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ALASKA STATE EMPLOYEES ASS'N/	)	
AFSCME LOCAL 52, AFL-CIO,	)	
(Janice L. Wagner, PCN 25-2122),	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
STATE OF ALASKA,	)	
	)	
Respondent,	)	
and	)	
	)	
ALASKA PUBLIC EMPLOYEES ASS'N/	)	
AFT, AFL-CIO,	)	
Intervenor.	)	
	)	
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CASE NO. 96-556-UC		

**DECISION AND ORDER NO. 240**

Digest: The bargaining unit placement of the administrative manager II position in the Department of Transportation, PCN 25-2122, is appropriately in the supervisory bargaining unit represented by the Alaska Public Employees Association/AFT, AFL-CIO.

**DECISION**

**Statement of the Case**

On May 17, 1996, the Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) filed this petition to clarify the bargaining unit status of the administrative manager II PCN 25-2122 at the Northern Maintenance and Operations Section of the 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 hearing was held on November 21, 1997, and the record closed that same day.

**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 25-2122 meet the definition of "supervisory employee" in 8 AAC 97.990(a)(5)?
2. Is the appropriate unit for the administrative manager II position PCN 25-2122 located in the Northern Maintenance and Operation Section of the Department of Transportation and Public Facilities 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 25-2122;
- 5a. State of Alaska Class Specification Management Analyst III (Rev. 3/16/75);
6. Classification memorandum from Dailey to Rider (Mar. 13, 1996);
103. Position description questionnaire for PCN 25-2120 (admitted over objection); and
107. Department of Transportation and Public Facilities Supervisors Guide Employee Discipline (Sept. 1990).

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

5. Class specification for Administrative Manager I-IV (Printed Oct. 23, 1997, rev. June 14, 1996); and
7. Organization Chart, Department of Transportation and Public Facilities, Northern Region Maintenance and Operations (July 9, 1997).

### **B. Testimony.**

Janice L. Wagner, 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 (May 17, 1996).

3. The position administrative manager II PCN 25-2122 is located in the Department of Transportation and Public Facilities, Northern Maintenance & Operations Section, and is in the general government unit. Exh. 3 at 1; Judson letter to O'Connell (May 13, 1996).
4. On May 13, 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 13, 1996). ASEA protested the change and filed this petition.
5. The incumbent in PCN 25-2122 is Janice L. Wagner. Exh. 3, at 1. Wagner has been in a range 17 administrative manager II position since April 16, 1996. *Id.* Prior to that, she worked as a range 18 management analyst III. Her position was reclassified as part of a reclassification study conducted by the Department of Administration. Instead of being the Interior District budget analyst, she became the Northern Region budget person, acquiring responsibility for two more districts. She provides technical support to approximately 25 administrative positions in the region.
6. Wagner supervises one administrative assistant position, occupied by Lynne Franklin. An accounting technician II position also reports to her, but this position is vacant. Wagner hires for these two positions because her boss, Ralph Swartout, prefers that Wagner perform the hiring function. When she assumed supervisory duties, Swartout advised her that it was for a six month period to see how things worked out because her supervisory abilities had not been established. She was not informed of any change in her supervisory duties after the six months ended.
7. Although Wagner acknowledged that she is a supervisor, she does not consider herself to be part of the management team. Upper level managers do not talk to her or ask her questions that concern her position. Wagner interacts with Jim Little, Jack Bitts, and Dwight Stellar, who occupy range 20-22 positions. However, she does not have contact with some higher level managers. Wagner believes that her interests are more closely aligned with members of the general government unit than with members of the supervisory unit.
8. James Romersberger, Wagner's former supervisor, completed the supervisory information for Wagner's position description questionnaire (PDQ) on April 26, 1996. The PDQ lists Wagner's authority to appoint, promote, and transfer as level 1, which is defined as "Employee effectively takes action." *Id.*, at 6. Wagner's authority to take disciplinary action, discharge, and settle grievances is listed as level 2, which is defined as "Employee discusses decision with me and then takes action." *Id.* Wagner has hired one employee, Barbara. Wagner does not remember the date that she hired this employee, but it was a couple of years earlier. Wagner decided to use a hiring committee when Barbara was hired because she wanted to make a correct hire. Wagner invited Lynne Franklin, her subordinate, and the office engineer, Jim Romersberger, to serve on the hiring committee with her. Wagner did not include her supervisor on the committee because he didn't want to be involved. Wagner prepared a list of questions for applicants that she showed to the hiring committee members, and they all agreed on a point value for the questions. There was no disagreement about which candidate to hire. Because she had not considered that the committee members might disagree, Wagner had not discussed with them how the ultimate decision would be made about who to hire if a disagreement occurred. However, Wagner would have advocated for her choice because she is the one who would have been responsible for supervising the position.
9. Wagner has not had an opportunity to promote an employee. She tried to upgrade a range 14 position to a range 16, but staff in Juneau who review classification requests decided that the position should not be upgraded. Wagner and her supervisor both supported the position upgrade. Wagner believes that she must talk to her boss prior to promoting an employee.
10. Wagner has not had any discussion with her boss about her authority to discharge or take disciplinary actions, but she feels that he would like to be included in the decision. Her written authority to perform supervisory functions consists of the authority in her PDQ. However, Wagner believes her level of authority to discipline and discharge should be a level 3, not the level 2 that is listed on the PDQ. Level 3 is defined as "Employee presents recommendations to me, I make decision and direct employee to take action." The reason for Wagner's belief that she has less authority than is stated on the PDQ is unclear since she has not discussed her authority to discipline or discharge with her supervisor. Wagner has not experienced a need to discipline an employee.
11. Wagner has been an ASEA shop steward for two or three years. She is a member of the E-board and is on the

Political Action Committee. Wagner is concerned that her activities as a shop steward for ASEA could have a negative effect on her employment if her position were to be transferred to the supervisory bargaining unit. Specifically, because Wagner has filed grievances on behalf of GGU members, which involve some supervisory bargaining unit members who occupy management positions, she is concerned that if she were to be placed in the supervisory unit, she would not be fairly represented by these individuals if she needed to have a grievance filed.

12. Wagner has not had any opportunity to adjudicate grievances in this position because none have been filed.
13. The administrative manager II PCN 25-2122 has the authority to act in the interest of the State in the employing function in the area of appoint, promote, and transfer. She has the authority to effectively recommend action in the discipline and grievance adjudication functions. *Id.*
14. The exercise of authority to employ is not merely routine, but requires the exercise of independent judgment when the opportunity to hire occurs, as demonstrated by the testimony of Wagner, and the authority conferred on her in the PDQ.
15. Wagner prefers to be in the general government unit because she feels her interests would be better represented in that 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, 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 manager II PCN 25-2122 is a "supervisory employee" because Wagner has been conferred authority in the employing function in the interest of the State to appoint, promote, and transfer employees. Wagner has demonstrated exercise of independent judgment by hiring one employee and attempting to have a position upgraded. Wagner's decision to use a hiring committee to fill the vacant position does not preclude her from being a supervisor under 8 AAC 97.990(a)(5). *See, Alaska State Employees Ass'n v. State*, Decision & Order No. 238, at 6-8 (Aug. \*, 1998). **Enter issue date for D&O 238**
7. Because the administrative manager II position, PCN 25-2122, 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 and Wagner's desire to be in the general government bargaining unit.

8. 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 25-2122, appropriately in the general government unit is DENIED;
2. The administrative assistant PCN 25-2122 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, (Janice L. Wagner PCN 25-2122), STATE OF ALASKA and ALASKA PUBLIC EMPLOYEES ASS'N/AFT, AFL-CIO, Case No. 96-556-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.