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PUBLIC SAFETY EMPLOYEES)
ASSOCIATION (Park Rangers),)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
DEPARTMENT OF NATURAL RESOURCES,)
)
Respondent,)
and,)
)
ALASKA STATE EMPLOYEES ASSOCIATION,)
AFSCME LOCAL 52, AFL-CIO,)
)
Intervenor.)
)

CASE NO. 95-378-RD

DECISION AND ORDER NO. 209

Digest: (1) The petitioner has not satisfied the requirements for severing the park rangers from the general government unit; and (2) adding the park rangers to the public safety officers unit would not make an appropriate unit.

DECISION

Statement of the Case

The Public Safety Employees Association (PSEA) filed its petition to represent the park rangers on February 10, 1995. On March 8, 1995, the Agency advised that PSEA had satisfied the requirement of a showing of interest from the park rangers and asked the State of Alaska to post copies of the notice of petition. The State posted the notice of the petition at 11 work sites of the park rangers and mailed each park ranger the notice of petition by certified mail on March 20, 1995. Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA) objected to the petition on March 13, 1995, and requested a hearing. The State filed its objection on March 20, 1995.

On March 29, 1995, the hearing examiner conducted a prehearing conference, setting the case for hearing on Wednesday and Thursday, July 19-20, 1995. The Agency delegated to the hearing examiner the authority to conduct the hearing.

The case was heard on July 19 and 20, 1995.

The parties filed a number of motions. On June 29, 1995, ASEA moved to dismiss the action on the basis of the contract bar. On July 5, 1995, PSEA moved to quash subpoenas issued on behalf of ASEA. On August 24, 1995, ASEA requested the admission of an additional exhibit, and on August 30, 1995, PSEA moved to supplement the record. ASEA opposed PSEA's motion on September 11, 1995.

The record closed on September 5, 1995, with the receipt of written closing statements.

On August 30, 1996, the Agency amended the panel assignment to substitute board member Blair E. Schad for former member Stuart H. Bowdoin, Jr., and on September 24, 1996, the Agency amended the panel assignment to substitute board member Robert A. Doyle for member James W. Elliott, who recused himself.

Panel: Board members Blair E. Schad, Robert A. Doyle, and Karen J. Mahurin, participating after review of the record.

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.

Procedure in this case is governed by 8 AAC 97.330, 8 AAC 97.350--8 AAC 97.480. Hearing examiner Jan Hart DeYoung presided.

Issues

1. Should the record be supplemented to include additional evidence from PSEA or from ASEA?
2. Does the State/ASEA collective bargaining agreement bar consideration of this petition under AS 23.40.100(e)?
3. Is the proposed unit, which combines the park rangers with the existing public safety officers unit, an appropriate unit under AS 23.40.090?
4. Has PSEA satisfied the requirements in 8 AAC 97.025(b) for severance of the park rangers from the general government unit, taking into account such factors listed in Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) 1011, 1016 (1966)?

Summary of the Evidence

A. Exhibits

Petitioner Public Safety Employees Association offered the following exhibits, which were admitted into the record:

1. Class Specification, park rangers I-III (Sept. 1, 1974);
2. Class Specification, park rangers I (July 16, 1978);
3. Class Specification, park rangers I (Sept. 16, 1993);
4. Class Specification, park rangers II (July 16, 1978);
5. Class Specification, park rangers II (Sept. 16, 1993);
6. Recruitment Bulletin, park rangers I-II (Feb. 7, 1994);
7. Position description questionnaire (PDQ) for PCN 10-5222 (Sept. 28, 1993);
8. PDQ for PCN 10-5107 (Sept. 28, 1993);
9. PDQ for PCN 10-5093 (June 10, 1992);
10. PDQ for PCN 10-5094 (Sept. 28, 1993);
11. PDQ for PCN 10-5118 (Sept. 28, 1993);

12. PDQ for PCN 10-5232 (Sept. 28, 1993);
13. PDQ for PCN 10-5177 (Sept. 28, 1993);
14. PDQ for PCN 10-5186 (Sept. 28, 1993);
15. PDQ for PCN 10-5098 (Sept. 28, 1993);
16. PDQ for PCN 10-5039(S) (Sept. 28, 1993);
17. PDQ for PCN 10-5026 (Sept. 28, 1993);
18. PDQ for PCN 10-5079 (Sept. 28, 1993);
19. PDQ for PCN 10-5111 (Mar. 26, 1993);
20. PDQ for PCN 10-5144 (Sept. 28, 1993);
21. PDQ for PCN 10-5183 (June);
22. PDQ for PCN 10-5218 (May 8, 1992);
23. PDQ for PCN 10-5217 (Sept. 28, 1993);
24. PDQ for PCN 10-5225 (Sept. 28, 1993);
25. PDQ for PCN 10-5022 (May 31, 1995);
26. PDQ for PCN 10-5162 (Sept. 28, 1993);
27. PDQ for PCN 10-5173(S) (Sept. 28, 1993);
28. PDQ for PCN 10-5184 (Sept. 28, 1993);
29. PDQ for PCN 10-5185 (Sept. 28, 1993);
30. PDQ for PCN 10-5219 (Sept. 28, 1993);
31. PDQ for PCN 10-5246 (May 8, 1992);
32. PDQ for PCN 10-5231 (June 2, 1992);
33. PDQ for PCN 10-5172(S) (Sept. 28, 1993);
34. PDQ for PCN 10-5014 (Sept. 23, 1993);
35. PDQ for PCN 10-5043 (May 30, 1992);
36. PDQ for PCN 10-5059(S) (Sept. 28, 1993);
37. PDQ for PCN 10-5092 (Sept. 28, 1993);
38. PDQ for PCN 10-5090 (Sept. 28, 1993);
39. PDQ for PCN 10-5119 (Sept. 28, 1993);

40. PDQ for PCN 10-5122 (Sept. 28, 1993);
41. PDQ for PCN 10-5040(S) (Sept. 28, 1993);
42. Area superintendent, letter to successful applicant for park ranger position (Jan. 27, 1995);
43. Dep't of Natural Resources, Policy & Procedure, Law Enforcement Policy (April 12, 1991);
44. Dep't of Natural Resources, Policy & Procedure, Law Enforcement Policy (April 15, 1995);
45. Certificate of Commission as Peace Officer (D. Amyot) (June 16, 1995);
46. Constitutional Oath of Office (May 27, 1994);
47. Certificate of Commission as Peace Officer (W. Berkhahn) (June 16, 1995);
48. 1995 Alaska State Parks Law Enforcement In-Service Training Agenda;
49. Certificate of Training, PPCT Defensive Tactics System Instructor (W. Berkhahn) (Mar. 31, 1995);
50. Dep't Public Safety, Certificate of Training, Alaska law enforcement training (W. Berkhahn) (Dec. 16, 1988);
51. Certificate of Completion, 24-hour semi-auto transition course (W. Berkhahn) (April 29, 1994);
52. Lori, training records memorandum to all staff (Oct. 13, 1994);
53. Alaska State Parks, training records for W. Berkhahn;
54. Alaska State Parks, spring training record (W. Berkhahn) (1991);
55. Alaska State Parks, other 1992 training (W. Berkhahn);
56. State/ASEA tentative agreement (April 24, 1995);
57. State/ASEA agreement (1990-1993); and
58. Division of Parks and Outdoor Recreation, memorandum (May 3, 1995).

Respondent State of Alaska offered the following exhibit, which was admitted into the record:

C. State trooper class specification series.

Intervenor Alaska State Employees Association, AFSCME Local 52, AFL-CIO, offered the following exhibits, which were admitted into the record:

201. PDQ for PCN 10-5092 (Sept. 28, 1993);
202. E. Barrett, letter to E. Clothier (Mar. 25, 1995);
203. Certificate of Commission as Peace Officer (D. Amyot) (June 16, 1995);
204. Constitutional Oath of Office (May 27, 1994);
205. D. Amyot, letter to J. Ward (Mar. 28, 1995);
206. PDQ for PCN 10-5093 (Sept. 17, 1993);

207. Withdrawn;
 208. Withdrawn;
 209. Class Specification, natural resource management series;
 210. Class Specification, environmental health officer I-IV;
 211. Class Specification, investigator I-IV;
 212. Class Specification, juvenile probation officer IV;
 213. Class Specification, psychiatric nursing assistant I;
 214. Class Specification, youth counselor I-III;
 215. Class Specification, adult probation officers I-V;
 216. Class Specification, weigh station operator I;
 217. Class Specification, boat officers I-III;
 218. Class Specification, radio dispatcher I-II;
 219. Class Specification, habitat biologist II-IV;
 220. Class Specification, forester I-IV;
 221. Class Specification, forest technician I-IV;
 222. Class Specification, security guard I-II;
 223. Class Specification, fishery biologist I-IV;
 224. Class Specification, fish and wildlife technician I-V;
 225. Class Specification, fish and wildlife aide;
 226. D. Heikes, memorandum to infection control policy reviewer (Jan. 19, 1993);
 227. Resolution & petition re. organization units for layoff purposes (Oct. 30, 1992);
 228. Arbitrator's Opinion and Award, In re State, Dep't of Labor and ASEA (T. Young) (July 26, 1994);
 229. D. Burdette, letter to E. Haseltine (Dec. 7, 1992);
 230. Class Specification, museum security clerk I-II;
 231. ASEA/State, letter of agreement (alternate workweek) (unexecuted & undated);
 232. Table of Contents; and
- [unlabeled] Affid. of Frances Kinney (Aug. 18, 1995).

B. Testimony

Petitioner Public Safety Employees Association presented the testimony of park rangers Jeffrey S. Johnson, William

"Bill" Berkhahn, Michael Goodwin, Patrick Murphy, and Dan Hourihan, and Alaska State trooper Dan Weatherly.

Respondent State of Alaska did not present any witnesses.

Intervenor Alaska State Employees Association, AFSCME Local 52, AFL-CIO, presented the testimony of ASEA business agent Kathy Dietrich, park ranger S. Wyn Menefee, ASEA business agent David Burdette, park rangers Edward L. Barrett and Daniel J. Amyot, ASEA President Kelly Brown, and ASEA business agent Charles O'Connell.

C. Agency case file. 8 AAC 97.410.

Findings of Fact

The panel, by a preponderance of the evidence, finds the facts as follows:

1. The Public Safety Employees Association (PSEA) is the recognized bargaining representative of the members of the public safety officers' unit employed by respondent State of Alaska.
2. PSEA seeks to sever from the general government unit and add to its public safety unit approximately 35 park ranger I and II positions employed in the Department of Natural Resources, who are currently represented in the general government unit.¹ The proposed bargaining unit is described as follows:
 - Included: All permanent seasonal and full-time nonsupervisory park rangers I and II and all State employee classifications presently included in the Regularly Commissioned Public Safety Officers Unit; and
 - Excluded: All other State employees not presently included in the Regularly Commissioned Public Safety Officers Unit.
3. The position of park ranger is in the general government unit and has been in the unit since its creation in 1973. Decision & Order No. 1, at 13 (Feb. 2, 1973). The current bargaining representative of the unit is the Alaska State Employees' Association, AFSCME Local 52, AFL-CIO (ASEA).
4. The park rangers' law enforcement responsibilities and training provide a basis for sharing a community of interest with the members of the public safety unit represented in bargaining by the PSEA. These enforcement responsibilities can result in conflicts with other State employees: a park ranger may have to issue a verbal or written citation against a State employee. The law enforcement responsibilities, however, are not the principal responsibilities of the park rangers. Their dominant responsibility is managing the resource, and their primary community of interest is with the other State employees in the general government unit who work in the parks or with the natural resource.
5. The hours of park rangers, which include a number of seasonal employees, resemble more closely the hours of other members of the general government unit, which include other seasonal employees, than the PSEA public safety unit.
6. The park rangers' compensation, including participation in the public employees retirement system and the collective bargaining agreement's wage scale, is shared with other members of the general government unit but differs from the retirement system and wage scale of the members of the public safety unit.
7. The working conditions of the park rangers resemble the conditions of members of the public safety unit when the park rangers perform law enforcement duties. Most of the work time of park rangers, however, is not spent in enforcing the law, and their working conditions also resemble the working conditions of other employees in the general government unit, such as the natural resource management series.
8. Park rangers are located organizationally in the Department of Natural Resources and do not share management with any of the employees in the public safety unit. Being located in an organizational unit with other general government unit (GGU) members results in shared working conditions with other GGU members.

9. Both labor organizations provided evidence of support for their bargaining units. Two park rangers indicated a preference for ASEA, Edward L. Barrett and Daniel Amyot, and two park rangers stated a preference to be represented by PSEA, Lori J. Landstrom and Terry Rude.
10. Park rangers receive adequate representation by the ASEA in the general government unit.
11. At least one park ranger has participated in ASEA's representation of his unit by serving as a shop steward and, when able, by attending the chapter meetings in his area.
12. The record did not establish any history of representation of park rangers in law enforcement or public safety bargaining units.
13. PSEA's 13-year history of representation of the public safety unit qualifies it to represent the park rangers, who share law enforcement duties with members of the public safety unit. PSEA's nine years of representation of the airport safety officers demonstrate that PSEA can represent employees whose duties combine law enforcement with other responsibilities.

Discussion

The issues in this case, as in all other cases to sever a group of employees from an existing unit, are whether the proposed unit is appropriate under AS 23.40.090 and whether the petitioner has satisfied the conditions of 8 AAC 97.025(b). The PSEA proposes to sever the park rangers from the general government unit represented in bargaining by ASEA and add them to PSEA's existing public safety unit. The case also includes issues on supplementing the record and on the contract bar in AS 23.40.100(e).

1. Should the record be supplemented to include additional evidence from PSEA or ASEA?

After the conclusion of the hearing, ASEA filed a request to admit an additional exhibit into the record, offering an affidavit from human resource manager Frances Kinney. The ASEA seeks to use this affidavit to establish the fact that the State does not employ any seasonal troopers. The reason ASEA gives for its delay is counsel's oversight. PSEA did not file a formal opposition but does oppose the request in a motion it filed to supplement the record.

PSEA filed its motion on August 30, 1995, offering Exhibit 58. The exhibit is a memorandum from the Department of Natural Resources, Division of Parks and Outdoor Recreation, advising that four park rangers are available to assist the Department of Public Safety. PSEA justifies its delay on its late discovery of the document. Counsel for PSEA on August 7, 1995, requested that the State produce the operating procedures manual of the Department of Public Safety relating to radio dispatchers in preparation for proceedings on PSEA's decertification petition in 95-377-RD. The State responded with this document on August 22, 1995. ASEA opposed PSEA's motion

When to supplement a record after the conclusion of a hearing appears to depend in some part on the reliability of the evidence offered, the right to cross examine, and administrative convenience. See A.C.E. Construction, Inc. v. Chena Construction Corp., 647 P.2d 602 (Alaska 1982); Stoody Co., Div'n of Thermadyne, Inc., and Electrical Workers, I.B.E.W., Local 369, 312 N.L.R.B. No. 197, 145 L.R.R.M.(BNA) 1342, 1993 WL 484049, at 11 (1993). In A.C.E. Construction, Inc., 647 P.2d at 604, the court found the superior court erred in denying a motion to supplement:

[T]he superior court should have granted Chena's motion to re-open the case to permit the filing of the certificate of compliance. To have granted the motion would not have required any additional testimony. The certificate was self-authenticating under Alaska Rule of Evidence 902(1). It demonstrated beyond peradventure that Chena had complied with AS 10.05.720 as of February 1, 1980. Its admission into evidence would have eliminated one of the main questions presented in this appeal: whether the showing of a good faith effort to comply is the equivalent of showing actual compliance with that statute.

Having considered the evidence offered and the right to cross examine and weighing any administrative inconvenience

against the justification for the delay, we conclude that ASEA's affidavit and PSEA's exhibit 58 should be added to the record.

ASEA seeks to correct counsel's oversight at the hearing by offering an affidavit to establish a fact about the work hours of the Alaska State troopers. The employees' hours of work are relevant to determine whether a proposed bargaining unit is appropriate under AS 23.40.090. The evidence is offered in the form of an affidavit and is hearsay. We are concerned about the denial of the opportunity to cross examine the affiant. The Administrative Procedure Act provides a specific rule for the use of affidavits; AS 44.62.470 would require ASEA to provide the affidavit to opposing counsel ten days before the hearing to allow an opportunity to request cross examination. The rule is a reasonable balance between the administrative convenience of an affidavit and the right to cross examine, but it does not govern representation and unit determination hearings. AS 23.40.130; 8 AAC 97.350. APEA, however, has not demanded to cross examine this witness, who is the State human resource manager for the Department of Public Safety, and the fact that ASEA seeks to establish is likely undisputed. There is substantial evidence in the record on the seasonal work of many park rangers and other positions in the ASEA, and the subject is addressed in ASEA's collective bargaining agreement. Our familiarity with public safety units and their work schedules make us conclude that it is unlikely that the Alaska State troopers work seasonal schedules. If counsel's inadvertence is allowed to remain uncorrected, the Agency would be misled on a material fact in AS 23.40.090 -- the hours of work. Such a result would be unjust. Stoody Co., Div'n of Thermadyne, Inc., and Electrical Workers, I.B.E.W., Local 369, 312 N.L.R.B. No. 197, 145 L.R.R.M.(BNA) 1342, 1993 WL 484049, at 11. While we believe the better practice is to discourage parties from correcting oversights or deficiencies after a hearing concludes, we believe allowing the correction is required in this case to avoid an injustice. See 8 AAC 97.480.

PSEA's exhibit, on the other hand, is a business record, which is an exception to the hearsay rule in Evidence Rule 803(6). PSEA obtained it from the State in response to its request for records in another case. PSEA's counsel was not aware of the record until after the hearing concluded and, using reasonable diligence, would not have discovered the record any earlier. While the record is not self authenticating under Evidence Rule 902(2), the circumstances of its discovery are inherently reliable. The record was in Department of Public Safety files. Its effect is merely to supplement other evidence in the record about the law enforcement responsibilities of the park rangers. The record reinforces the testimony of one of the park rangers that the park rangers enforced laws on traffic corridors between parks. While the exhibit does not affect the outcome of the case, we conclude that it should be admitted.

2. Does AS 23.40.100(e) bar consideration of the petition in this case?

The panel denies the motion and adopts by reference the discussion on the motion to dismiss in Public Safety Employees Ass'n (Weigh station operators) v. State of Alaska, Department of Public Safety, Decision & Order No. 201, at 9-10 (April 4, 1996), appeal pending case no. 3AN-96-3522 CI (Super. Ct., filed May 6, 1996).

3. Is the proposed unit, which combines the park rangers with the existing public safety officers unit, an appropriate unit under AS 23.40.090?

PSEA must establish that the unit it proposes, combining the park rangers with PSEA's public safety 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.

a. History of collective bargaining.

The bargaining unit of the park rangers is the general government unit. The general government unit was set forth and described in Order and Decision No. 1, at 10-11 (Feb. 2, 1973):

Employees covered by Petition No. 2-72 have a community of interest with all other state employees. They provide services to the people of Alaska at the direction of the elected representatives of the people. They all come under a common civil service merit system and their compensation is set by the legislature. There is a uniform grievance procedure and a uniform system of progressive discipline. Recruitment, examination, transfer, promotion, orientation and training are conducted on a uniform, system-wide basis. .

. . . Approximately 90 percent of the employees in question are professional, technical or clerical. The interests of these groups are intertwined and the distinctions between them are often blurred. This establishes the fact that there is a substantial community of interest among state employees in general.

One of the park rangers maintains that an increase in the law enforcement responsibilities of park rangers justifies a change in the park rangers' bargaining unit from the general government unit to the law enforcement unit. Other job classes in the general government unit have at least some law enforcement duties, such as probation officers, Exhs. 212 & 215, inspectors, Exh. 211, natural resource technicians, Exh. 209, at 3-4, weigh station operators, Exh. 216, security guards, Exh. 22, and museum security employees, Exh. 230. However, the State's principal law enforcement unit is the public safety unit represented by PSEA. The history of the unit appears in Public Safety Employees Ass'n (Aircraft rescue fire fighting specialists) v. State of Alaska, Department of Public Safety, Decision & Order No. 187, at 2 (hereafter "Aircraft rescue fire fighting specialists") (May 25, 1995), appeal pending case no. 3AN-95-5208 CI (Super. Ct., filed June 28, 1995):

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.

Public Safety Employees Ass'n (Weigh station operators) v. State of Alaska, Dep't of Public Safety, Decision & Order No. 201, at 12.

Severance of a public safety unit from the general government unit was authorized by the State Labor Relations Agency (SLRA) in 1977. Pertaining to a unit authorization petition by Public Safety Employees Ass'n, SLRA Order & Decision No. 28 (1977). Segregating the law enforcement personnel from other State employees was the initial justification for the unit, and the sole qualifying factor was certification as a police officer by the Alaska Police Standards Council. Id., at 7. However, in 1987, the SLRA authorized expanding the unit to include airport safety officers, a group of partially commissioned officers who had been represented in bargaining in the general government unit. Public Safety Employees Ass'n, Inc. and Alaska Public Employees Ass'n, SLRA Order & Decision No. 106 (May 14, 1987). Although certification as a police officer was no longer essential for inclusion in the public safety unit, the justification for moving the airport safety officers remained separating law enforcement personnel from other employees. The reason for segregating law enforcement employees is the conflict of interest created by law enforcement duties. Another reason is the prohibition against strikes by police. Id., at 9; AS 23.40.200(b).

b. Community of interest and working conditions.

The essential, defining characteristic of all members of the public safety unit is the responsibility to enforce the law. As the State Labor Relations Agency stated:

The Labor Relations Agency found that the classifications set forth in Order and Decision No. 28 have a clearly demonstrable community of interest in that they are sworn public safety officers who wear or may wear badges, who are or may be armed, and who have full penal arrest powers. Furthermore, all of these classifications are in the Department of Public Safety and have the same management.

. . . . [T]he general description of the Unit should be modified to include all of those classifications within the Department of Public Safety (other than Supervisory and Confidential as defined in the regulations) which have primary responsibility for the prevention and detection of crime and the enforcement of the fish and game, penal, traffic or highway laws of the State and require certification as a police officer by the Alaska Police Standards Council. In addition, job classes established for training purposes, where satisfactory completion of training and promotional advancement requires such certification, should also be included in the Unit.

Pertaining to a Petition Amendment/Clarification of the Law Enforcement Bargaining Unit, Order and Decision No. 30, at 2-3 (emphasis added). Those job classes that did not meet this definition were excluded from the unit -- laboratory technicians, latent fingerprint examiner, protection aide, fish and wildlife protection aide, dispatchers, and pilots. Id.

This Agency also has found that positions whose duties were not exclusively or predominantly law enforcement were not appropriately in the unit. The position of fish and wildlife enforcement officer was found inappropriate for inclusion in the public safety unit in Public Safety Employees Ass'n (F.W.E.O.) v. State of Alaska, Decision & Order No. 186 (May 25, 1995), and Public Safety Employees Ass'n v. Alaska State Employees Ass'n and State of Alaska, SLRA Order & Decision No. 120 (Aug. 28, 1989); and the position of aircraft rescue and fire fighting specialist was found an inappropriate addition to the unit in Aircraft rescue fire fighting specialists, Decision & Order No. 187.

Applying these considerations to the park rangers, we note that they do have significant law enforcement responsibilities. The park rangers enforce all State criminal laws and provide basic law enforcement services within the State park system, although primary law enforcement responsibility within the parks remains with the Department of Public Safety's Alaska State troopers. Exh. 44, at 2 & 4. Park rangers' law enforcement duties are covered in a policy and procedure manual. Id. The park rangers are authorized to enforce laws affecting the parks and natural resources under AS 41.15.950, 41.21.955, and 41.35.220. They may be commissioned as peace officers. Exh. 6, at 1, 6, & 7. They issue citations, make arrests, testify in court, and perform the full range of law enforcement duties. The frequency and duration of these activities varies. Park ranger William Berkhahn estimates in his position description questionnaire that he spends 35 percent of his work time in law enforcement duties, yet he states he encounters aggressors about twice a month, and has never had to perform an arrest or use his weapon. Exh. 12, at 2.

Park rangers coordinate with other agencies on criminal investigations as well as search and rescue emergencies. Exh. 5, at 1-2. They may come into contact with Alaska State troopers or local police officers.

The park rangers are trained in law enforcement. One park ranger estimated that 80 percent of a park ranger's training is devoted to law enforcement subjects. The initial training for park rangers is a 360-hour course at the Sitka Academy: Alaska Law Enforcement Training. Exh. 50. Park rangers receive an annual one-week refresher course in law enforcement. Exhs. 48 & 54. Every two years they receive firearms training that includes "shoot, don't shoot" scenarios. Exh. 51. The park rangers must qualify with their weapon every six months. They may receive

training in defensive tactics such as training in the use of the baton. Exh. 54. The park rangers may also receive training in the handling of juveniles.

Park rangers are uniformed when they work in the field. They wear a khaki shirt, badge, utility belt, black stetson, and green jeans. They may wear civilian clothes when they work in the office and often do in the winter unless they are assigned field activities.

Park rangers are provided tools appropriate for law enforcement. Park rangers carry a citation book, evidence tags, and plastic bags to secure evidence. On patrol they may wear a protective vest. Park rangers are authorized, but not required, to carry defensive weapons and may carry pepper spray, a revolver or pistol, handcuffs, and a collapsible baton. On duty, the weapon may be concealed. Park rangers drive a marked vehicle that has lights and a siren typical of law enforcement vehicles. Park rangers have access to and use APSIN, the State's law enforcement computer system.

Law enforcement is not, however, the principal responsibility of park rangers. Their principal responsibility is to manage the resource. This responsibility includes habitat protection, resource development, and facilities maintenance. The park ranger class specification provides a list of duties typical of park rangers: a park ranger may perform or supervise repair, maintenance and construction of park structures, trails, roads and facilities; they may train and evaluate other park personnel; they may "interpret" the natural and historic features for visitors; they collect and account for park fees; they patrol to protect park property, fight fires, and detect plant disease or insect infestation; they maintain records; and they may participate in park planning and budget requests. Exh. 1, at 1-2. Park rangers described duties including park and trail maintenance, facilities cleanup, interpretive programs, issuing permits for park use, attending public meetings, collecting user fees, and land status research.

Park rangers receive training unrelated to law enforcement. They have basic first aide certificates. Park rangers may receive training in search and rescue, swift water rescue, chain saw safety, hazardous materials, blood borne pathogens, and management. Exhs. 53 & 54. Park rangers can be trained in archeological resource protection and in giving interpretive programs. Exh. 54.

Park rangers in the course of their duties may interact with other employees. In addition to contact with law enforcement personnel, the park rangers may interact with positions in the general government unit, such as habitat biologists, fishery biologists, fisheries technicians, fish and wildlife enforcement officers, and fish and wildlife aides. Exhs. 209, 219, 223, 224, & 225. They may work with Department of Environmental Conservation employees and boat officers in the GGU. Exhs. 210, 211, 212, & 217. Depending on the duty assignments, a park ranger might come into contact with foresters, forestry techs, and fire fighters. Other contacts are outside of the GGU bargaining unit. Park rangers may work with subsistence boards. South Central Alaska park rangers may coordinate and exchange information with Department of Transportation and Public Facilities road maintenance crews.

The park rangers may directly supervise other park rangers and maintenance workers. They may work closely with and supervise members of the Alaska Conservation Action Corps. The Corps is a program to employ young adults. AS 41.21.902--41.21.908. Park rangers can work with campground hosts, who are volunteers serving as the eyes and ears of the rangers. Park rangers can work closely with the natural resource management series positions who perform many of the same duties as the park rangers. Compare Exh. 209 with Exh. 1.

The split between law enforcement and resource management duties depends on the duty assignment. A review of the various park ranger position descriptions that segregated law enforcement from other duties in the description showed a range of between 15 to 40 percent of the time worked in those duties. E.g. Exhs. 13, 20, 24, 25 & 26. The position descriptions show that Kenai area park rangers, Exhs. 13 & 26, devote more time to law enforcement than other rangers, which was supported by the testimony. Large crowds at Anchor Point and Ninilchik during fishing season, for example, require such traditional law enforcement duties as settling disputes, performing search and rescue, responding to domestic violence, intervening when drivers are under the influence, and responding to incidents of misdemeanor theft. Another example, the Kenai River Special Management Area, requires a park ranger to spend patrol duty on a 13-foot motor boat on the river. Duties on the water corridor include responsibility for anglers, adjacent land owners, public safety, and boating safety. The Alaska State troopers have primary jurisdiction for swift water rescue, but park rangers also may perform this function. Patrol frequency is higher in the period between May 1 and mid-September. Administrative responsibilities are heavier at either end of the busy season.

Some park ranger assignments involve almost no law enforcement responsibility. For example, one park ranger II, Jeffrey Johnson, works in Anchorage on a State capital project. He does not wear a uniform or work in the field as a general rule.

Strike class can be a consideration in determining community of interest. Public safety unit employees are class 1, AS 23.40.200(b), and ASEA is a mixed strike class unit. Alaska Public Employees Ass'n v. State, Decision & Order No. 143 (Sept. 16, 1992), affirmed case no. 1JU-92-1882 CI (Super. Ct., filed May 28, 1993). The State represented that the strike class of park rangers was unknown. ASEA argued that their strike class should be class 3, eligible to strike, because the public's health, safety, and welfare do not require park rangers to remain on the job. The State could respond to a park ranger work stoppage by closing the State parks. Unless AS 23.40.200 justifies restricting the eligibility of the park rangers to strike, they will be class 3. The issue of strike class, however, was not fully explored in this case, and we decline to decide it here.

c. Wages.

The wages of the park rangers more closely resemble the wages of the members of the general government unit. By statute the park rangers are in the public employment retirement system with most State employees. See generally AS 39.35.300. They do not participate in the 20-year retirement system of the Alaska State troopers and other members of the public safety unit.² The park rangers share the GGU collective bargaining agreement's wage scale with other members of the GGU. Exh. 57, at 97.

d. Hours.

Two characteristics of the work schedules of the park rangers distinguish them from the 8-4:30, Monday through Friday State employees. Because of the seasonal variations in use of the State parks, many park rangers work seasonal schedules or an eight-month year. Other employees in the general government unit work seasonal schedules: fish and game technicians, forestry technicians, and certain job classes in the Department of Environmental Conservation. Park rangers may also work shifts to cover the busier times of the day and busier days of the week in the State parks. A park ranger might work 10:00 a.m. to 6:00 p.m. or 4:00 p.m. to 2:30 a.m., for example. In addition, ASEA has negotiated alternate work weeks for some park rangers. The public safety unit members work in shifts and the general government unit members work various schedules including seasonal and shift work. The work schedules of the park rangers are more like schedules of positions in the GGU.

e. Desires of employees.

PSEA has asked that its "substantial showing of interest" be taken into account to demonstrate employee preference. That showing of interest, however, is not in the record. The showing of interest is considered confidential and is not disclosed. 8 AAC 97.060(d) provides:

The employee petition or interest cards in support of a showing of interest are confidential records that may not be disclosed and are not part of the public record.

The letters filed by bargaining unit members are evidence of employee preference, and both bargaining units have supporters.

f. Unnecessary fragmentation:

The proposed unit would not increase the number of bargaining units and fragmentation is not an issue in this case. Public Safety Employees Ass'n (Weigh station operators) v. State of Alaska, Department of Public Safety, Decision & Order No. 201, at 16. 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. The petition would only shift one group of employees from one bargaining unit to another.

4. Has PSEA satisfied the requirements in 8 AAC 97.025(b) for severance of the park rangers from the general government unit, taking into account the analysis set forth in Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) 1011, 1016 (1966)?

Because PSEA seeks to sever a group of employees from an existing unit, it must also satisfy the requirements of 8 AAC 97.025(b) and 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.

a. Adequacy of representation.

The adequacy of representation by the current bargaining representative must be considered to determine whether severance is appropriate. The system favors stability and continuation of existing bargaining units, but a bargaining representative's inadequate representation would justify disrupting the status quo. For example, the existing unit structure might interfere with the ability of the group seeking severance to be heard on issues of concern. Conflicts between the interests of the other members of the unit and this group could also interfere with a group's receiving adequate representation. See Public Safety Employees Ass'n (Weigh station operators) v. State, Decision & Order No. 201, at 12; In re Fraternal Order of Police, 12 Ohio Pub. Employee Rep. 1546 (Ohio State Employment Relations Bd. 1995) (applying similar criteria to a severance petition).

PSEA challenges the adequacy of ASEA's representation on a number of grounds but none withstand examination. PSEA points to a lay-off incident in which geographic restrictions resulted in the lay-off of the more senior park ranger. Exh. 227. However, when ASEA became aware of the issue, ASEA raised it with the State, and they changed the policy.

PSEA claims that the park rangers do not have terms in the ASEA collective bargaining unit that respond to their special needs as law enforcement officers. PSEA closing brief, at 9. Park ranger Berkhahn states the two largest issues for the park rangers are hazard pay when working in hazardous conditions, such as work on the Kenai River, and 20-year retirement. Berkhahn's concern with hazard pay is that, when Department of Fish and Game employees are exposed to the same hazards he is, they receive hazard pay, but he does not. Berkhahn has not passed on these concerns to ASEA. Nevertheless, ASEA has attempted in bargaining to expand the employees receiving hazard pay from the State but without success. Moreover, ASEA provided an historic explanation of payment of hazard pay to Department of Fish and Game employees. Before a legislative change in 1986 these employees were entitled to 20-year retirement. The hazard pay was paid to those positions affected by the law change. These facts do not establish any inadequacies in ASEA's performance as a bargaining representative.

The second issue identified was 20-year retirement. It is of special interest to eight-month seasonal workers who, according to one park ranger, could reach 85 years of age before becoming eligible to retire. Eligibility for 20-year retirement, however, is a legislative issue, and neither ASEA nor PSEA could obtain it for the park rangers in bargaining. One park ranger, Jeffrey Johnson, said he had spoken to an ASEA business agent once about obtaining 20-year retirement but nothing ever came of it. However, ASEA President Kelly Brown testified about ASEA's efforts to work with the legislature to obtain peace officer retirement for park rangers.

ASEA provided testimony of work on other issues of benefit to park rangers. Business agent O'Connell has used the complaint mechanism at the State's office of Occupational Safety and Health to improve employee safety from the risks of blood borne pathogens. O'Connell says that ASEA designated the park ranger class series for a study under Article 17 of the collective bargaining agreement, which allows ASEA to meet and confer with the State when it believes a pay inequity exists in a class series. Exh. 56, at 32; Exh. 57, at 80-81.

There was testimony that ASEA had performed adequately in response to a grievance and a pay problem.

ASEA provided evidence in support of the adequacy of its representation of park rangers in collective bargaining. The evidence showed that ASEA has negotiated with the State issues raised when an employee works seasonally. For example, a seasonal employee remains eligible for consideration for hire to a full-time position, Exh. 57, at 46, and can use overtime to extend the season. An employee can carry annual leave over to the next season.

b. Tradition of representation.

The evidence did not establish any tradition of representation for park rangers in law enforcement units or in any other units. The only evidence was that park rangers in Alaska have been represented in the general government unit.

c. Community of interest.

The record did not establish that the park rangers' community of interest is separate from the general government unit. See discussion in subsection 3.b., supra.

d. Time in existing unit.

The park rangers have been in the unit since it was first established.

e. Excessive fragmentation.

For the same reasons addressed in subsection 3.f., supra, granting this petition would not result in excessive fragmentation.

f. Mallinckrodt Chemical Works.

This Agency also takes into account the factors that the NLRB reviews in craft severance cases. See Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) at 1016; International Bhd. of Elec. Workers v. Fairbanks North Star Bor. Schl. Dist., Decision & Order No. 153, at 3-4 (Mar. 24, 1993). The evidence in this case did not establish that park rangers were a distinct and homogenous craft unit. They perform some of the duties and use the same skills as law enforcement officers, but they also perform many duties that are unrelated to law enforcement but are related to managing the park resources of the State. The existing unit structure has adequately responded to the needs of the park rangers, and the record does not establish any reason to disrupt the existing unit scheme. There was some evidence of park ranger participation in their representation by ASEA. The record did not contain any information from which the Agency could make conclusions about the patterns of representation of park rangers in other states. However, we do find PSEA qualified to represent these employees. The addition of the airport safety officers to the public safety unit in 1987 has provided PSEA with experience in representing employees with mixed law enforcement and nonlaw enforcement duties. Consideration of craft severance issues does not support moving the park rangers from the general government unit.

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. The record is supplemented to include the affidavit of Frances Kinney and exhibit 58.
3. AS 23.40.100(e) does not bar consideration of PSEA's petition in this case.
4. 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, the general government unit is the appropriate unit for the park rangers.
5. 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, the public safety unit is not an appropriate unit for the park rangers.
6. Moving the park rangers from the general government unit to the public safety unit would not result in excessive fragmentation.
7. PSEA has not satisfied the requirements in 8 AAC 97.025(b) to sever the park rangers from the general government unit.
8. Balancing the factors set forth in Mallinckrodt Chemical Works, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) at 1016, we cannot conclude that park rangers are a craft that would be more appropriately represented in a law enforcement unit with law enforcement personnel.

ORDER

1. The petition of the Public Safety Employees Association to sever the park rangers from the general government unit and add them to the public safety officers 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

Blair E. Schad, Board Member

Robert A. Doyle, 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 (Park Rangers) vs. STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES and ALASKA STATE EMPLOYEES ASSOCIATION, AFSCME LOCAL 52, AFL-CIO, Case No. 95-378-RD, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 13th day of November, 1996.

Victoria Scates

Administrative Clerk III

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

Kent Duran, State

James A. Gasper, PSEA

Don Clocksin, ASEA

Signature

IPSEA does not seek to represent the park ranger II positions who are supervisors and members of the supervisory unit and represented by the Alaska Public Employees Association.

2"Peace officers" are entitled to 20-year retirement. AS 39.35.370(a)(2). AS 39.35.680(28) defines "peace officer" to include employees occupying positions as a peace officer, chief of police, correctional officer, or correctional superintendent.