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PUBLIC SAFETY EMPLOYEES)
 ASSOCIATION (Weigh station operators),)
)
 Petitioner,)
)
 vs.)
)
 STATE OF ALASKA,)
 DEPARTMENT OF PUBLIC SAFETY,)
)
 Respondent,)
 and,)
)
 ALASKA STATE EMPLOYEES ASSOCIATION,)
 AFSCME LOCAL 52, AFL-CIO,)
)
 Intervenor.)
 _____)
 CASE NO. 95-377-RD)

DECISION AND ORDER NO. 201

This case was heard on September 19 and 21, 1995, before a panel of the Alaska Labor Relations Board, with Vice Chair Stuart H. Bowdoin, Jr., and Board Members Karen J. Mahurin, and James W. Elliott participating on the basis of a review of the record. Hearing examiner Jan Hart DeYoung presided. The record closed on October 20, 1995, with the filing of written closing statements.

Appearances:

James A. Gasper, Jermain, Dunnagan & Owens, P.C., for petitioner Public Safety Employees Association; Art Chance, labor relations analyst, for respondent State of Alaska; and Don Clocksin, attorney, for intervenor Alaska State Employees Association, AFSCME Local 52, AFL-CIO.

Digest:

1. The petitioner has not satisfied the requirements to sever the commercial vehicle inspectors from the general government unit.
2. Adding the commercial vehicle inspectors to the public safety officers unit would not make an appropriate unit.

DECISION

A hearing was conducted on September 19 and 21, 1995, at which the parties presented testimony and other evidence. Upon consideration of the record, the panel finds the facts as follows:

Findings of Fact

1. The Public Safety Employees Association (PSEA) is recognized by the State of Alaska as the bargaining

representative of members of the public safety officers unit.

2. The Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA), is recognized by the State as the bargaining representative of the general government unit (GGU), which consists of a range of positions, from clerical to professional employees. STATE/ASEA Agreement (1990 -- 1993), Exh. 6, at 2; STATE/ASEA Letter of Agreement (eff. July 1, 1995 -- June 30, 1996), Exh. 7, at 2; STATE/ASEA Agreement (eff. July 1, 1996 -- June 30, 1999), Exh. 7, at 73.

3. In this petition PSEA seeks to sever from ASEA's general government unit and add to its public safety officers unit approximately four inspector positions employed in the Department of Public Safety. These positions share the class specification of weigh station operator (WSO) with a number of other positions in the general government unit. There are 30 positions in the weigh station operator classification code (2458) in the general government unit's roster of employees. Exh. 207. Of this number, six are in the Department of Public Safety. Four of the six Public Safety positions are filled. Exh. 207, at 2. The remaining WSOs are in the Department of Commerce and Economic Development. Exh. 207, at 5; see also Exh. 210.

4. PSEA uses the term "commercial vehicle enforcement officers" to distinguish the four weigh station operators in the Department of Public Safety from those in the Department of Commerce and Economic Development. This is the name preferred by Wayne Renz, one of the incumbents. The State's PDQ for the position provides the working title "commercial vehicle inspector." This decision will use the term "inspector" to refer to the Public Safety weigh station operators.

5. The question is whether the inspectors in the Department of Public Safety share a community of interest with the Alaska State troopers and other positions in the public safety officers unit or with the other WSOs and positions in the GGU. Exh. 1.

6. The class specification for the class series weigh station operator covers both the inspectors and the weigh station operators in the Department of Commerce and Economic Development. It provides that weigh station operators I

perform inspections to enforce regulations governing the in-transit operation and safety of heavy duty commercial vehicles such as tractor trailers, trucks, buses and caterpillar or other earth-moving equipment. Incumbents inspect vehicles and enforce pertinent regulations relating to vehicle weight, size, load and condition of equipment. The Weigh Station Operator class series includes field and office enforcement work.

Exh. 1, at 1. Thomas Sanborn, a Commerce WSO, states this description accurately describes the duties he performs. The class specification for weigh station operator II is similar. The duties distinguishing the WSO II from the WSO I are budget and supervisory responsibilities. Exh. 2, at 1.

7. The position description questionnaire (PDQ) for Raymond Champagne, a WSO I in Commerce, provides the specific duties for that position. Exh. 208. The PDQ states the position spends 55 percent of work time weighing and inspecting 5-ton and bigger trucks for compliance with State size and weight statutes and regulations. The balance of the work time is spent in the duties logging trucks, checking and issuing oversize and overweight permits, following the preshift checklist, issuing traffic citations, and appearing in court to defend citations, among others. Exh. 208, at 3; see also Exh. 212.

8. The history of commercial vehicle enforcement shows responsibility shifting between the departments of Public Safety and Commerce. In 1982 Public Safety was responsible for weights and measures. In 1984 Commerce took over the weigh stations. The weigh station operators performed their duties under the Alaska Transportation Commission. When the Commission was abolished in the early 1980's, the positions were moved to Commerce. Throughout this period the WSOs were in the general government unit, represented first by the Alaska Public Employees Association and later by ASEA. In 1988 the Alaska Highway Safety Planning Agency started to look into vehicle safety inspection. In 1989 Officer Bradley Brown assisted with the development of a vehicle safety inspection program. Brown wrote the job descriptions and recommended the creation of a new job class of commercial vehicle inspector.

9. Brown's recommendations were considered by Department of Public Safety personnel officer Fran Kinney. She rejected the new commercial vehicle inspector job class and, because of the similarity of duties, recommended that four of the new positions be made weigh station operators I. Exh. 217, at 1. The positions were placed in the WSO job class in the GGU. Public Safety hired several WSOs to implement the program, including Dean Adams and Bill Hogg from Commerce. The initial incumbents did not have an opportunity to vote in a representation election or otherwise express a preference for either their unit placement or bargaining representative.

10. The position description questionnaire for the Department of Public Safety inspectors reflects the position's similarities to the WSO positions in the Department of Commerce and Economic Development. Officer Brown, the Alaska State trooper who currently supervises the inspectors, stated the commercial vehicle inspector PDQ describes the duties in much greater detail than the WSO PDQ, but the duties are similar. The inspector PDQ states that 15 percent of work time is spent in driver vehicle inspections, which are described step-by-step. The inspector approaches the driver; identifies him or herself; obtains and inspects the driver's license, medical certificate, registration, and bill of lading; observes the driver for indications of alcohol or drug use; and checks the manifest. The PDQ also includes a detailed description of the mechanical inspection procedure. Other duties include cargo tank inspection (10 percent); concluding the inspection (10 percent); preparing reports (5 percent); and conducting commercial vehicle inspections in a terminal (18 percent). Exh. 211, at 8-11. One inspector, Wayne Renz, stated this PDQ accurately describes his job duties.

11. Renz compared his duties as an inspector to the duties listed in the class specifications for WSO. The only duty named that he did not perform as an inspector was the operation of a fixed scale. He does, however, operate a portable scale, which he carries in the truck and uses to weigh the axles. In addition, WSOs can modify and reissue overlength and overweight permits, unlike inspectors who do not have this authority. Renz also noted that he performed duties in addition to those named in the class specification -- he reviews the registration, checks for expired or revoked licenses, pulls vehicles over, calls N.C.I.C. for information on a driver, and confirms the accuracy of shipping papers. Of these additional duties, the only one WSOs do not also perform is to pull vehicles over. WSO Sanborn in describing the differences between his job and that of an inspector noted that he does not park a vehicle for a driver or perform as detailed an inspection as the inspectors do. He does not, for example, inspect the transmission. The nature of the inspections performed by inspectors and WSOs does differ some. The inspectors have more responsibility for hazardous loads and driver checks, while the WSOs deal mainly with overlength and overweight issues, although they do some hazardous materials enforcement. However, when the duties and responsibilities of the inspectors and WSOs are compared, they are significant for their similarities, not their differences.

12. A difference between inspectors and WSOs is where the work is performed. Inspectors work throughout the State mainly from their vehicles. Inspector Renz spends about 80 percent of his time in Anchorage, traveling to other parts of the State. The inspectors pull over the commercial vehicles they inspect. They may talk to the driver on the CB or, if necessary, use a red light and siren. Photographs of a vehicle used by an inspector were admitted into the record. Exh. 8. The vehicles in the photographs include the Alaska State trooper wave shield, but the shield has since been removed and the vehicles now have regular State vehicle license plates, rather than Alaska State trooper plates. Exh. 8, at 5 & 7. In contrast, only the supervising WSO drives a State vehicle. WSOs mainly work at fixed weigh stations. There are four in Fairbanks, three in Anchorage, one in Tok, and one in Sterling.

13. The inspectors are located organizationally in the Department of Public Safety. They are supervised by an Alaska State trooper, who is a member of the PSEA public safety officers unit. Bradley Brown supervised the inspectors from June of 1990 to July of 1993 and was reassigned to the unit in July of 1995.

14. Three groups of employees play a role and work as a team in the enforcement of the commercial vehicle laws -- law enforcement officers such as the Alaska State troopers, commercial vehicle inspectors, and weigh station officers. The inspectors maintain contact with both the troopers and WSOs and interact and communicate on a regular basis. Renz states he has radio contact with the Alaska State troopers and CB radio contact with the WSOs.

15. Inspector interactions with a trooper or local police officer could consist of a call for assistance, if, for example, a driver were intoxicated or a vehicle were reported stolen. An inspector could render assistance to an officer at an accident scene. A WSO could also interact with a trooper or police officer. WSO Thomas Sanborn stated he would

contact an officer if a driver were refusing to follow his instructions to "deadline" a vehicle or if he detected a safety issue. He gave an example of an instance when he notified trooper Brown of a safety problem and Brown responded by dispatching an inspector to inspect the vehicle. Both inspectors and WSOs could be called on to assist law enforcement officers. An inspector and a WSO each stated he had assisted as an unarmed guard in the transfer of a prisoner. Inspectors and WSOs might interact at the weigh station facilities, which an interdepartmental agreement allows the inspectors to use.

16. As employees of the Department of Public Safety, the inspectors are subject to its SOP (standard operating procedures manual). However, the inspectors are civilian employees and subject to the civilian provisions. SOP provisions addressing the use of force, traffic enforcement, warrant procedures, and polygraph procedures do not apply to inspectors. Exh. 3, at 1-2. The WSOs likewise are subject to a department procedural manual, the administrative permit manual, issued by the Department of Commerce and Economic Development. Exh. 215.

17. The relationship between the duties of the Commerce weigh station operators and the Public Safety inspectors is shown by the fact that most inspectors began as WSOs. For example, Wayne Renz worked as a seasonal WSO before his employment as an inspector in 1991. Thomas G. Sanborn, a weigh station operator, applied for the inspector position but was not hired. The impact of this is significant. The State must hire off the same list for both inspectors and WSOs. In contrast, the inspectors are not on a career path with the Alaska State troopers.

18. All inspectors and WSOs can issue citations for certain commercial vehicle violations, enforcing federal regulations in Titles 23 and 49 and State regulations in 3 AAC 35.110 -- 3 AAC 35.400 and 17 AAC 25.010 -- 17 AAC 25.900. Exh. 211, at 3; Exh. 214; Exh. 215; Exh. 216. In addition both groups of employees testify in court, put vehicles out of service, conduct inspections, check driver paperwork, and weigh and measure vehicles. Both groups have access to the State's criminal records computer system (APSIN).

19. Both inspectors and WSOs possess some law enforcement authority but neither are certified by or meet the standards of the Alaska Police Standards Council, in contrast to the members of the public safety officers unit, all of whom are currently certified.

20. The inspectors are issued certificates of commission as special officers and carry identification stating that fact. Exh. 4; Exh. 9. In contrast, WSOs are not issued these certificates. The inspectors' certificate of commission states:

Said [Name] is duly appointed by the State to assist the Alaska State Troopers, and is authorized to act as an Officer in the actual performance of commercial vehicles inspections. Enforcement authority is to 13 AAC 4 (with exception of 13 AAC 4.320 through 4.420), 13 AAC 5, 13 AAC 6, and 13 AAC 8; AS Title 28 as it directly applies to motor vehicle registration, driver licenses, commercial vehicles, and school buses; and 3 AAC and 17 AAC under the authority of AS Title 19 as it applies to size and weight enforcement in his or her duties as: Weigh Station Operator I, Division of Alaska State Troopers, Department of Public Safety.

Exh. 9, at 1. The commission notes that the carrier is not authorized to carry a concealed weapon while on duty. Id. However, like the WSOs, the inspectors may not use deadly force or any force greater than any citizen can use. Inspectors may not restrain persons or use such defensive weapons as pepper spray or the collapsible baton.

21. One area where the two groups differ is training. All parties acknowledge the more extensive training of the inspectors. The Department of Public Safety provides more extensive training than the Department of Commerce and Economic Development for this work. Renz described his initial training as an inspector as including hazardous materials, brakes, and driving. Renz initially described his training as including defensive weapons training but this training was not provided by the Department of Public Safety.

22. Another difference is the wearing apparel on the job. Inspectors wear uniforms and WSOs wear street clothes. Brown had a hand in designing the inspector's uniform. Their main work uniform is a standard blue coverall and baseball cap with the words "vehicle inspector" on it. The inspectors also are issued summer and winter dress uniforms, which they use when testifying in court. Exh. 3, at 1; Exh. 8, at 18.

23. Another job class in the GGU performs duties similar to the inspectors and WSOs -- the weights and measures

inspector series. Exhs. 201, 202, 203, & 204.

24. The inspectors participate in the PERS system and are not eligible for the 20-year retirement system available by statute to the members of the public safety officers unit.

25. The similarities inspectors share with WSOs and the GGU outweigh significantly any similarities that the inspectors share with the public safety officers unit.

26. There is no evidence in the record that commercial vehicle inspectors, weigh station operators, or other positions with similar duties have been placed in a law enforcement bargaining unit in the past.

27. One of the inspectors, Wayne Renz, clearly wants to be in the public safety officers unit. Renz believes that PSEA would be more familiar with his line of work and would provide better representation. He believes PSEA would provide someone to talk to who would return messages and who would consider alternatives to the formal filing of a complaint or grievance.

28. Renz testified on the subject of the adequacy of ASEA's representation. Renz is dissatisfied with his representation. He does not like several provisions of the collective bargaining agreement negotiated between ASEA and the State. One complaint is the change in the per diem payments for work related travel. ASEA agreed to a change in per diem from payment of \$100 per day to payment of actual lodging expenses plus \$42 per day for food. Renz viewed this change as a concession by the ASEA, although a person paying more than 60 dollars per day for lodging would not. Renz said it was a loss to him because he could manage to find cheaper lodgings.

29. Renz was also dissatisfied with ASEA's representation in a complaint he had. It concerned the imposition of a minimum number of inspections per day. Some days he could not achieve this number, which he thought was unrealistic and impossible to achieve. He received a letter in his file, which he thought was unfair. ASEA business agent David Burdette talked to him about filing a complaint or grievance but did not advise that any intermediate steps were available. Renz was dismayed at the advice and did not pursue the matter, although he was offered the opportunity to file a formal grievance or complaint. Later a meeting was scheduled on the subject, but Burdette did not attend. Burdette testified that he was not notified of the meeting. The problem was resolved when Public Safety dropped the minimum inspection requirement.

30. Renz's complaints are about matters over which reasonable minds can differ. There is no evidence that ASEA has not effectively represented the inspectors.

31. To the contrary the evidence supports the conclusion of adequate representation. A WSO, who would be familiar with the duties of the inspectors, serves as a shop steward. ASEA business agent David Burdette has handled grievances for inspectors.

32. In 1994 and 1995 ASEA chose the weigh station operator job class for a class review under article 17 of the collective bargaining agreement because the job duties had evolved. Burdette is attempting to work with the inspectors to obtain updated job descriptions for the review but they have not provided them. In a classification study, the State looks at salary ranges, like duties for like pay, minimum qualifications, recruitment problems, degree of specialization, and the pay ranges of similar employees in other states, among other things, to determine whether adjustments to the pay range assigned to the job class would be appropriate.

Procedural History

33. PSEA filed this petition to represent the weigh station operators on February 10, 1995.

34. On April 17, 1995, ASEA objected to the petition and requested a hearing.

35. This Agency confirmed that PSEA met the required showing of interest and the State posted a notice of the petition at the work sites of the affected employees on or about April 25, 1995.

36. At a prehearing conference on May 1, 1995, this matter was set for hearing on September 12, 1995.

37. On May 12, 1995, the Agency delegated the authority to conduct the hearing in this matter to hearing examiner Jan Hart DeYoung.

38. On June 29, 1995, ASEA filed a motion to dismiss the petition on the basis of the contract bar in AS 23.40.100(e). The State opposed the motion on July 3, 1995.

39. On August 31, 1995, the case was rescheduled to September 19, 1995, after ASEA's unopposed request.

Preliminary Matter: the contract bar

On June 29, 1995, ASEA filed a motion to dismiss this petition based on the contract bar doctrine. The contract bar appears in AS 23.40.100(e), which provides:

An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

The petition in this case was filed on February 10, 1995. On this date the State and ASEA were in negotiations on a new contract. The previous one had expired on December 31, 1992 for (class III employees).¹

ASEA in its motion represented that it negotiated between November of 1992 and May of 1995 and had reached agreement with the State. ASEA Mtn., attachment A (July 3, 1995). The agreement was a one year letter of agreement to extend the 1990-1993 agreement one year, effective July 1, 1995, through June 30, 1996. ASEA Mtn., attachment B; see also Exh. 7, at 1. ASEA and the State also entered into a three year agreement, to commence on July 1, 1996 -- June 30, 1999. Exh. 7, at 64. This agreement was ratified by the ASEA membership. ASEA Mtn., attachment C. ASEA's argument is that any election would be scheduled during the period of an agreement and would therefore be barred under the AS 23.40.100(e).

The State, on the other hand, opposes the motion on the basis that the time that should control is the date the petition was filed. On that date, the controlling agreement had been in effect five years and had expired approximately two years earlier. The bar in AS 23.40.100(e) was intended only for three years.

We agree that any election should not be barred under AS 23.40.100(e) in this case. The policy of not disrupting the contract and bargaining relationship is an important one. We do not believe that the policy should bar an election when the petition was filed during a window period or before an agreement was reached even if the election cannot be accomplished before the agreement becomes effective.

Discussion

This is one of six representation petitions that PSEA filed to represent employees currently placed in the general government unit. In this petition PSEA seeks to shift certain employees to the public safety officers unit, formerly called the regularly commissioned public safety officers unit, but now referred to as the public safety officers unit.

The decisions in two of these cases have issued, Public Safety Employees Ass'n (Fish and Wildlife Enforcement Officer) v. State of Alaska, Department of Public Safety, Decision & Order No. 186 (May 25, 1995), and Public Safety Employees Ass'n (Aircraft rescue and fire fighting specialists) v. State of Alaska, Department of Public Safety, Decision & Order No. 187 (May 25, 1995), appeal pending case no. 3 AN-95-5208 (CI) (filed June 28, 1995, super. ct.) Both denied PSEA's petitions to sever employees from the general government unit and add them to the public safety officers unit.

The petitioner seeking to sever a group of employees out of an existing unit has a heavy burden to carry under the

factors established by this Agency's predecessor and the National Labor Relations Board and applied by this Agency in the two earlier PSEA severance petitions. It is not an easy burden to satisfy and, once again, PSEA has not done so.

PSEA argues vigorously that the severance factors should not be applied so as to interfere with the employees' free exercise of their choice of bargaining representative. PSEA reminds the Agency that the unit determination must be made to "assure to employees the fullest freedom in exercising the rights guaranteed." It raises the issue of freedom of association. It argues that PERA is a remedial statute to be construed liberally in favor of those whom it benefits.

PSEA is not persuasive. It confuses the issue of freedom of choice of a bargaining representative with the issue of the appropriateness of the unit. The appropriateness of the unit is a responsibility of the Agency. Employees have an important stake in the outcome of that determination, as do any potential bargaining representatives and the employer. The Agency is charged with taking the employees' preference into account in the initial unit determination. After the determination is made, the employees exercise the right to choose a bargaining representative in an election and the majority of those voting control the outcome.

Unsurprisingly, not being of one mind, all employees will not have chosen the representative certified. The system tolerates this minority and discourages severance of it. As the National Labor Relations Board stated in the craft severance case of Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) 1011, 1014 (1966) (cites and footnotes omitted):

[I]t is appropriate to set forth the nature of the issue confronting the Board in making unit determinations in severance cases. Underlying such determinations is the need to balance the interest of the employer and the total employee complement in maintaining the industrial stability and resulting benefits of an historical plant-wide bargaining unit as against the interest of a portion of such complement in having an opportunity to break away from the historical unit by a vote for separate representation. The Board does not exercise its judgement lightly in these difficult areas. Each such case involves a resolution of 'what would best serve the working man in his effort to bargain collectively with his employer, and what would best serve the interest of the country as a whole.' It is within the context of this declared legislative purpose that Congress has delegated to the Board the obligation to determine the appropriate bargaining units. We do not believe that the Board can properly, or perhaps even lawfully, discharge its statutory duties by delegating the performance of so important a function to a segment of the affected employee body. Thus, we accept the Court's view in Pittsburgh Plate Glass that "the Board was not authorized by . . . [the Act] to surrender to anyone else its statutory duty to determine in each case the appropriate unit for collective bargaining."

The cohesiveness and special interest of a craft or departmental group seeking severance may indicate the appropriateness of a bargaining unit limited to that group. However the interests of all employees in continuing to bargaining together in order to maintain their collective strength, as well as the public interest and the interests of the employer and the plant union in maintaining overall plant stability in labor relations and interrupted operation of integrated industrial or commercial facilities may favor adherence to the established patterns of bargaining.

The system requires stability, and stability is the reason a petitioner seeking to disrupt the unit must carry a heavy burden to demonstrate a genuine problem with the composition of the unit. 2 NLRA: Law & Practice § 21.03[3][a], at 21-18 -- 21-19 (1995).

The question, is the unit petitioned an appropriate one, in a petition to sever from an existing unit must be reviewed in the context of the history of bargaining for these employed. For example, does the unit's composition interfere with the ability of this group to make its voice heard and to receive adequate representation. This is a very different issue from the employees saying they would choose a different unit. In this petition, one of the four affected employees testified that he wanted to be represented by PSEA and gave his reasons. These reasons, however, never went beyond his preference. He did not raise any issues with the adequacy of ASEA's performance as his bargaining representative. Employee preference is appropriately taken into account in reviewing whether a particular unit is the appropriate unit, but it is only one of several factors and it does not receive special weight.

Conclusions of Law

1. The State of Alaska is a public employer under AS 23.40.250(7). The Public Safety Employees Association and Alaska State Employees Association are employee organizations under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.090 and AS 23.40.100 to consider this case.
2. PSEA as the petitioner has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).
3. As we noted in Public Safety Employees Ass'n (Aircraft rescue and fire fighting specialists) v. State of Alaska, Department of Public Safety, Decision & Order No. 187 (hereafter "Aircraft rescue and fire fighting specialists"),

PSEA was first recognized in 1979 as a unit of fully commissioned State troopers. In 1987 the unit was expanded to include the airport safety officers(ASOs). All PSEA members are classified for purposes of strike eligibility as Class 1, ineligible. There are approximately 350 troopers and 80 ASOs and PSEA divides the bargaining unit into the trooper and ASO chapters. The unit also includes the job classes court service officers, who are in the troopers' chapter, and the job classes constable, investigator, demolition specialist, security specialist, and the deputy fire marshals.

Id., at 2. In other words, the unit is a law enforcement unit whose members are fully commissioned law enforcement officers.

4. The key to PSEA's argument that the inspectors belong in the public safety officers unit is the role of the inspectors in law enforcement. However, the inspectors's enforcement authority is restricted to commercial vehicles. They cannot stop noncommercial vehicles, enforce DWI laws, or restrain drivers. While there are differences between the inspectors and the WSOs, on balance, we believe these differences are insignificant. ASEA accurately described them as differences of focus and priority rather than as differences in their authority to act. ASEA Closing Brief, at 5.
5. PSEA must establish that the unit it proposes, combining the four inspectors with the troopers, ASOs, and other job classifications in PSEA's public safety officers unit, would be an appropriate unit for 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. In addition, units must be as large as is reasonable and avoid unnecessary fragmenting. AS 23.40.090.
6. We conclude that it would not. The evidence supports the conclusion that the inspectors are appropriately placed in the GGU and adding them to the public safety officers unit would not make an appropriate unit. The community of interest of inspectors is with the weigh station operators in the GGU. They have similar responsibilities and concerns -- commercial vehicle regulatory enforcement. Their duties even overlap. They communicate and interact. The factors distinguishing the inspectors from the WSOs are not nearly as significant -- inspectors are uniformed and work mainly from a State vehicle rather than in a fixed weigh station. The inspectors, on the other hand, have interests very different from the members of the public safety officers unit. They do not have the same responsibilities nor do they face the same hazards. Two additional facts weigh against the inspectors sharing a community of interest with the public safety officers. There is an inherent conflict of interest between the persons responsible for enforcing the criminal laws and other State employees. The narrow jurisdiction of the inspectors places them in conflict with most members of the public safety officers unit. A second conflict is that a member of the public safety officers unit supervises the inspectors, posing a potential violation of 8 AAC 97.090. Other factors also support the conclusion that the proposed unit is not appropriate. While the inspectors are more highly trained than WSOs, their training does not approach the law enforcement training of, for example, Alaska State troopers. The wages and hours of inspectors and WSOs are more alike than different. Inspectors and WSOs have the same wage rate and neither qualify for full retirement in twenty years. Since both groups inspect commercial vehicles, their working conditions will be similar and very much unlike the working conditions of fully commissioned law enforcement officers. Another factor is the desires of the employees. Only one of the affected employees testified. He desires to be in the public safety officers unit. While this factor supports PSEA's proposed unit, it barely registers on the scale when balanced against the other factors considered under AS 23.40.090.

7. If PSEA had established that the proposed unit were an appropriate unit, because it seeks to sever a group of employees from an existing unit, it would also have to satisfy the requirements of 8 AAC 97.025(b):

In addition to the requirements of (a) of this section, if 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 part of the existing unit; and
- (5) why the grant of the petition will not result in excessive fragmentation of the existing bargaining unit.

8. This Agency also takes into account the analysis of the National Labor Relations Board in craft severance cases under 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.

Aircraft Rescue and Fire Fighting Specialists, Decision & Order No. 187, at 11; International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153, at 3-4 (Mar 24, 1993).

9. Adequacy of representation: The complaints that Renz has with his representation by ASEA do not establish any inadequacy in ASEA's performance as his representative.

10. Craft history: PSEA did not demonstrate and we are not aware of any history or tradition of combining commercial

vehicle regulatory enforcement personnel with fully commissioned law enforcement officers for representation in collective bargaining.

11. Community of interest: As discussed in conclusion of law no. 6, supra, PSEA has not established that the inspectors have a community of interest distinct from the WSOs. Moreover the movement between the WSO and inspector positions has precluded the establishment of a truly separate identity of interest.

12. History in GGU: The inspectors are fairly new positions in the GGU, although the class specification weigh station operator has a longer history in the unit. The inspectors would not have had an opportunity to participate as inspectors in the selection of their bargaining representative.

13. Unnecessary fragmenting: The proposed unit would not increase the number of bargaining units so in that sense fragmentation is not an issue in this case. Aircraft Rescue and Fire Fighting Specialists, Decision & Order No. 187, at 13; Public Safety Employees Ass'n, Inc., and Alaska Public Employees Ass'n, SLRA Order & Decision No. 106, at 6 (May 17, 1987). However, splitting the job classification of weigh station operator between two units could result in some of the problems the prohibition against fragmenting is designed to prevent. Movement between the commercial vehicle inspector and WSO positions would become more difficult, at least in layoff situations. Usually layoff rights in bargaining agreements are restricted to the bargaining unit.

14. Potential for disruption: The NLRB under Mallinckrodt weighs this factor heavily. One commentator has stated, "The Board's reluctance to disrupt an established stable bargaining relationship will generally prevail over a claim that a separate craft unit is entitled to different representation." 1 Patrick Hardin, The Developing Labor Law 467 (3d ed. 1992). We believe the proposed severance is potentially disruptive in this case. The class specification weigh station operators would be split between two bargaining units and may interfere with hiring, transfer, and layoff. Adding a new group of employees would change the character of the public safety officers unit from a unit of fully commissioned law enforcement officers to employees with some law enforcement responsibility, which is a significant change. It would mix employees with different benefits and potentially combine two groups of employees with different strike classification. This factor weighs in favor of maintaining the status quo.

15. Qualifications of PSEA: If adding the inspectors to the public safety officers unit would make an appropriate unit, PSEA would be qualified to represent them. It has represented the public safety officers unit since 1977. Pertaining to a Unit Authorization Petition by the Public Safety Employees Ass'n, SLRA Order & Decision No. 28 (Jan. 3, 1977).

16. 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 that the Public Safety Employees Association has not justified severing the Department of Public Safety commercial vehicle inspectors from the general government unit represented by ASEA.

ORDER

1. The petition of the Public Safety Employees Association to sever the Department of Public Safety commercial vehicle inspectors from the general government unit and add them to the public safety officers unit is hereby **DENIED and 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.

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 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 EMPLOYEES ASSOCIATION (Weigh station operators) vs. STATE OF ALASKA, DEPARTMENT OF PUBLIC SAFETY and ALASKA STATE EMPLOYEES ASSOCIATION, AFSCME LOCAL 52, AFL-CIO, CASE NO. 95-377-RD, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 4th day of April, 1996.

Victoria D. Scates

Administrative Clerk III

This is to certify that on the 4th day of April, 1996, a true and correct copy of the foregoing was mailed, postage prepaid to

Art Chance, State

James A. Gasper, PSEA

Don Clocksin, ASEA

Signature

1The agreement expired for class I employees, who are ineligible to strike, on April 30, 1993.