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ALASKA STATE EMPLOYEES ASS'N/ AFSCME LOCAL 52, AFL-CIO, (William Alan Braley, PCN 25-3044),	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	
	)	
Respondent,	)	
and	)	
	)	
ALASKA PUBLIC EMPLOYEES ASS'N/ AFT, AFL-CIO,	)	
Intervenor.	)	
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CASE NO. 96-550-UC		

**DECISION AND ORDER NO. 238**

Digest: The bargaining unit placement of the technical engineer I/architect I position in the Department of Transportation & Public Facilities, PCN 25-3044, is appropriately in the supervisory bargaining unit represented by the Alaska Public Employees Association/AFT, AFL-CIO.

**DECISION**

**Statement of the Case**

On May 7, 1996, the Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) filed this petition to clarify the bargaining unit status of technical engineer I/architect I PCN 25-3044 at the Fairbanks International Airport, Department of Transportation and Public Facilities, 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 25-3044 meet the definition of "supervisory employee" in 8 AAC 97.990(a)(5)?
2. Is the appropriate unit for the technical engineer I/architect I position PCN 25-3044 located in the Department of Transportation and Public Facilities, at the Fairbanks International Airport, in the supervisory unit or the general government unit?

## Summary of the Evidence

### **A. Exhibits.**

Petitioner Alaska State Employees Association offered the following exhibits, which were admitted into the record:

1. ASEA and State collective bargaining agreement (July 1, 1996 -- June 30, 1999);
2. ASEA and State collective bargaining agreement (Jan. 1, 1990 -- Dec. 31, 1992); letter of agreement extending terms through June 30, 1995;
3. Position description questionnaire for PCN 25-3044;
6. Classification memorandum from Jaeger to Classification Section, Dept. of Administration (Mar. 5, 1996);
101. Position description questionnaire for PCN 25-3076;
107. Department of Transportation & Public Facilities Supervisors Guide (Sept. 1990).

Respondent State of Alaska offered the following exhibits, which were admitted into the record:

5. Class specification for technical engineer I/architect I (April 26, 1994);
7. Organization chart, Fairbanks International Airport (Mar. 1996);
8. Department of Transportation & Public Facilities Policy (July 12, 1991);

*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.*

The following exhibit offered by Alaska State Employees Association was not admitted into the record:

114. Fair Labor Standards Act overtime eligibility worksheet for PCN 25-3044, cumulative- already in the record; filed with the petition as union exhibit 5.

### **B. Testimony.**

William Alan Braley, 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. Exhs. 1 and 2.
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 (May 7, 1996).
3. The position technical engineer I/architect I PCN 25-3044 is located in the Department of Transportation and Public Facilities at the Fairbanks International Airport and is in the general government unit. Judson letter to O'Connell (May 1, 1996).
4. The incumbent in PCN 25-3044 is William Alan Braley. Exh. 3. Braley has been in the technical engineer I/architect I position since April 16, 1996. Exh. 6.
5. On May 1, 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. Judson letter to O'Connell (May 1, 1996). ASEA protested the change and filed this petition.
6. Braley supervises an environmental analyst position. Exh. 3, at 6. Kristen Dubois, formerly known as Kristen Goodwin, occupies the environmental analyst position, which is a range 17.
7. Page 11 of the PDQ, entitled "supervisory information" and completed by Braley's supervisor, Jim Fiorenzi, six days before Braley's promotion to technical engineer I/architect I was effective, shows that Braley has full authority to appoint employees, defined under level 1 as "Employee effectively takes action." Exh. 3, at 11; position description questionnaire submitted with unit clarification petition, at 6 (effective 10/16/96). It shows that Braley has level 2 authority, defined as "Employee discusses decision with me and then takes action," to promote, transfer, and discipline employees and to settle grievances. *Id.* Braley's authority to discharge is listed as level 3, defined as "Employee presents recommendations to me, I make decision and direct employee to take action." *Id.*
8. Prior to the hearing, Braley had not seen the page of the PDQ Fiorenzi completed and he has not had a detailed discussion with Fiorenzi about his supervisory authority. Braley's knowledge of his supervisory authority stems from his PDQ, performance of supervisory duties, and being evaluated on his performance of those duties. Braley testified that page six of the PDQ is inaccurate because it shows him as having no supervisory responsibility for DuBois' position. We find that Braley's testimony about his supervisory duties is more persuasive than the information contained on page six of the PDQ, completed before Braley was reclassified to a technical engineer I/architect I on April 16, 1996.
9. Braley assumed supervisory duties after he and his supervisor determined that an environmental position was needed to assist Braley at the airport. Braley and Fiorenzi created DuBois' position by modifying an existing PDQ to make it an environmental analyst II. Braley called for the register used to hire the environmental analyst II. Braley independently decided to form a committee to hire the environmental analyst II. He believes that he discussed the committee idea with his supervisor. Braley asked two individuals, neither of whom are his supervisor, to participate in the interviews. He asked the environmental manager from the Anchorage International Airport (AIA) to participate due to her knowledge of environmental matters. Because environmental law is very complex and Braley's background is in civil engineering, he wanted the benefit of the AIA environmental manager's environmental expertise to make sure he hired the most qualified candidate. The environmental manager's position and Braley's position are lateral positions. Braley asked the maintenance chief at the Fairbanks International Airport (FIA) to participate because a close working relationship is required between maintenance, Braley's position, and the environmental analyst II position. Braley prepared questions for the interview and the AIA manager contributed some questions. Braley showed his questions to the maintenance chief and asked if he wanted to add anything, but Braley does not believe that the chief added any questions. Braley did not discuss with the other two individuals how the decision to hire would be made if the three of them did not agree on the best candidate because he felt that the decision on who to hire was his to make. Although a committee member initially expressed an opinion that differed from Braley's, Braley's view prevailed. If each of the three committee members had decided that a different candidate was the appropriate choice, Braley believes that he would have made the ultimate decision. If a substantial difference of opinion existed between Braley and the maintenance chief, Braley

would discuss the matter with his supervisor, Fiorenzi, the assistant airport manager, and with Doyle, the airport manager. Braley has never been advised by his supervisor that he needs to check with him before hiring an employee. Braley did advise his supervisor of his choice for the environmental analyst II and his supervisor agreed with the choice. Braley prefers to discuss his choice and the reasons for it with his supervisor because he thinks it is a good idea to bounce his ideas off someone else. Fiorenzi has never disagreed with any personnel decision that Braley has made.

10. The only opportunity that Braley has had to hire occurred when the environmental analyst II position was filled.
11. Braley is planning to expand his staff. He and his supervisor are in the process of requesting two additional positions for the airport during the upcoming legislative session, an assistant engineer and another environmental analyst. If the positions are obtained, Braley would supervise the engineer and would do the hiring for that position himself. A decision has not been made whether he or DuBois would supervise the environmental analyst position. Braley believes that he, his supervisor, and the airport manager will make that decision. The airport manager will make the final decision if the three do not agree. He expects that both he and DuBois would participate in hiring an applicant for the environmental analyst position. He would include DuBois in the hiring decision because she is responsible for the environmental work. If the two of them were to disagree on who should be hired, he would try to reach consensus rather than impose his decision.
12. Braley is trying to promote DuBois by upgrading her position. When the position was created, he wrote the PDQ and described the projected duties. Three or four months after he hired DuBois, Braley recognized that her abilities exceeded those that he had expected the person in the position to have. Braley subsequently assigned DuBois some duties that he would have had to handle had she not been so capable. On her first evaluation, he recommended that the position be upgraded. Her PDQ has been revised to reflect the duties that she is performing and submitted for reclassification. He signed the upgrade request three months before the hearing and the receptionist sent it in. Braley believes that he had to obtain budgetary approval before submitting the upgrade request. The upgrade request is still pending.
13. Braley is somewhat unclear about his authority to discipline. He believes that he has the authority both to take disciplinary action and to recommend disciplinary action. He can give a verbal warning and would advise his supervisor after the fact. He can recommend suspension, but would discuss the matter with his supervisor before taking action. He would discuss a proposed termination with his supervisor. Braley has not had any opportunity to exercise disciplinary authority because no discipline has been needed.
14. Braley has not had any opportunity to adjudicate grievances in this position because none have been filed. He is not knowledgeable of the ASEA/State contract provision concerning grievances, which requires that grievances be adjudicated by the first level supervisor outside of the collective bargaining unit. Exh. 1, at 30.
15. The technical engineer I/architect I PCN 25-3044 has the authority to act in the interest of the State in the employing function in the area of appoint. Exh 3, at 11. Braley's supervisor has conferred on Braley at least the authority to recommend promotion and transfer of employees, discipline that is less severe than termination, and grievance settlement. *Id.*
16. The authority to employ is not merely routine, but requires the exercise of independent judgment when the opportunity arises to employ, as demonstrated by Braley's PDQ and testimony.
17. Braley does not have the authority to act or effectively recommend discharge in the discipline function in 8 AAC 97.990(a)(5) because his supervisor has retained that authority for himself. *Id.*
18. Braley prefers to be in the supervisory unit.

### **Discussion**

A question in this case is whether Braley's participation on a hiring committee precludes him from having sufficient authority under 8 AAC 97.990(a)(5) to act or effectively recommend action in the employing function in the area of hiring. When it determined the supervisory status of correctional officers III in *Public Safety Employees Ass'n v. State*

of Alaska, this Agency addressed hiring committees, stating:

Any authority correctional officers III may have had to hire is based on two circumstances. Some correctional officers may have served on a hiring committee and participated in making a recommendation to hire to the superintendent or assistant superintendent . . . . The committee would interview the candidates for a position, often using prepared questions, and provide a report or recommendation to the superintendent or assistant superintendent who would make the decision to hire. The superintendent of Spring Creek Correctional Center indicated this practice continues at this facility. Tr. 1361. He described it by stating that two or three sergeants may be assigned to an interview committee. They are provided questions and they discuss the candidates' qualifications. The recommendations of the committee are generally followed. Tr. 1358-1359. While the superintendent clearly values the contribution of the correctional officers III in the process, we cannot conclude that they exercise independent judgment or effectively recommend the hire of a State employee.

The predecessor to this labor relations agency, the State Labor Relations Agency, considered whether serving on a hiring committee supported a determination of supervisory status. It held in *In re Supervisory Unit Clarification*, Order & Decision No. 123, at 8 (Aug. 28, 1989), that such service did not demonstrate the authority to appoint, stating:

The agency has determined that the supervisor must have independent authority to appoint. Participation as a co-equal on a committee manifests a conclusion by management that the incumbent does not have independence to engage in that appointment. If management desires an employee to be a supervisor then it needs to delegate that authority; if management concludes that it wishes to withhold or maintain in a committee setting authority to appoint, then it has withheld supervisory status to the incumbent as to that criterion.

We agree. Participation on a hiring committee, particularly where that participation is limited to asking prepared questions and to making a group recommendation to a higher level authority, does not demonstrate the exercise of independent judgment required in the current definition of "supervisory." Service on a hiring committee is unrelated to a particular correctional officer's work duties or any other supervisory obligations. Shift supervisors, for example, do not have a role in the selection of the employees they direct on their shift. For example, at one facility, Spring Creek, the responsibility to fill positions belongs to an assistant superintendent. The correctional officers chosen to participate on a hiring committee seem to have been chosen on the basis of availability, rather than on any other supervisory responsibilities they might have. Shift supervisors did not generally participate in hiring committees. Their work and work schedules interfered with service on a hiring committee. The practice of including correctional officers III on hiring committees, which has been discontinued except at Spring Creek, does not demonstrate authority to employ. (transcript citations omitted)

*Public Safety Employees Ass'n v. State of Alaska*, Decision & Order No. 233, at 33-34 (Nov. 24, 1997).

Braley's decision to form a hiring committee differs substantially from the facts described in *Public Safety Employees Ass'n v. State*. Braley's supervisor has given him authority to hire and does not require Braley to check with him prior to making a job offer. Exh. 3, at 11. In contrast, correctional officers III have not been given authority to hire, but are limited to making a group recommendation to a superior about who to hire. Instead of being assigned to participate on a hiring committee by his supervisor, Braley independently decided to form a hiring committee, which did not include his supervisor. He chose the members of the committee, instead of participating with other committee members who had been selected by a superior. Although he valued the recommendations of his committee members, he retained decision making authority himself, unlike correctional officers III, who submitted a recommendation to the assistant superintendent or superintendent, who then made the hiring decision. Braley prepared interview questions, which were supplemented by one of the committee members, instead of proceeding with questions that has been prepared by someone else. Braley exercised independent judgment in calling for the register himself, thereby determining what type of register to request. Under these circumstances, we believe that Braley has demonstrated sufficient independent

judgment in hiring to meet the exercise of independent judgment requirement in 8 AAC 97.990(a)(5).

### **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 technical engineer I/ architect I PCN 25-3044 is a "supervisory employee" because Braley has been conferred authority in the employing function in the interest of the State to appoint employees and he has the authority to recommend promotion and transfer of employees, discipline that is less severe than termination, and grievance settlement. Braley has demonstrated exercise of independent judgment by hiring the environmental analyst II when the opportunity arose, and by requesting to have the environmental analyst II position upgraded.
7. The technical engineer I/architect I PCN 25-3044 does not have authority to act or effectively recommend action in the interest of the State in the discipline function in 8 AAC 97.990(a)(5) to discharge an employee because his supervisor makes the decision after listening to his recommendation and Braley merely implements the decision.
8. Because the technical engineer I/architect I position, PCN 25-3044, 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.
9. Braley's desire to be in the supervisory bargaining unit supports placing the technical engineer I/architect I position in the supervisory 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 technical engineer I/architect I PCN 25-3044, appropriately in the general government unit is DENIED;
2. The technical engineer I/architect I PCN 25-3044 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, (William Alan Braley, PCN 25-3044) v. STATE OF ALASKA and ALASKA PUBLIC EMPLOYEES ASS'N/AFT, AFL-CIO, Case No. 96-550-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.