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ALASKA STATE EMPLOYEES ASS'N/ AFSCME LOCAL 52, AFL-CIO, (Ruth J. Sikma, PCN 18-7454),)	
)	
Petitioner,)	
)	
vs.)	
)	
STATE OF ALASKA,)	
)	
Respondent,)	
and)	
)	
ALASKA PUBLIC EMPLOYEES ASS'N/ AFT, AFL-CIO,)	
Intervenor.)	
CASE NO. 97-590-UC		

DECISION AND ORDER NO. 239

Digest: The bargaining unit placement of the administrative assistant position in the Division of Administrative Services, Department of Environmental Conservation, PCN 18-7454, is appropriately in the supervisory bargaining unit represented by the Alaska Public Employees Association/AFT, AFL-CIO.

DECISION

Statement of the Case

On July 11, 1996, the Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) filed this petition to clarify the bargaining unit status of the administrative assistant PCN 18-7454 at the Fairbanks Division of Administrative Services, Department of Environmental Conservation, 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. At the prehearing conference on October 14, 1997, ASEA advised that it was withdrawing this unit clarification petition and the petition was dismissed without prejudice on October 21, 1997. After further investigation, ASEA asked to reinstate the petition on October 23, 1997. ASEA's request was granted and a notice of hearing was issued that same day. 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 hearing was held on November 20-21, 1997, and the record closed on November 21, 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.

Issues¹

1. Does the incumbent in PCN 18-7454 meet the definition of "supervisory employee" in 8 AAC 97.990(a)(5)?
2. Is the appropriate unit for the administrative assistant position PCN 18-7454 located in the Department of Environmental Conservation, at the Administrative Services Division, 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);
3. Position description questionnaire for PCN 18-7454;
6. Classification memorandum from Jones to Judson, Classification Section, Dept. of Administration (Jan. 19, 1996);
101. Position description questionnaire for PCN 18-7195; and
105. Ballentine delegation of authority to Sikma, (July 21, 1997) (admitted over objection).

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

5. Class specification for administrative assistant (Printed Nov. 3, 1997); and
7. Organization Chart, Department of Environmental Conservation, Division of Administrative Services (Rev. May 23, 1997).

B. Testimony.

Kit Ballentine, the incumbent's supervisor, and Ruth J. Sikma, 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 (July 11, 1996).
3. The position administrative assistant PCN 18-7454 is located in the Department of Environmental Conservation,

Fairbanks Administrative Services Section, and is in the general government unit. Exh. 6; Judson letter to O'Connell (July 1, 1996).

4. The incumbent in PCN 18-7454 is Ruth J. Sikma. Exh. 3. Sikma has been in a range 13 administrative assistant position since April 16, 1996. *Id.*, at 1. Prior to that, she worked as a range 12 administrative assistant I. The State conducted a reclassification study and eliminated the administrative assistant I, II, and III classifications and replaced them with an administrative assistant and administrative manager classification. Her supervisory duties regarding appoint, promote, transfer, discipline, and grievance adjudication did not change when she was reclassified from an administrative assistant I to an administrative assistant.
5. On July 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 (July 1, 1996). ASEA protested the change and filed this petition.
6. Sikma's primary duties include managing the office and providing coordination for the Fairbanks Division of Administrative Services, supervising an administrative clerk I position, and providing technical supervision for Fairbanks staff who are responsible for accounts payable and procurement functions. Before a departmental reorganization about one and one-half years earlier, Sikma had supervised as many as five positions. She did not participate in the reorganization decision that resulted in the transfer of an administrative clerk III position to another administrative services section. This decision was made by the director. An administrative clerk I position was eliminated and the employee filling the position was laid off. The layoff decision was made by Kit Ballentine, Sikma's supervisor, and the director.
7. Ballentine has given Sikma the authority to appoint, promote, transfer, and suspend employees, and to take disciplinary action. Ballentine supervises Ole Olsen, who was formerly Sikma's supervisor. Ballentine believes that the supervisory information Olsen completed on page 12² of Exhibit 3 is a more accurate representation of Sikma's supervisory authority than the information listed on page 11 of Exhibit 3, except that Sikma supervises one employee instead of the three listed. Olsen had rated Sikma's authority to appoint, promote, transfer, and take disciplinary action at level 1, which is defined as "Employee effectively takes action." Sikma's authority to discharge and settle grievances is listed as level 2, which is defined as "Employee discusses decision with me and then takes action." Ballentine expects Sikma to handle disciplinary problems that arise and she is aware that Sikma has addressed problems that have arisen. Ballentine testified that Sikma would discuss a decision to discharge an employee with her prior to taking action, and would also confer with the personnel office to insure that proper steps were being taken.
8. The delegation of authority memorandum dated July 21, 1997, is a standard Department of Environmental Conservation form used primarily for the purpose of delegating procurement authority. Exh. 105.
9. Sikma has supervised the same person in the administrative clerk I position at least since Sikma became an administrative assistant I. She has not had an opportunity to hire an employee since her position was reclassified to an administrative assistant because there has not been a vacancy. Similarly, she has not had an opportunity to promote an employee. Simka would voluntarily inform her supervisor of her intentions in hiring and other employing functions. Sikma has handled issues that could have led to formal discipline had they not been resolved satisfactorily. She took the level of action required to address the issues. Even though Ballentine has given Sikma authority to take disciplinary action short of discharge without consulting her, Sikma always confers with her supervisor and personnel to insure she is doing things correctly. Sikma has not experienced the need to discharge an employee. Sikma believes that her supervisor and the personnel staff would support her disciplinary actions.
10. Sikma hired three employees while she was classified as an administrative assistant I: Carmen McCumbey, Mike Nafpliotis, and Bonnie Workman. She obtained budgetary approval to fill the position from the director through her supervisor, called for a register, checked it for rehires, decided which applicants needed to be interviewed, sent letters to those applicants, determined the questions to be asked, conducted interviews, added up the scores, checked references, marked the register, signed it, and send it back to the personnel office with a request to appoint letter and explanation of her choice of the applicants. Personnel staff reviewed paperwork to insure everything was done correctly and wrote the offer to hire letter. Sikma's recommendations about who to hire have always been followed.

11. Both Sikma and Ballentine testified that Sikma has the authority to transfer an employee. The record does not contain information about whether her authority to transfer is restricted to transfers within her section, if she were to again supervise more than one position, or if it includes transferring a position to or from her section. Sikma stated that she had not had an opportunity to transfer an employee. However, at least one employee from her section was transferred to another section during a departmental reorganization that occurred around the time her position was reclassified to an administrative assistant position. The director, instead of Sikma, made the transfer decision. Sikma does not have budgetary authority to decide where positions will be placed within the department, implement transfers that will accomplish budgetary goals, or lay off a subordinate.
12. Sikma has not had any opportunity to adjudicate grievances in this position because none have been filed.
13. The administrative assistant PCN 18-7454 has at least the authority to effectively recommend action in the interest of the State in the employing function in the area of appoint and promote, and in the disciplining and grievance adjudication functions. Exh 3, at 12.
14. The exercise of authority to employ and discipline is not merely routine, but requires the exercise of independent judgment when the opportunity to hire occurs or the need to discipline arises, as demonstrated by the testimony of Sikma and Ballentine, and the authority conferred on her in the PDQ, which was confirmed by Ballentine.
15. Sikma prefers to be in the supervisory unit because she feels her interests would be better represented in that unit. She consulted a general government unit union representative when a disciplinary issue arose with a subordinate who was also in the general government unit. She was told by the union representative that the union didn't want to take actions against someone in the same union.

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, affirmed case no. 3 AN-95-9083 CI (Super. Ct., filed June 15, 1997).
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 administrative assistant PCN 18-7454 is a "supervisory employee" because Sikma has been conferred at least the authority in the employing function in the interest of the State to effectively recommend the appointment and promotion of employees; discipline of employees; and adjudication of their grievances. Sikma has demonstrated exercise of independent judgment by hiring three

employees while she was classified as an administrative assistant I, and by handling the disciplinary issues that have arisen.

7. Because the administrative assistant position, PCN 18-7454, 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.

8. Sikma's desire to be in the supervisory bargaining unit supports placing her administrative assistant position in the supervisory unit. The actual conflict of interest that occurred when she contacted her union about a disciplinary action is an example of the inherent conflict of interest that occurs when supervisors under 8 AAC 97.990(a)(5) are placed in the same bargaining unit as rank and file employees, which was addressed by the Agency in *State v. Alaska State Employees Ass'n/AFSCME Local 52, AFL-CIO*, Decision and Order No. 219, at 28-29 & 34, affirmed case no. 3 AN-95-9083 CI (Super. Ct., filed June 15, 1997).

9. 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 administrative assistant PCN 18-7454, appropriately in the general government unit is DENIED;

2. The administrative assistant PCN 18-7454 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, (Ruth J. Sikma, PCN 18-7454), STATE OF ALASKA and ALASKA PUBLIC EMPLOYEES ASS'N/AFT, AFL-CIO, Case No. 97-590-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

1In 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.

2Confusion over page numbers exists because the preprinted numbers on the position description questionnaire (PDQ) differ from the page numbers used to mark the exhibits. The page numbers listed in this decision are the numbers on the exhibit labels.