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ALASKA STATE EMPLOYEES ASS'N/ AFSCME LOCAL 52, AFL-CIO, (Judith M. Biggane, PCN 25-1712),	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	
	)	
Respondent,	)	
and	)	
	)	
ALASKA PUBLIC EMPLOYEES ASS'N/ AFT, AFL-CIO,	)	
Intervenor.	)	
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CASE NO. 97-669-UC		

**DECISION AND ORDER NO. 236**

Digest: The bargaining unit placement of the engineering assistant II position in the Department of Transportation & Public Facilities, PCN 25-1712, is appropriately in the supervisory bargaining unit represented by the Alaska Public Employees Association/AFT, AFL-CIO.

**DECISION**

**Statement of the Case**

On October 30, 1996, the Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) filed this petition to clarify the bargaining unit status of engineering assistant II PCN 25-1712 in the Department of Transportation and Public Facilities, Division of Design and Construction, after the State of Alaska notified that it intended to move the position to the supervisory bargaining unit. On October 2, 1997, ASEA moved to postpone the prehearing conference scheduled for October 14, 1997. The hearing officer responsible for the prehearing conference only, Jan Hart DeYoung, denied the motion on October 13, 1997. ASEA moved to sequester witnesses on November 12, 1997, and hearing officer Jean Ward granted the motion on November 14, 1997, relying upon *NLRB v. Stark*, 525 F.2d 422, 90 L.R.R.M. (BNA) 3076 (2d Cir. 1975); *see also, Greyhound Lines*, 319 N.L.R.B. 554, 153 L.R.R.M. (BNA) 1081, 1082 (1995). The record closed on November 20, 1997.

**Panel:** Alfred L. Tamagni, Sr., chair, and board members Robert A. Doyle and Raymond P. Smith participating after review of the record.

**Appearances:** Kathy Dietrich, business agent, for petitioner Alaska State Employees Association/AFSCME Local 52, AFL-CIO; Kent Durand, labor relations analyst, for respondent State of Alaska; and Bob Watts, business agent, for intervenor Alaska Public Employees Association/AFT, AFL-CIO.

Procedure in this case is governed by 8 AAC 97.330--8 AAC 97.480. Hearing officer Jean Ward presided.

**Issues**<sup>1</sup>

1. Does the incumbent in PCN 25-1712 meet the definition of "supervisory employee" in 8 AAC 97.990(a)(5)?
2. Is the appropriate unit for the engineering assistant II position PCN 25-1712 located in the Department of Transportation and Public Facilities, Division of Design and Construction, in the supervisory unit or the general government unit?

**Summary of the Evidence****A. Exhibits.**

Relevant to the issue of the unit placement of PCN 25-1712 were the following:

1. ASEA and State collective bargaining agreement (July 1, 1996 -- June 30, 1999);
3. Position description questionnaire for PCN 25- 1712;
5. State class specification, engineering assistant II;
6. Classification memorandum from Thacker to Classification Section, Dept. of Administration (Sept. 18, 1996);
7. Organization chart, northern region Design & Construction Division, DOT&PF (July 1, 1997);
8. Department of Transportation & Public Facilities Policy (July 12, 1991);
9. Memorandum from Perkins to all employees (June 9, 1997), admitted over objection;
- A. *In re Alaska State Employees Association/AFSCME Local 52, AFL-CIO, and State of Alaska*, Opinion and Award (Mar. 26, 1996) (Dorsey, Arb.) (supervisor definition), admitted over objection; and
107. Department of Transportation & Public Facilities Supervisors Guide (Sept. 1990).

**B. Testimony.**

Judith M. Biggane, the incumbent, testified.

**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 Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) is the recognized bargaining representative of the general government unit of State of Alaska employees. Exh. 1.
2. Alaska Public Employees Association/AFT, AFL-CIO (APEA) is the recognized bargaining representative of the supervisory unit of State of Alaska employees. Unit Clarification Petition (Oct. 30, 1996).
3. The position engineering assistant II PCN 25-1712 is located in the northern regional office in the Department of Transportation and Public Facilities, Division of Design and Construction, and is in the general government unit. Judson letter to O'Connell (Oct. 17, 1996).

4. The incumbent in PCN 25-1712 is Judith M. Biggane. *Id.* She has been in the engineering assistant II position since October 1, 1996.
5. On October 17, 1996, the State advised that the duties of the position were supervisory and it would be moving the position to the supervisory unit fifteen days from ASEA's receipt of the notice. *Id.* The ASEA protested the change and filed this petition.
6. Biggane supervises the pre-construction drafting unit operations for the northern region. The position description questionnaire and organization chart show that she supervises six drafting technician III positions. PDQ, at 7 (effective 10/16/96); organization chart (revised June 28, 1996). Exh. 3, at 7.
7. The part of the PDQ completed by Biggane's supervisor indicates that Biggane has full authority to appoint and promote employees, which is defined under level 1 as "Employee effectively takes action." *Id.* In her current position, Biggane's opportunity to hire State employees has been limited. She has had a vacancy since May that she needs to fill. Biggane has left the position vacant because she wants to downgrade it from a drafting technician III position to one that can be flexed from a I to a II, which will allow her to hire applicants who have completed school, but who have less experience. Due to other workload priorities, she has not yet started the paperwork for this action. She knows that she needs to revise the PDQ, but because she has never changed a position to a lower level, she does not know all of the steps she will have to take to accomplish the change. She discussed her intent to change the position with her former supervisor, who thought it was a good idea, and her current supervisor, Ron Tanner, who also agreed. Had her supervisor disagreed with her plan, she would have had the authority to proceed with the change. Biggane will use Workplace Alaska to fill the vacant position. She intends to develop the ten questions that will be asked for Workplace Alaska, schedule interviews after she gets the names of applicants, prepare a form sheet to ask them about their experience, score it, and offer the job to the successful applicant. As a matter of courtesy, she will inform her supervisor of her choice, although she is not required to do so. She will also check with personnel to insure she is doing everything correctly. Biggane knows that she has authority to appoint because her supervisor has told her she has this authority and they discussed her authority when she completed her PDQ.
8. Biggane believes that "promote" can include giving merit increases to employees when they are evaluated. Because the positions that she supervises are all drafting technicians III, Biggane has not had an opportunity to promote an employee to a higher rank or job classification, and thus has not been able to exercise her authority to promote.
9. Biggane's supervisor lists her authority on the PDQ to transfer employees as level 2, which is defined as "Employee discusses decision with me and then takes action." *Id.* Biggane has participated in the loan of employees to other sections, although the position control numbers have remained in her section. She advised her supervisor that she approved the employee performing work for the other section, and her supervisor agreed with her decision. She has not had an opportunity to transfer a different position control number to or from her unit, and thus she has not been able to exercise her authority to transfer due to lack of opportunity.
10. The engineering assistant II PCN 25-1712 has the authority to act in the interest of the State in the employing function in the area of appoint and promote, and to effectively recommend action in the area of transfer. *Id.*
11. The authority to employ is not merely routine, but requires the exercise of independent judgment when the opportunity arises to employ, as demonstrated by Biggane's PDQ and testimony.
12. The part of the PDQ completed by Biggane's supervisor describes her authority to take disciplinary action, discharge, and settle grievances as level 3, which is defined as "Employee make recommendations to me, I make decision and direct employee to take action." *Id.* Although Biggane has given an employee a verbal warning about a performance issue, the authority to issue verbal warnings, without more, does not constitute adequate authority in the discipline function. Biggane does not have authority to act or effectively recommend action in the discipline and grievance adjudication functions in 8 AAC 97.990(a)(5) because her supervisor has retained that authority for himself. *Id.*
13. Biggane prefers to be in the supervisory unit.

### Conclusions of Law

1. The State of Alaska is a public employer under AS 23.40.250(7), and the Alaska State Employees Association/AFSCME Local 52, AFL-CIO, and the Alaska Public Employees Association/AFT, AFL-CIO are organizations under AS 23.40.250(5). This Agency has jurisdiction under AS 23.40.090 to consider this matter.
  2. The ASEA, as the petitioner, has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).
  3. Under 8 AAC 97.090 a bargaining unit of State employees may not properly combine supervisory personnel with nonsupervisory personnel.
  4. We have found a separate supervisory unit to be the appropriate unit for State employees who meet the definition of "supervisory employee" in 8 AAC 97.990(a)(5). *State v. Alaska State Employees Ass'n/AFSCME Local 52, AFL-CIO*, Decision & Order No. 219, at 15-17.
  5. We have found that
 

To be a supervisor under 8 AAC 97.990(a)(5), two standards must be met. First, the employer must have conferred on an employee the authority to act or effectively recommend action in any one of the three following supervisory functions: employing, discipline, or grievance adjudication. Second, the employee must exercise independent judgment in performing the function when the opportunity arises.
- State of Alaska v. Alaska State Employees Ass'n/AFSCME Local 52, AFL-CIO*, Decision & Order No. 194, at 6 (Sept. 26, 1995).
6. Under the definition of "supervisory employee" in 8 AAC 97.990(a)(5), the engineering assistant II PCN 25-1712 is a "supervisory employee" because Biggane has been conferred authority in the employing function in the interest of the State to appoint, transfer, and promote employees. A delay, caused by Biggane's decision to reclassify a position, in the exercise of her conferred authority to fill the only position that has become vacant, does not significantly diminish her exercise of authority to hire employees. Biggane has demonstrated exercise of independent judgment by deciding to downgrade the position before she fills it, and by determining that the position can remain vacant during the time she needs to accomplish the downgrade.
  7. Granting a merit increase to an employee in the employee's current job classification is not a promotion. The American Heritage Dictionary 816 (2d college ed. 1982) defines "promote" as "ir.v. To raise to a more important or responsible job or rank." Thus, a promotion would include an action such as placing an employee in a higher or more complex job classification.
  8. The engineering assistant II PCN 25-1712 does not have authority to act or effectively recommend action in the interest of the State in the discipline and grievance adjudication functions in 8 AAC 97.990(a)(5) because her supervisor makes the decision after listening to her recommendation and Biggane merely implements the decision.
  9. Because the engineering assistant II PCN 25-1712 is a "supervisory employee" under 8 AAC 97.990(a)(5) it shares a community of interest and working conditions with the supervisory unit despite its previous shared history and contract terms with the general government unit.
  10. Under AS 23.40.090, we conclude the appropriate bargaining unit is the supervisory unit.

### ORDER

1. The petition of the Alaska State Employees Association/AFSCME Local 52, AFL-CIO to declare the engineering assistant II PCN 25-1712 appropriately in the general government unit is DENIED;

2. The engineering assistant II PCN 25-1712 is appropriately in the supervisory unit; and
3. 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

Alfred L. Tamagni Sr., Chair

Robert A. Doyle, Board Member

Raymond P. Smith, Board Member

#### APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

#### CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of ALASKA STATE EMPLOYEES ASS'N/AFSCME LOCAL 52, AFL-CIO, (Judith M. Biggane, PCN 25-1712), STATE OF ALASKA and ALASKA PUBLIC EMPLOYEES ASS'N/AFT, AFL-CIO, Case No. 97-669-UC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 20th day of August, 1998.

Margie Yadlosky

Personnel Specialist I

This is to certify that on the 20th day of August, 1998, a true and correct copy of the foregoing was mailed, postage prepaid to

Kathy Dietrich, ASEA

Kent Durand, State

Bob Watts, APEA

Signature

In its prehearing brief, ASEA incorporated by reference all legal issues raised in the appeal of Decision & Order No. 219, which was issued in *State v. Alaska State Employees Ass'n/AFSCME Local 52, AFL-CIO*, Decision & Order No. 219 (May 27, 1997) affirmed case no. 3AN-95-9083 CI (Super. Ct., filed June 15, 1997). We rely on Decision & Order No. 219 for those issues addressed previously and do not repeat their discussion here. ASEA also claims that the transfer of bargaining unit positions violates the merit principles governed by AS 23.40.070. This issue was addressed previously in *Alaska State Employees Ass'n v. State*, Decision & Order No. 223 (Aug. 7, 1997). We rely on Decision & Order No. 223 for this issue and do not repeat its discussion here.