not supported by the evidence. The evidence is that APEA files fewer grievances because it resolves more issues short of formal filing. On those three grievances filed on behalf of trooper supervisors, moreover, APEA has prevailed.

37. Dianne Corso, State labor relations manager, compared APEA and PSEA in the areas of final step grievance processing and arbitration. Corso stated that the style of the APEA supervisory unit is to attempt to resolve disputes short of filing a formal grievance and consequently they file a low number of formal grievances. The State and APEA also have a labor management committee that works through many of the issues without the necessity of a formal grievance. Corso believes APEA rarely files anything she would place in a frivolous category. Formal disputes are restricted to substantial differences of opinion between APEA and the State. The PSEA, on the other hand, files more grievances but does not pursue them all to arbitration. Corso had recently reviewed State arbitration statistics and the statistics for PSEA and APEA were similar.

38. APEA has pursued grievances on behalf of trooper supervisors. It grieved on behalf of Yakopatz and it grieved for overtime wages on behalf of two first sergeants for trooper transport work. APEA prevailed. At the time of the hearing APEA was in the process of addressing a problem with step adjustment that had been brought to its attention. A trooper supervisor testified that he had sought assistance from APEA and had found APEA and shop steward Yakopatz very helpful.

39. One incident was recounted in which the APEA refused to grieve. The issue was the loss of leave upon a promotion to the supervisory unit. Former PSEA business manager Robert Piazza stated that APEA would not take then first sergeant Yakopatz's grievance on this issue so the PSEA pursued the issue as a class action grievance and prevailed. This incident predated the term of the APEA's present business manager, Bruce Ludwig.

40. The real concern with the adequacy of APEA's representation, however, is not with its representation in grievances but its representation in contract negotiations. Trooper supervisors complain that the supervisory unit collective bargaining agreement does not address their needs. The primary complaint is compensation.

41. There is historic justification for this complaint. When Glass was promoted to supervisory status in 1982, a promotion from sergeant to first sergeant, he received a pay cut of \$182. This particular disparity, however, appears to have been favorably resolved in arbitration, with some supervisors receiving a back pay award. Kaiser stated that he had declined promotion out of the RCPSO for a period and, when he did promote to supervisory status in 1986, he received a decrease in pay of \$90. Kaiser also states this disparity was corrected. He put his situation in writing and the next round in bargaining addressed the pay issue.

42. There is a notion that the pay of supervising troopers has not kept pace with the pay of the troopers they supervise. One study group, for example, in 1992 concluded that pay levels for troopers should be established that are lower than the pay levels of their supervisors. Governor Hickel's Organizational Efficiency Task Force (July 1992) (extract), Exh. 2, at 2.

43. A number of troopers testified about their belief in a disparity in compensation between the APEA and PSEA collective bargaining agreements. Clontz believes that he makes less than his sergeant subordinates and that he has fallen behind them monetarily in a manner that will affect him the rest of his life. First Sergeant Joe D'Amico works in the administrative support unit of the director's office. He has a high level of responsibility and is in charge of regulations, legislation, the SWAT team, and training; he has 14 years with the troopers. D'Amico believes he supervises troopers who make more than he does. First Sergeant Boitnott believes there is a disparity in pay in the APEA agreement. The example he gave to illustrate the disparity is that a captain in the unit receives less pay than a lieutenant. This disparity can be explained by length of service or geographic differential.

44. Dianne Corso, State labor relations manager for the State and former APEA business agent, believes there is no wage disparity between the supervisory and RCPSO contracts. All RCPSO members are guaranteed and receive an increase in base pay upon promotion into the supervisory unit. Because she had heard claims of a disparity in compensation between the two units, she had the claims investigated. The Department of Public Safety's human resources manager examined the claims and found them without merit. Any wage differences between supervisors and subordinates were the result of differences in overtime entitlement or longevity.

45. Differences in overtime entitlement and geographic differential can have a significant impact on an employee and the decision whether to seek a promotion. According to Glass, a trooper in Bethel declined promotion because he would receive a monthly cut in pay of \$600. The geographic differential in this example is the real reason for the disparity. This trooper, Warren G. Grant, was promoted to sergeant in 1988 and currently is stationed in Bethel. Warren G. Grant declined a promotion to a first sergeant position in Anchorage, instead accepting a transfer to Bethel. He is nearing retirement and the geographic differential would increase his retirement payments. Retiring as sergeant with a nine step geographic differential rather than a first sergeant without the differential is more financially advantageous for Grant. He had other concerns about promotion, believing, if he went into a supervisory position as a first sergeant, he would be subject to forced transfer without the protection of the PSEA contract. He also has observed the amount of overtime the supervisory troopers work and is concerned about the absence of compensation for overtime. He stated that a promotion to first sergeant in Bethel would mean a \$95 increase in base pay which would be outweighed by the increase in the number of hours he would work without any overtime compensation. Sergeant Jeffrey Hall also has been discouraged from seeking promotion. Hall, a trooper since 1978 and presently assigned to Ketchikan as a major crimes investigator, has not taken the first sergeant examination because of a concern about job security. He is concerned that, if he promotes, he risks involuntary transfer, receives an adjustment to his leave bank, and loses opportunities for voluntary overtime. Longer hours and the absence of a financial incentive were also important factors discouraging his seeking promotion. First Sergeant Wayne Boitnott also testified about transfer between the RCPSO and supervisory bargaining units. Although apparently not discouraged from promotion himself, he related concerns about the loss of bump rights, overtime eligibility, and protection against polygraph tests. Boitnott did receive an increase in his base pay upon promotion to first sergeant.

46. The concern about leave adjustment is a result of the transfer from an annual and sick leave system, such as the RCPSO agreement, to a personal leave system, such as the supervisory unit agreement. This adjustment occurs on promotions from both the general government unit, represented by the Alaska State Employees Association, and from the RCPSO unit to the supervisory unit. The annual leave converts to personal leave but sick leave is apportioned. Part of the sick leave converts to personal leave and part goes into a medical leave bank, whose use is restricted.

47. One example of a genuine pay disparity in the terms of the PSEA and APEA contracts is a difference in the geographic differential in southeast Alaska. PSEA obtained in interest arbitration a two-step increase for its members located in southeast Alaska that the supervisors do not have in the APEA contract. One trooper stated that PSEA in 1990 bargained Cantwell down and obtained increases in Ketchikan, Juneau, and Sitka. APEA has not received this same adjustment. Sergeant Hall, a trooper in the RCPSO unit assigned to Ketchikan, stated that, if he were promoted to first sergeant in Ketchikan, he would lose pay in the amount of \$200 -- the difference between the two-step geographic differential for southeast Alaska and the absence of a similar provision in the APEA contract. This geographic differential was addressed by the APEA in negotiations with the State, but it was not successful in negotiating the increase.

48. Glass complained that PSEA had made greater gains for its unit in negotiations than APEA had. Another trooper supervisor, D'Amico, who was active in the PSEA unit as a negotiator of the 1990 contract, believes that PSEA is a leader on contract issues. However, a comparison of the wage gains of the two labor organizations since 1983 shows similar wage increases. See Exh. 101 (comparing wage gains in the PSEA and APEA contracts).

49. A comparison of the base wages effective today for the two units shows wages to be fairly comparable at the level of likely promotion. The highest ranked trooper in the PSEA unit is sergeant, at pay range 78. Class specifications, Exh. 5. On January 30 the PSEA contract provided for monthly payments of between \$4220--5878 for range 78, steps A-M. PSEA/State Agreement (unexecuted) Art. 15, § 2, Exh. 12, at 80. The lowest ranked supervisory trooper is a first sergeant, at range 21. Class specifications, Exh. 5. The APEA contract provides for range 21 in the amount of \$4314--5850.18, steps A-M. APEA/State Agreement, (1990--1992), Art. 24, § 1 & Appendix A, Exh. 3, at 73-74 & 122, adjusted for cost of living increases in 1991 and 1992 per Exh. 101. If funded, a negotiated increase in the amount of $6\frac{2}{3}$ percent would be added to the supervisory unit agreement's pay on July 1, 1995, to compensate for the change in the official supervisory unit work week from 37.5 to 40 hours per week. To insure that an increase in pay is obtained upon promotion in the unit, the APEA agreement guarantees it. See APEA/State Agreement, (1990--1992), Art. 24, § 6, Exh. 3, at 76-79.

50. Corso states that the State is required in its merit system to provide for career progression, which includes rewards for promotion. In part to insure compliance with this requirement, the State performs salary surveys. AS 39.25.010. Since contract cycles are not uniform through the various bargaining units, it is possible for contract gains in one group to interfere with the requirement for career progression. A bargaining representative can seek to negotiate a letter of agreement or the matter can be raised through a classification study. An example occurred recently with the supervisory unit after the interest arbitrator issued his award in the PSEA contract. Salary placement became an issue for the supervisors who had promoted during the three-year period in which PSEA did not receive a pay raise. The Department of Public Safety raised the issue for its supervisory employees who promoted from the lower salary base. A letter of agreement was negotiated with the APEA that adjusted step placement upon promotion to a supervisory position by retroactively adjusting the step and range placement of a number of trooper supervisory unit members. It also provided that future step advancement would be based upon the date of entry into the supervisory unit, rather than the date of adjustment in the agreement. Letter of Agreement (unsigned and undated), Exh. 7.

51. According to Piazza the APEA agreement has in it a provision that provides to public safety supervisors any pay increases negotiated by the RCPSO. Piazza called the clause a "me too" clause. It should insure that the supervisors base pay keeps pace with the base pay of the troopers they supervise. The dry cleaning allowance and provision for physicals in the RCPSO contract are also adopted by reference for public safety supervisors in the State/APEA contract. See APEA/State Agreement, (1990--1992), Art. 16, §§ 4 & 5, Exh. 3, at 37-38.

52. Another pay issue of concern was supervisors' general ineligibility for overtime. Because of changes in the law, the State's overtime obligations were higher than expected and the State was in the process of handling a number of claims for overtime by various bargaining units, including the supervisory unit. A strong bargaining objective identified by the State's labor relations manager was to agree to overtime pay only as required under the Fair Labor Standards Act. The State's goals are to restrict eligibility to persons eligible under the FLSA, to pay an overtime premium only after 40 hours, and to require that the 40 hours be work time and not include, for example, holidays. Corso believes the State is close to meeting these objectives in bargaining. Overtime and the effect on pay of troopers and supervisors in the Department of Public Safety was a subject of negotiation in the supervisory unit negotiations between APEA and the State.

53. Another of the pay issues concerning trooper supervisors was the existence of subordinates who are paid more than a supervisor as a result of length of State service. The State's range and step system that is used throughout State service rewards longevity. Both PSEA and APEA contracts have a range and step system. Both contracts reward longevity and in both bargaining units there are subordinate employees who earn more than their supervisors due to step advancement resulting from length of service. This issue is not unique to the trooper supervisors.

54. Other differences in the APEA and PSEA contracts of concern to troopers testifying include the difference in provisions addressing moving allowance, and the absence of a procedure for internal investigations and of a provision for on-the-job injuries. The difference in moving allowances is that PSEA members are entitled to move 12,000 pounds at State expense while the APEA members are limited to 10,000 pounds. The PSEA agreement has provisions for internal investigations and indemnification that respond to the exposure troopers have to accusations of wrongdoing due to the nature of their duties. The RCPSO contract provides full indemnification for civil and criminal costs for troopers later proved innocent as a result of an incident occurring in Fairbanks six years ago. Another difference is the absence in the APEA contract of a provision for on-the-job injuries. The RCPSO agreement provides for full pay for one year for members injured in the course of their duties.

55. Another concern named was the absence in the APEA contract of a provision for administrative leave, although the State apparently has not denied reasonable requests for administrative leave and the supervisors had not expressed this concern to APEA.

56. Yet another concern was loss of the right to bump back into the RCPSO unit if a trooper supervisory position were eliminated. An employee retains the right to bump after transfer out of the unit only for a period of one year. Corso states that, as a general rule, bumping is not permitted between units and the State was in extended discussions with the supervisory unit before third parties on the issue of bump rights.

57. A perceived difference in the agreements on the subject of forced transfer was another concern. The PSEA agreement requires the State to justify an involuntary transfer and take seniority into account. PSEA/State Agreement, Art. 12 (1990-1991), Exh. 4, at 27-32; PSEA/State Agreement, Art. 15 (1991-1994), Exh. 12, at 48-56. However, APEA has addressed this concern and had negotiated a letter of agreement with the State limiting involuntary transfer to once every 5 years and only for the betterment of the department and providing for arbitration of disputes. State/APEA letter of agreement, Exh. 8. Corso explained that the transfer provisions in most of the bargaining agreements tracked the personnel rules, which address "for the good of the service transfers." Under the rules an employee transfer can be appealed to the director of the division of personnel. 2 AAC 07.210. The issue arose recently in Corso's experience in two departments, public safety and revenue. The APEA as the supervisory unit representative represented both employees. The public safety employee dispute was resolved in the employee's favor and the revenue case was pending grievance arbitration, as provided in the new APEA agreement.

58. State/PSEA contracts are the product frequently of binding interest arbitration. Robert M. Piazza, labor consultant and retired business manager for PSEA, estimated that PSEA had gone to interest arbitration four times in the previous 11 years. With the exception of one year when the State went to interest arbitration on four contracts, including the supervisory unit agreement, APEA has not proceeded to interest arbitration for the Class 1 employees in the supervisory unit. At one point John Glass was on the APEA executive board. He stated that, in a conference with Bruce Ludwig and Cherie Shelley about binding interest arbitration for Class (a)(1) members of the unit, they stated a belief that proceeding to binding arbitration would fractionalize the unit.

59. Corso's impression of the relative successes of the RCPSO and supervisory units in negotiation was that PSEA had made gains for the RCPSO unit through interest arbitration that other employees had not been able to achieve through negotiation. The example she provided was criminal indemnification. She felt that in the early years, late seventies and early eighties, PSEA had fared better on economic issues. She believed the negotiated modification of the most recent interest arbitration award had brought the RCPSO unit into conformity on monetary issues with most of the other units' negotiated agreements. Corso compared the terms of the two collective bargaining agreements and noted two terms that APEA has that PSEA lacks: a legal trust provision and protection of travel incentives, such as airline awards.

60. Although the trooper supervisors have concerns about contract issues, none attempted to communicate those concerns to APEA, with the exception of Glass, whose most recent discussion had been before 1990. For example, Boitnott stated he had not raised his concerns with APEA.

61. APEA made an effort at the commencement of bargaining to discover the concerns of its membership by surveying them for bargaining interests and goals. Clontz stated he did not return the survey. In addition to the written survey, Jay Yakopatz, trooper supervisor and member of the APEA negotiating team, telephoned all of the officers in the unit to solicit information to help in bargaining.

62. Surveying the membership is one of two methods PSEA uses to prepare for bargaining. Another is to review the history of the parties' relationship during the contract period to discover problems with the contract language.

63. The supervisory troopers were estimated to comprise about three percent of the supervisory unit yet have had a trooper supervisor on several negotiating teams. Currently Lieutenant Jay Yakopatz, a supervisory trooper, serves as one of three members on the negotiating team and has been a member of the negotiating team for four years. Yakopatz stated that he raised issues of concern to the trooper supervisors in bargaining. State representative Corso remembered that one of the APEA negotiators came from the Department of Public Safety and that he commented about most issues' application to that department. She remembered APEA raising two issues specifically for Department of Public Safety supervisors that required extended discussion -- transfers and pay differentials. Corso expressed the opinion that Yakopatz's representation of public safety concerns was detailed, extensive, and based on his experience in the department.

64. APEA notifies its members of meetings.

65. The smallest of the 11 State bargaining units is either AVTECA or TEAM, depending on the date. Both are education units. AVTECA, affiliated with NEA-Alaska, represents approximately 20 employees at the vocational and technical center located in Seward and Team represents the teachers at Mt. Edgecombe.

66. An increase in the number of bargaining units would increase the labor relations workload. It would increase the number of agreements to be negotiated, which could affect the State's ability to respond to grievances and other labor relations matters.

Procedural History

67. PSSA filed its petition to represent the Alaska State Trooper supervisors on March 31, 1994.

68. On May 2, 1994, the Agency confirmed that PSSA supported its petition with a showing of interest from at least 30 percent of the members of the proposed unit.

69. On May 16, 1994, intervenor APEA filed its notice of objection to the petition.

70. The various work sites of affected employees were posted by June 10, 1994.

71. On June 14, 1994, respondent State of Alaska filed its objection to the proposed unit.

72. At a prehearing conference on June 17, 1994, this matter was set for hearing on October 10 and 11, 1994. Because the hearing did not conclude, an additional day of hearing was scheduled for December 19, 1994, and later rescheduled to January 30, 1995, at petitioner's request.

73. On July 13, 1994, the State confirmed posting of the petition in various work sites in the Department of Public Safety.

74. The record closed on January 30, 1995.³

Preliminary Matter: motion to dismiss

Respondent State and Intervenor APEA jointly filed a motion to dismiss at the hearing on October 10, 1994. Petitioner PSSA opposed the motion on October 26, 1994.⁴ The basis of the motion is the absence in the Public Employment Relations Act of any specific authorization for decertification of a part of a bargaining unit. The movants rely also on National Labor Relations Board case law that they argue requires a decertification election to be in a unit "coextensive with the certified or recognized unit." Motion to Dismiss, p. 2.

The movants argue that allowing subgroups of employees to sever from a unit would disrupt established bargaining relationships. They argue further that this disruption would neither promote harmonious and cooperative relations nor contribute to orderly operations of government, which are the policies underlying PERA, AS 23.40.010.

The National Labor Relations Board did in fact rely on some of movants' arguments when it issued decisions in its early history that it was not authorized to split appropriate units. See American Can Co., 13 N.L.R.B. 1252, 4 L.R.R.M. (BNA) 392 (1939).⁵ In the case of craft severance, however, the position of the NLRB on the issue of changing existing units has evolved to allowing craft severance from an existing unit if a number of criteria are satisfied. This position, set forth in Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) 1011, 1016 (1966), has been applied by this Agency and its predecessor the State Labor Relations Agency in a number of cases. See, e.g., International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153 (Mar. 24, 1993); Alaska Correctional Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 105 (May 14, 1987).

Meeting the requirements for severance set forth in Mallinckrodt and in 8 AAC 97.025(b) is difficult largely in recognition of the likely disruptive effect of severance on the units and collective bargaining. See generally 1 Patrick Hardin, The Developing Labor Law 462-467 (3d. ed. 1992).

This Agency and its predecessor have a long history of consideration of craft severance petitions. Public Safety Employees Ass'n, Inc., and Alaska Public Employees Ass'n, SLRA Order & Decision No. 106, at 8 (May 14, 1987). See also International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153;

Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 112 (Mar. 22, 1988); Alaska Correctional Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 105. Such petitions are expressly authorized in 8 AAC 97.025(b). That regulation sets forth the filing requirements for a petition to sever a group from an existing unit. It establishes a procedure to address matters pertaining to representation and unit composition under the Agency's authority in AS 23.40.090 and AS 23.40.100.

Allowing petitions to sever is consistent with the declaration of policy in AS 23.40.070, which strongly endorses public employees' self-determination. We appreciate the potential disruptive effect, however, of a severance petition on labor relations and the consequent disruption on the business of the public employer. These are the reasons why, under 8 AAC 97.025(b), a group seeking separate representation must demonstrate some deficiency in the representation in the larger unit.

These petitions are authorized, and the Agency will consider this one. The prehearing motion to dismiss is denied.

Conclusions of Law

1. The State of Alaska is a public employer under AS 23.40.250(7) and PSSA and APEA are organizations under AS 23.40.250(5). The Alaska Labor Relations Agency has jurisdiction under AS 23.40.090 and AS 23.40.100 to consider this petition.
2. As petitioner, PSSA has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).
3. The trooper supervisors PSSA seeks to represent in a separate unit currently are in the State supervisory unit, established in SLRA Order & Decision No. 8, Concerning the Petition for Collective Bargaining Representative of Supervisory Employees of the State (Jan. 17, 1974).
4. This petition was filed on March 31, 1994. The one-year collective bargaining agreement between the State and the APEA at that time was due to expire on June 30, 1994. AS 23.40.100(c) bars the conduct of an election during the term of a collective bargaining agreement except during a 90-day period preceding the expiration of the contract. A decertification petition must be filed between 150 and 90 days before the contract expires. 8 AAC 97.060(e)(3). The petition was therefore timely filed.
5. For an election to proceed, a proposed unit must be an appropriate unit. Determining the appropriate unit for collective bargaining generally 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, bargaining units must be as large as is reasonable to avoid unnecessary fragmenting. AS 23.40.090.
6. Because of the strong bond shared between trooper supervisors and the troopers in the RCPSO, it is important to note the prohibition against combining supervisors with the employees they supervise in the same bargaining unit. A bargaining unit that combines State "supervisory personnel with nonsupervisory personnel" is per se an inappropriate unit. 8 AAC 97.090(1). A justification for the prohibition is the conflict of interest inherent in the relationship between a supervisor and the employees supervised.
7. Because PSSA seeks to sever a unit from an existing unit, it must also prove the five factors in 8 AAC 97.025(b):

[I]f a petition for certification proposes to sever a bargaining unit from an existing bargaining unit, the petition must 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 that have traditionally been represented in the same unit;

- (3) why the employees in the proposed unit have a community of interest that 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; and
- (5) why the grant of the petition will not promote excessive fragmentation of the existing bargaining unit.

8. This Agency also takes into account the six factors that the NLRB reviews in craft severance cases listed in Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) 1011, 1016 (1966):

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.

International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153, at 3-4.

9. The factors in 8 AAC 97.025(b) and Mallinckrodt in conjunction with the prohibition against unnecessary fragmenting in AS 23.40.070 impose a significant burden to the petitioner seeking to carve out a smaller unit from an existing unit. International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153; Alaska Institutional Security Employees Ass'n v. Alaska Public Employees Ass'n, SLRA Order & Decision No. 112, at 8.

10. Community of interest. The proposed unit is composed exclusively of Alaska State trooper supervisors. All of the members of the proposed unit have advanced through the ranks of the trooper classifications represented in collective bargaining in the RCPSO unit by PSEA. The various classifications of troopers display a sense of community with each other as a result of their shared training, experience, and responsibilities. This bond is one factor supporting a trooper supervisory bargaining unit.

11. Despite this bond, the supervisors' principal responsibility and most of their duty time is spent in administrative and supervisory duties. They spend comparatively little time performing the work of the troopers they supervise, although there are differences depending on rank and assignment. Although these supervisors oversee law enforcement activities, they share their supervisory duties with all other members of the supervisory unit. That they feel a stronger community with each other than with the larger community of supervisors is not surprising and probably not unlike many other

supervisors in the bargaining unit.

12. As the State has argued, these shared supervisory responsibilities are significant. The supervisors in the various departments supervise in the same way as a result of a centralized system resulting from the State Personnel Act, AS 39.25.010--39.25.220, personnel rules, 2 AAC 07.085--2 AAC 07.810, the rights State employees have in common, AS 39.26.010--39.26.020, State pay and leave laws, AS 39.27.011--39.27.045, and Department of Administration required procedures. These shared responsibilities are the basis of a community of interest with all other State supervisors in the supervisory unit.

13. Wages: The trooper supervisors currently are paid under the pay scale in the APEA negotiated agreement for the supervisory unit. They are ineligible for overtime, with some exceptions as when performing overtime eligible work. They may receive a geographic differential under the contract. While shift differential, hazard pay and standby pay are available under the APEA agreement, the trooper supervisors due to their duties and assignments as supervisors generally do not receive such pay. Unlike their supervisors, troopers in the RCPSO generally do qualify for overtime, shift differential, and depending on work site, geographic differential.

14. Hours: The trooper supervisors generally work the hours of supervisors or professionals; that is, they are assigned a regular work shift but generally work longer hours without additional compensation. Their responsibilities, like those of other supervisors, may require them to be available during their off duty time and they may even be interrupted from leave if they are needed.

15. Other working conditions: Other working conditions do not justify a change in unit placement. The trooper supervisors share restrictions on their personal lives with troopers in the RCPSO and some of the other employee classifications in the supervisory unit. The fact that they may wear a uniform and usually are armed are working conditions they may share with other troopers, depending on their personal preferences and their particular supervisor. Trooper supervisors in the proposed unit are Class (a)(1) employees under AS 23.40.200, ineligible to strike. All of the RCPSO unit is Class (a)(1) but so is 20 percent of the supervisory unit. Their working conditions as principally administrative and supervisory employees are more similar to those of other supervisors than those of troopers involved in direct law enforcement duties.

16. Desires of employees: This factor appears to support severance. The moving force behind the petition is Lieutenant Glass. He testified that half of the members of the proposed unit had signed cards supporting a change in bargaining representative. Several trooper supervisors testified in support of a change in representative but one trooper testified against a change. Certainly if the witnesses were representative of the supervisory troopers, more of them support severance.

17. Unnecessary fragmentation: The proposed unit does not include all of the supervisors of job classes represented in PSEA. It does not include, for example, supervising airport safety officers. It does not even include all supervisors in the Department of Public Safety. Excluded are the supervising fire marshal classes who are in the Department of Public Safety who are represented by PSEA until they are promoted to supervisory status. The unit proposed is exclusively trooper supervisors. Because the unit is small, composed of a single class series, and bears no relation to existing bargaining units and the State's departmental organization, it could promote excessive fragmenting. The issue of unnecessary fragmentation is a significant one. Other larger units, such as units of all RCPSO supervisors or all Department of Public Safety supervisors, might be as reasonable as the unit PSSA proposes. We cannot conclude in this case that the proposed unit is "as large as is reasonable" under AS 23.40.090.

18. History in unit and potential for disruption: These supervisory positions have been in the existing supervisory unit at least 21 years. Dividing the supervisory unit into a number of smaller craft, professional or other supervisory units could be very disruptive. Creating an additional small unit would not serve the goal of stable labor relations and is not justified by the record in this case.

19. Craft history: There is a tradition under PERA and in labor relations generally of separate units for law enforcement personnel. Public Employees Local 71 v. Bristol Bay Bor., Decision & Order No. 181 (Dec. 16, 1994); Public Safety Employees Ass'n and Alaska Public Employees Ass'n, SLRA Order & Decision No. 106, at 4 (May 17, 1987); Pertaining to a Unit Authorization Petition by the Public Safety Employees Ass'n, SLRA Order & Decision No. 28

(Jan. 3, 1977); National Labor Relations Act § 9(b)(3), 29 U.S.C. § 159(b)(3) (prohibiting units mixing plant guards with other employees). The fundamental justification for segregating law enforcement into a separate unit is the conflicts of interest with other employees inherent in their law enforcement duties. See Village of Skaneateles, 16 New York PERB 3070 (1983), relied upon by PSSA in its brief, at 5 (Sept. 30, 1994). These employees supervise but only incidentally perform law enforcement duties and we are unaware of a tradition or craft history that supports their segregation from nonlaw enforcement supervisors.

20. Adequacy of representation: This requirement recognizes the inadequacies of the existing representative as a rationale for disrupting the existing unit boundaries. The evidence showed that trooper supervisors have unrealistic expectations of their bargaining representative. Without communicating their concerns, they expect APEA to respond to them. Even a concern that had been addressed, involuntary transfer, remained a complaint. Other concerns, such as loss of bump rights and conversion of annual and sick leave to personal leave, were the result of moving from one bargaining unit to another rather than with any inadequacies in APEA's representation.

21. The trooper supervisors attempt to demonstrate the inadequacy of APEA's representation by comparing their contract with the RCPSO contract. The comparison reveals differences but those differences do not establish that APEA's representation is inadequate. Concerns about loss of overtime, shift differential, and geographic differential are more the result of a change from the rank and file to supervisor than with any inadequacies in APEA's representation. Few senior supervisors are located in the remoter State work sites that pay a geographic differential. Most supervisors work a regular shift and do not qualify for a shift differential. Supervisors as a general rule do not qualify for overtime, although they may work more than the regularly assigned duty hours. The APEA bargaining agreement does address geographic and shift differentials and overtime eligibility. Changing bargaining units or bargaining representatives will be unlikely to affect these supervisors' eligibility for payment under these provisions.

22. The example of a wage disparity that withstood scrutiny was the difference in geographic differential for southeast Alaska in the two contracts. A contract provision cannot, however, be viewed in isolation. The contract periods for the various contracts are different and the concerns of the members will vary from unit to unit. All bargaining unit agreements will not have all of the same terms. A gain in one subject area may have been the result of a trade-off in another. APEA did seek a pay differential from the State for southeast Alaska but was not successful. This difference does not demonstrate APEA's inadequacy as a bargaining representative.

23. The trooper supervisors also argue that APEA is an inadequate representative because its contract does not include many of the same terms as the PSEA contract, such as provisions for internal investigation, indemnity, and job related injury. These subjects were raised by PSEA in bargaining because of specific incidents involving RCPSO members that arose under the contract. These incidents were largely a result of the law enforcement responsibilities of the troopers in the RCPSO. The trooper supervisors complain about the absence of such provisions in the APEA agreement. As both PSEA and APEA representatives testified, a bargaining representative raises issues at the bargaining table as a result of polls of the members or problems arising under the contract. The trooper supervisors, however, do not participate in the polls or raise their concerns directly with APEA. None of the witnesses provided any instances of coworkers in the unit harmed by the absence of these provisions so APEA could not have been aware of the concern through incidents under the contract. The evidence does not support the conclusion that APEA's representation in bargaining issues has been inadequate.

24. The evidence supporting the adequacy of the representation on behalf of the trooper supervisors included the presence of Lieutenant Jay Yakopatz on the bargaining team. He insured that issues of interest to the Department of Public Safety supervisors were addressed and impacts of proposals of these employees were considered. In addition a former business representative for the APEA is a retired State trooper, David R. Kaiser. The evidence supports the conclusion that the APEA is aware of and responsive to trooper supervisor concerns.

25. The concern about the adequacy of APEA in grievance proceedings is unfounded. While the grieving styles of the two bargaining representatives may be different, their success rates in grievance arbitration are not. APEA recounted several specific instances where it had pursued grievances successfully for trooper supervisors. If there is a problem in the area of addressing trooper supervisor grievances, it is the reluctance of the trooper supervisors to grieve. This reluctance was attributed to various factors, including pride in the division and fear of retribution, which are beyond

APEA's control.

26. The claim that APEA is less effective because it fails to proceed to interest arbitration is a puzzling one. Interest arbitration is the impasse tool equivalent to a strike for strike ineligible employees. It demonstrates a breakdown or failure in bargaining and does not represent success.

27. PSSA. The qualifications of the petitioner is one of the factors considered in Mallinckrodt. PSSA is an organization activated for the purpose of representing these employees. It has no track record or organizational experience in representation, although there are trooper supervisors in the proposed unit who have been active, principally for PSEA, in collective bargaining matters. PSSA probably would lack the membership and dues to lodge a quarter of a million dollar contract battle with the State such as the PSEA did. While PSSA would not be as small as the two smallest of the State units, which have about 20 members, it would be a statewide unit and have additional expenses for travel and communications. However, smaller organizations have successfully represented bargaining units under PERA. While there are limitations, they can be viable entities with sufficient commitment from the members. The trooper supervisors by their participation in the hearing, both personally and financially, have demonstrated commitment to PSSA.

28. In weighing the criteria under the burden a petitioner must carry to justify severance of a group of employees from an existing unit, we conclude on balance that the Public Safety Supervisory Association has not justified severing the trooper supervisors from the State supervisory unit represented by APEA. The trooper supervisors share responsibilities, wages, and hours and other working conditions with the other supervisors in the supervisory unit. The community of interest trooper supervisors have with other troopers is significant. On the other hand, severing them would create an additional small unit. The unit that is created is not the largest reasonable unit and therefore it would unnecessarily fragment the supervisory unit. Additional small units represented by relatively inexperienced representatives could disrupt labor relations and affect the conduct of the public's business. In addition, the PSSA did not establish any inadequacy in the representation of the trooper supervisors in their current unit.

ORDER

1. The petition of the Public Safety Supervisory Association to sever the trooper supervisors employed in the Department of Public Safety from the State supervisory unit and represent them in a separate unit is hereby **DISMISSED**;
2. 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, serve each employee affected personally. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Stuart H. Bowdoin, Jr., Vice 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 the Decision and Order in the matter of PUBLIC SAFETY SUPERVISORY ASSOCIATION v. STATE OF ALASKA, AND ALASKA PUBLIC EMPLOYEES ASSOCIATION, AFT, AFL-CIO, Case No. 94-297-RD, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 25th day of May, 1995.

Victoria D. Scates

Administrative Clerk III

This is to certify that on the 25th day of May, 1995, a true and correct copy of the foregoing was mailed, postage prepaid to

Mauri Long/PSSA

Dennis Geary/APEA

Art Chance/State

Signature

1There was a suggestion at the hearing that the PSSA may at some point affiliate with the Public Safety Employees Association, representing the regularly commissioned public safety officers in the State, i.e., the trooper employees the trooper supervisors supervise. PSSA polled the 38 trooper supervisors on whether they would want to associate with another unit such as PSEA. 29 returned the survey forms. 26 supported affiliation with PSEA and three opposed affiliation. We decline to speculate on affiliation but note that a decision to affiliate would not materially affect our decision.

2Piazza stated that previously, in 1984 or 1985, he had been approached by a group of trooper supervisors about representation. He told him that they were not in a window period at that time, and they did not return.

3Added to the record on April 3, 1995, is a written offer of proof filed by PSSA. The offer was not in the record reviewed by board panel assigned to this case, but will be part of the record in the event of appellate review.

4This Agency does not provide specifically for motions to dismiss or other dispositive motions but does provide generally for motions in 8 AAC 97.390. Under 8 AAC 97.390(c) a party opposing a motion may have 10 days to respond to it. Motions to dismiss or for summary judgment can be an efficient way to address a petition or complaint if they are filed before a hearing because they could dispose of the hearing and avoid the time and expense that necessarily attend it. Filing such a motion at the hearing, however, has the opposite effect. The record must remain open a minimum of ten days to allow opposing parties an opportunity to respond. The motion will preclude the record from closing and delay decision. Parties are urged to address such issues in a prehearing brief if they cannot file their motion sufficiently before the hearing.

5See also W.T. Grant Co., 179 N.L.R.B. No. 114, 72 L.R.R.M.(BNA) 1434 (1969); Campbell Soup Co., 111 N.L.R.B. No. 36, 35 L.R.R.M.(BNA) 1453 (1955), cited by movants.