

ALASKA LABOR RELATIONS AGENCY
 3301 EAGLE STREET, SUITE 208
 P.O. BOX 107026
 ANCHORAGE, ALASKA 99510-7026
 (907) 269-4895
 Fax (907) 269-4898

ALASKA VOCATIONAL TECHNICAL)
EDUCATION CENTER TEACHERS')
ASSOCIATION, NEA-ALASKA,)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent,)
)
and)
)
ALASKA STATE EMPLOYEES)
ASSOCIATION, AFSCME LOCAL)
52, AFL-CIO,)
)
Intervenor.)
)

CASE NO. 00-1047-UC

DECISION AND ORDER NO. 262

Digest: Based on factors in AS 23.40.090, we find that the training specialist position, PCN 05-8530, at the Alaska Vocational Technical Center in Seward shares a greater community of interest with members of the Alaska Vocational Technical Education Center teachers' unit than with members of the general government unit. There is no contract bar to the transfer of PCN 05-8530 from the Alaska Vocational Technical Education Center teachers' unit to the general government unit on July 1, 2000.

Appearances: Kent Durand, labor relations analyst, for respondent State of Alaska, Department of Administration; and Joe Josephson, Josephson & Associates and Don Oberg, for petitioner Alaska Vocational Technical Education Center Teachers' Association, NEA-Alaska. Intervenor Alaska State Employees Association, AFSCME Local 52, AFL-CIO, did not appear.

However, on May 30, 2000, it filed a Notice of Joinder, stating that “ASEA hereby joins with the State of Alaska for purposes of the above-captioned case. ASEA adopts the State’s [p]osition as its own throughout the pendency of this case. Notice is hereby served that ASEA will participate in this matter exclusively through its adoption of the State’s position.” Notice of Joinder (May 29, 2001).

DECISION

Statement of the Case

On July 13, 2000, the Alaska Vocational Technical Education Center Teachers’ Association, NEA-Alaska (AVTECTA) filed a unit clarification petition to have the Alaska Labor Relations Agency determine the appropriate bargaining unit for PCN 05-8530, a training specialist position that the State had reclassified from a teacher/placement counselor position. Prior to the reclassification, the position had been in the AVTECTA bargaining unit.

The Agency’s personnel specialist conducted an investigation under 8 AAC 97.060(a). On November 9, 2000, she issued a Notice of Investigation, advising the parties that the investigation showed the position shared a greater community of interest with the general government unit than with the AVTECTA unit. She further advised them she would recommend the Agency dismiss the petition unless a party raised a valid reason for proceeding. AVTECTA requested and was granted an extension to January 15, 2001, to reply. Both AVTECTA and the State provided additional information. On April 12, 2001, the personnel specialist issued a Notice of Preliminary Finding After Investigation, recommending that the Agency schedule a prehearing conference because a valid factual dispute existed. A prehearing conference was held on May 15, 2001.

This matter was heard on June 11, 2001, in Anchorage, Alaska, before the Alaska Labor Relations board panel, consisting of Chair Aaron T. Isaacs, Jr., and members Robert Doyle¹ and Raymond Smith. Hearing Officer Jean Ward presided. The record closed on June 11, 2001.

Issues

1. Is there a contract bar to the transfer of PCN 05-8530 from the AVTECTA bargaining unit to the general government unit on July 1, 2000?
2. What is the appropriate bargaining unit for PCN 05-8530?

Findings of Fact

¹ Member Doyle considered the matter on the basis of the record, including the hearing tapes. Subsequently, he resigned from the board. Since he is not serving on the board at the time this decision is being issued, he is not participating in the decision.

1. The Alaska Vocational Technical Center (AVTEC) is located at Seward and is part of the Department of Education and Early Development. It is a postsecondary institution that offers training in vocational skills. The average student age is 35, and the student population is approximately one-half Native Alaskan. AVTEC programs include Applied Technology-Diesel; Heavy Equipment; Facility Maintenance; Maritime Department, Culinary Arts and Science; IT Computer Skills; Business Office Occupations; and Bulk Fuel Storage. Most of the students receive classroom instruction as well as hands-on experience, which enables them to learn to perform the competency that they are studying. The long-term programs are from eight weeks to ten months in length. Other training in the curriculum includes communication skills, employability skills, resume writing, and first aid training.

2. The Alaska Vocational Technical Education Center Teachers' Association, National Education Association (AVTECTA) is recognized "as the exclusive representative of all teachers in the AVTECTA for collective bargaining with respect to salaries, wages, hours, and other terms and conditions of employment." Exh. I, at 1.

3. According to the parties' collective bargaining agreements, effective July 1, 1999 – June 30, 2002, and July 1, 2000 – June 30, 2003,² "Teacher' in this Agreement shall mean a person in State service who is paid a salary or wage and who engages in planning and/or instructing in an exempt teaching, counseling, or librarian position at the Alaska Vocational Technical Center that has been agreed to by mutual consent of the parties or which has been certified by the Alaska Labor Relations Agency (ALRA) or a court of competent jurisdiction as an AVTECTA bargaining unit position." Exh. G, at 5; Exh. I, at 1.

4. Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA) represents the general government unit (GGU). The GGU is a statewide unit of classified nonsupervisory employees of the executive branch who are not included in another bargaining unit. The unit includes technical, professional, and clerical personnel.³

5. AVTEC employees are either exempt or partially exempt, or they are in the classified service in one of two units: the GGU or the labor, trades, and crafts unit.

6. AVTEC students receive certificates in each vocational program in which they are enrolled, based on the level of competency achieved. The certificate level varies by program, with some programs having three levels. The vocational program instructor is primarily responsible for determining the certificate level that a student will receive.

²As a result of a reopener in late 1999 and early 2000, the ending date of the July 1, 1999, contract was changed to June 30, 2000.

³State of Alaska v. Public Employees Local 71, ALRA Decision & Order No. 165, at 2 (July 1, 1993).

7. No certificate is offered for the interview, job skills, and resume-writing classes that are taught by the person in PCN 05-8530, the position that is at issue in this unit clarification petition. These classes are an integral part of the vocational program that the long-term student takes. Exh. 15, at 2. Failure to attend these classes can affect the level of certificate a student receives.

8. Richard Harrell has been AVTEC's instructional administrator since August of 1998. Previously, Harrell spent 23 years in the United States Air Force. He has a degree in industrial technology.

9. The training specialist position, PCN 05-8530, was classified as an exempt teacher-AVTEC position⁴ prior to its reclassification to a training specialist position. Deborah Dixon was the incumbent at the time the State reviewed the position for classification purposes.

10. Dixon has a master's degree in education, with a minor in counseling. She has worked at AVTEC since the 1990's. Prior to accepting the counselor's job, PCN 05-8530, she worked in the Learning Resources Department. She was hired in the counseling position because AVTEC needed a third position in the counseling office, and she had done a lot of impromptu counseling over the years.

11. After Dixon accepted PCN 05-8530, Director Fred Esposito and Harrell discussed with Dixon what they wanted her position to do. They determined there should be more emphasis on outreach to get students employed.

12. After Dixon worked as a placement counselor for about two years, Dave Fouts, the head of the Counseling Department, and Dixon heard that something was going on with reclassification of her position, PCN 05-8530. They asked Harrell and Esposito about it. Dixon and Fouts were told that the GGU representative could complain about the classification of the position, and that there was a substantial difference in the wages for a classified and an exempt position. Harrell felt it would be irresponsible if AVTEC did not address this issue with the State. Harrell believed the position was classified inappropriately as a teacher and that it was in the wrong bargaining unit. He drew this conclusion after learning there were other State positions that did similar work, including teaching resume writing and job interview skills.

13. On June 12, 2000, Harrell advised Dixon that her counselor position would be

⁴ PCN 05-8530 has been known by different names during its existence. Even though PCN 05-8530 was classified as a teacher-AVTEC, Dixon signed a contract with AVTEC on June 7, 1997, that said in relevant part, "Congratulations on being re-appointed as Counselor Instructor with the Alaska Vocational Technical Center. Please accept this offer of employment for the 1997-1998 school year. This offer is based on 190 instructional days plus 6 holidays for a total of 202 days." Exh. 10. The position has also been called a placement counselor.

submitted for a classification review. He told her that the classification review would be conducted prior to July 1, 2000.

14. Dixon was asked to complete a position description questionnaire (PDQ), which she signed on June 28, 2000. The PDQ shows that Dixon spent 60 percent of her time instructing students in job readiness classes, including resume writing, job interview skills, job search skills, and employment plans. She modified the curriculum for the classes she taught on an on-going basis, and provided some evening assistance to students in resume writing and job search skills. She spent another 20 percent of her time meeting individually with students, helping with their job search, and addressing any work-related issues they had. The remainder of her time was spent in employment-related activities, such as maintaining bulletin boards with job-related information; planning, organizing, and attending the AVETC job fair; locating other job fairs; and contacting employers and giving presentations. Exh. 4, at 5-12. Dixon was involved in developing the curriculum for the classes she taught. Exh. A, at 8.

15. Maggie Hall, a personnel officer I at the Department of Education and Early Development, reviewed the request to reclassify PCN 05-8530, and recommended that the Division of Personnel at the Department of Administration reclassify the position to a training specialist position. Exh. A. At the time the reclassification request was submitted, the position was in the exempt service. Exh. A, at 6. According to Hall, it is not common for a PCN to move from an exempt position to a classified position. It has occurred no more than five times in her ten years of experience. A move of this type requires involvement with the Office of Management and Budget through the Governor's Office. A classification request typically results in a position being reclassified to another position in the classified service, or it is determined that the position is properly classified.

16. To make her recommendation, Hall used the standard operating procedure that all State classifiers use to classify a position. As part of her review, Hall read through the PDQ to determine the duties performed. She compared these duties to duties performed by other positions in State government. After reviewing the duties that PCN 05-8530 performed, Hall thought initially that the position was a real blended one, requiring work that seemed to fall into a number of categories. She compared the position's duties to numerous other job classifications and position descriptions, including those for employment security specialist, employment counselor, workforce development specialist, training specialist, education system associate, and project assistant. Hall also looked at the distinguishing characteristics, the minimum qualifications, and the knowledge, skills and abilities required for the jobs.

17. Some of these classifications, including the training specialist, contain banded positions, which have several ranges of pay assigned based on the level of work that the position does. Some of these classifications are specific to the department in which they are placed. In order to use them in another department, the classifier has to do additional work. Due to contractual provisions, such as lay-off rights, the person would have to be able to succeed in the other department in which they could be assigned, and the department would have to agree that the

position could be used in another department.

18. Hall was unable to compare Dixon's PDQ to class specification for AVTEC teachers because the AVTEC teachers occupy exempt positions, which do not have class specifications. However, she talked with Harrell about PCN 05-8530's duties, and asked why the position should not be considered a teaching position. Hall understood that the position was not responsible to teach any core curriculum subject, whereas a teacher would teach a core curriculum subject. Because Dixon did not have a counseling degree, Hall did not compare Dixon's duties with the job descriptions for the counselor positions at AVTEC. She could tell by looking at the minimum qualifications for the counselor position that PCN 05-8530's duties did not seem to fit its requirements. She did not see a job description for a placement counselor, and she did not talk to Dixon's supervisor, Fouts, about the placement counselor's duties. Hall did not compare PCN 05-8530's duties with any positions at the University of Alaska to see if there might be similar positions there.

19. When Hall reviews a blended, or mixed position, she makes a recommendation based on the preponderance of the position's job duties. For PCN 05-8530, she determined that 60 percent of the duties involved training. She felt the remaining 40 percent were more typical of the duties performed by a project assistant.

20. Because the classification action for PCN 05-8530 could result in the position going from the exempt service to the classified service, classification action could not be delegated to the Department of Education and Early Development. Instead, it had to take place in the Division of Personnel. On June 27, 2000, Hall issued an allocation memo to Sharon Barton at the Division of Personnel, and recommended that PCN 05-8530 be reclassified to a range 16 training specialist position, which is the first level of the band for that classification. Exh. A, 1-4. Hall felt this was the best classification because the position trains adult learners, as do other training specialist positions. Although other training specialists work primarily with State employees, they also develop and present classes to people outside of state government, such as contractors.

21. On June 30, 2000, Personnel Specialist Keith Murray notified Penny Beiler, the human resources manager at the Department of Education & Early Development, that the request to reclassify the position had been granted. Exh. A, at 15. According to Murray, "After reviewing the various job classes performing employment training and counseling, I agree with the determination that none of those classes are the best fit for this position. The Training Specialist job class is the best option available at this time. Reallocation of this position to the first level of Training Specialist is approved, effective July 1, 2000. The position no longer meets the requirements for fully-exempt status under AS 39.25.110(7) or the membership criteria for the Alaska Vocational Technical Education Center Teachers' Association as set forth in Section 1 of the AVTECA contract. . . ." Exh. A, at 15.

22. Dixon was offered another position when her instructor/counselor's position was reclassified to the training specialist position. She accepted an instructor position in the Learning

Resources Department, effective July 1, 2000. Because she accepted this position, she did not suffer a wage reduction as a result of the reclassification, and she remained in the AVTECTA bargaining unit.

23. Dixon believes PCN 05-8530 is a teaching position due to the amount of classroom work required, although some of the individual work with students made it seem like a counseling position to her.

24. Duties performed by staff in the Counseling Department have been revised over the years. Before Dixon was hired in 1997, there were two counselors who taught the job placement classes, and there was no placement person. When Dixon was hired, the plan was to decentralize the delivery of placement services by having each counselor do placement work. The work was being done in the Counseling Department because there was a need for people with a background in both instruction and counseling.

25. Dixon was selected because she has a minor in counseling and a strong background in instruction. Fouts provided some training in counseling by giving Dixon books and discussing addictions, family, and relationship problems. Dixon agreed to further her education in counseling. According to Harrell, Dixon did not take additional classes in counseling. However, Harrell's motivation for submitting a classification request for Dixon's position was based on the potential cost savings instead of Dixon's failure to acquire additional education in counseling.

26. Dixon's position was revised while she was in it. After a year, Esposito centralized services to have the placement duties performed by one position because he wanted AVTEC to do a better job of getting the students employed. Dixon became a placement counselor, and she worked in this capacity for two years.

27. While Dixon was a counselor/instructor, Fouts evaluated her performance. Fouts concluded that Dixon performed effectively in the placement counselor position. She was familiar with AVTEC and versed in counseling, and she had a good relationship with the students.

28. Fouts has a master's degree in counseling. However, his certification in the subjects of drug and alcohol has lapsed. He worked in secondary schools previously. In addition to Fouts, people or positions currently in the counseling department include Pattie Price, who is a counselor, Norman Casagrande, who is the training specialist, and a person who works as a placement technician. Price has a master's degree in counseling and a bachelor's degree in education. She worked previously in elementary schools and for the Division of Family and Youth Services.

29. Casagrande's office is located next to Fouts' office. It is one of four offices in a row. Price and the Alaska Temporary Assistance Program (ATAP) case manager occupy the other two offices. Fouts supervises Casagrande. Fouts also supervised Casagrande when Casagrande was in

the ATAP program. The ATAP position is in the GGU.

30. Casagranda was hired after the training specialist position was reclassified and Dixon had accepted the instructor's position. The position was advertised during the summer when there were few or no students at AVTEC. Casagranda has experience in education and a degree in elementary education, but he does not have a counseling degree. In addition to private sector jobs, he worked as an employment security specialist in the Department of Labor from 1989 to 1998. He then worked as a case manager for the ATAP program until he accepted the training specialist position.

31. The State's classification specification for the training specialist position that Casagranda occupies generally defines the assigned job duties in the following manner:

Positions provide professional level training and training development services to state employees and others. Responsibilities include marketing, assessment, consulting, coordinating, organizational development, training, evaluation and administration.

This is a broadbanded class. Salary range assignments correspond to position responsibilities and performance competencies of the individuals filling the positions. Position levels range from the first level, with limited assignments, to the manager level, which is a single position in charge of the Training and Development unit.

Exh. D, at 11.

32. The "distinguishing characteristics" section of the classification specification for the first level training specialist position includes the following description:

Training specialists at the first level of the band are assigned professional training projects of limited scope, such as in a specific subject area, for a specific agency or for a specific target audience. Positions at this level may assist higher level specialists in a learning/development role, presenting a range of developed workshops or training modules. They are expected to update, adapt, and modify workshops and to develop presentation and classroom skills. Such positions may also assist with course development and consultant work.

Id.

33. The knowledge, skills and abilities listed in the class specification for the range 16 level training specialist are: working knowledge of the subject to be taught; basic knowledge of presentation and teaching principles, instructional materials and techniques; some knowledge of adult learning theory and principles; skill in presentation and teaching groups; ability to

communicate effectively, both orally and in writing; ability to produce clear, concise and easily understandable written materials; and the ability to lead discussion panels, and facilitate and present training workshops and seminars.

Exh. D, at 11 (second side of a two-sided document).

34. The minimum qualifications for the training specialist position are:

Bachelor's degree in adult education, education with a concentration in guidance and counseling, human resources, psychology, communication, sociology, business/public administration, or closely related field AND one year training experience in professional development, organizational development, adult education, or closely related occupation.

Additional experience may substitute for the degree.

Id., at 12. The class specifications do not require a teacher's certificate for the training specialist position.

35. There has not been a significant change in PCN 05-8530's job duties since the position was reclassified. The length and type of classes that Dixon taught remain the same. Casagrande performs the same tasks that Dixon listed in her PDQ. However, the time he spends in instructional activity is somewhat less than the 60 percent Dixon spent. At the hearing, Casagrande stated that he thought he spent about 50 percent of his time in instructional activities. Earlier, on September 1, 2000, in response to questions posed by the Agency's personnel specialist, Casagrande indicated that "I anticipate spending 40% of my time performing teaching duties." Response to Questionnaire Regarding Duties, at 1 (Sept. 1, 2000). Since Casagrande had only been in the position for two months at the time he completed the questionnaire, and most students were not at school during those summer months, Casagrande's estimate of 50 percent at the hearing is found to be more accurate than his earlier estimate of 40 percent.

36. Casagrande did not begin teaching classes until late April of 2001 because he did not feel comfortable teaching at first. Fouts and Price taught the classes while Casagrande observed.

37. At the beginning of the school year, Casagrande does not teach any classes because students are learning the competencies of the program in which they are enrolled. As the students are closer to completing their vocational programs, they attend the resume writing and job search classes he teaches, and prior to the end of their program, they attend the interview class.

38. The classes that Casagrande teaches are included in AVTEC's Counseling/Job Placement Services web page, which states that the "[j]ob [i]nterview [t]raining is required of most long-term students. This fourteen-hour class ends with practice job interviews involving local employers. The interviews are videotaped and analyzed to encourage future success in this type of

skill.” Exh. 15, at 2. Casagranda helps the student identify where he or she would like to work, describes the skills needed for the job interview, and then observes the student demonstrating his or her skills. Casagranda rates the student’s performance, using a 1-4 scale that ranges from “needs improvement” to “excellent.” Exh. 16, at 2. Since the programs are of varying length, he does not teach all of the students at the same time. There were about 100 students in the job skills classes in 2000.

39. Fouts and the other counselor had input into the documents used for the classes, but Casagranda can change them to fit his personality. Casagranda has modified the curriculum since he began teaching the classes.

40. Fouts believes Casagranda is working in an instructional capacity because he is teaching courses from a curriculum, dealing with students on a one-on-one basis, and relating to them as an instructor would relate to a student. Fouts believes that in a school setting, classified positions are supportive, not instructional.

41. The testimony of the various witnesses shows that the duties performed by the placement counselor/training specialist have not changed significantly since the position was reclassified. Fouts does not believe that there is any real difference between the duties performed by Casagranda and Dixon, except that Casagranda may have been on the road recruiting a little more in 2001. Robert Wilson, who is an instructor and AVTECTA’s president, interacts with Casagranda in the same way he interacted with Dixon. He does not believe the duties have changed since the position was reclassified. Mark Ganser, who is a department head, stated that his relationship with the person in the position that teaches the job search skills classes has not changed since the position was reclassified from a job placement counselor position to a training specialist position. The individual still teaches the classes, evaluates the students, and communicates back to him when the students have completed the classes. However, Ganser believes there is some difference in the way Casagranda delivers the service as a training specialist than in the way Dixon delivered it as a job placement counselor.

42. Wilson testified that the classes Casagranda teaches are required by a lot of the funding agencies, and the classes have to be included in the funding documents. Wilson cannot recall any student in his cooking program receiving a certificate without attending the job interview and job search related classes and passing them. The classes are included in the cooking program as part of the curriculum. In Wilson’s program, while a student would not be denied an occupational certificate if the student did not attend the job search classes taught by the training specialist, failure to attend or pass the classes could result in the student receiving a lower grade or a lower certificate level. Wilson’s class-related paperwork does not state that a student has to pass the classes. Harrell testified that all students are scheduled to attend all parts of their training. However, occasionally a student does not attend one or more parts, such as first aid or resume writing, because the student is ill, for example. In 2000, one student refused to sit in front of a camera and do an interview, but the student still received a certificate for the vocational program he had completed. The testimony establishes that students are expected to attend the scheduled classes. Failure to do so can impact a

student's grade, or certificate level, but it will not prevent a student from receiving a certificate in the vocational program the student is attending, if the student passes the vocational course content.

43. Wilson believes the training specialist position should be in the AVTECTA unit because the position's job duties are mainly teaching, and the classes are included in AVTEC's catalog and are a part of the curriculum. The students' grades from attending these classes are part of their entire grades. The individuals attending the classes are students, not just people attending a job skills workshop.

44. Harrell believes the position is a training specialist position that should be in the GGU because the position works with students and employers to match them up to employment after the student completes training; it organizes job fairs; brings employers to AVTEC; and teaches interview and resume writing classes. Harrell wants a greater emphasis on organizing job fairs and bringing employers to AVTEC. He believes the interview classes and resume writing classes are related to this activity.

45. Harrell believes the instructor or teacher position differs from the training specialist position. In addition to being different due to having a teaching certificate, the instructor or teacher has primary responsibility for the success of the student in vocational program, whereas the training specialist acts as a resource that helps the student get placed. However, he acknowledged that instructors also have some responsibility for placement, and placement is an element of their job description. Instructors may have knowledge of openings because of the work they do with employers who are serving on the advisory board. Because the instructors have responsibility for the vocational programs, they have limited time to spend on placement activities. The training specialist is responsible to maintain placement documentation and provide statistics about placement.

46. There are elements of the training specialist's duties that are similar to the duties performed by both the teachers and counselors. Looking first at the similarities between the training specialist's duties, as well as those duties performed previously by Dixon, and the counselors' duties, the evidence shows that they all work with the students to help them identify and overcome barriers to employment. They have all instructed students in classes, teaching resume writing and interview skills. For example, Fouts and Price taught the resume writing and interview class while Casagranda was becoming familiar with the training specialist position. Fouts, Price, and Dixon have all discussed a student's difficulties, and how to enable the student to succeed. Fouts and Price would ask Dixon what she had observed about a particular student, and discuss whether there was a need to refer the student to a specialist. A large part of Fouts' current duties consist of working with Price and Casagranda to provide services to the student body, assist with things that get in the way of the students' education or job placement, and find ways to overcome the obstacles. There is on-going communication and interaction among the counselors and the training specialist. Dixon had the same type of communication and interaction when she occupied PCN 05-8530. Although none of the students are assigned currently to Casagranda, Dixon was assigned students, just as Price and Fouts were, for a part of her time in PCN 05-8530.

47. Looking next at the similarities between the work Casagrande does and the work the instructors/teachers do, the evidence shows that some of Casagrande's duties are also performed by the instructors. For example, Wilson has taught some of the interview and job search classes if there are too many students for Casagrande to handle at one time. Both types of positions serve as resources to help the students become employed. Wilson and Casagrande work together to avoid duplication in helping students decide what they want to do and what jobs interest them. The instructors and Casagrande evaluate the students' mastery of the respective classes each teaches. Casagrande reports the results for his classes to the vocational instructors to consider when they decide what certificate level a student will receive. Both teach classes that are included in the curriculum, and they modify it. Both instruct students in a classroom setting.

48. There are also some differences in the counseling and teaching work that Casagrande does and the counseling and teaching work that is performed by the counselors and teachers. The counselors work with students who may have more complex issues, such as addictions, that interfere with employment. Casagrande does not provide counseling for those types of issues. Counselors decide when a student needs to see a specialist, whereas Casagrande would only make a referral to the counselors, who would then make the decision regarding the specialist. Currently, all of the students are assigned to one of the two counselors, although that was not always the procedure used during the most recent five-year history of PCN 05-8530. Most of Fouts' counseling work with students takes place while the student is at AVTEC, whereas Casagrande will both work with students while they are at AVTEC and follow up with them after they leave AVTEC to see if they have found a job.

49. The instructors are primarily responsible for teaching the classes in the subject area in which the student is seeking certification. Casagrande does not teach any of the classes that pertain to the subject area in which the certification will be issued. Instructors/teachers at AVTEC are certificated. Some may have a limited certificate for vocational education. They have five years of journeyman experience in their field. They are required to have a certificate by the terms of the parties' collective bargaining agreement. The program instructors are primarily responsible for curriculum development. They work with advisory boards, which are made up of industry professionals in Alaska, to develop the curriculum. Each vocational program has core competencies that are broken down into specific subject areas. A program could have 100 or 200 competencies. Instructors/teachers deliver day to day instruction, evaluate the students, determine the students' progress, meet with them monthly to discuss their progress, and determine what certificate level the students will receive at the end of the course.

50. Employees other than Casagrande are involved with student records. The counselors, administrative assistant, administrative clerk, and the employees responsible for student records and student enrollment, all work together to input and retrieve data from the student record database. Except for the counselors, these employees are in the GGU.

51. There are training specialist positions in other departments of the State, including

the Departments of Administration, Labor and Workforce Development, Revenue, and Transportation. The largest number of training specialists is located in the Department of Administration. However, PCN 05-8530 is the only training specialist position that is placed in a school setting. Casagranda does not have contact with the training specialists in the other departments.

52. The training specialists in the Department of Administration provide training for all departments of the State. Sometimes other public employees, such as city or borough employees, also participate in the training conducted by the Department of Administration's training specialists. Some training specialists provide training only within the department in which they work. Training specialists at the Department of Transportation may provide training to employees and others, who would be contractors. Other training specialists work with the University of Alaska Southeast in the certified public manager program. However, the testimony did not establish that the University employed them.

53. There are both similarities and differences in the duties performed by the training specialists who are located outside of AVTEC and the duties performed by Casagranda. For example, the State of Alaska Position Descriptions for the training specialists in PCN's 04-7145, 2103, 25-0046, and 25-1724 all include developing curriculum as a duty. Exh. C, at 4, 17, 37, and 57. At AVTEC, Dixon developed curriculum before the position was reclassified, and Casagranda has modified the curriculum after the position was reclassified to a training specialist position. All of the training specialists also teach adult learners. Exh. C, at 4, 17, 37, and 57. Likewise, the training specialist at AVTEC teaches adult learners. Unlike the other training specialists, however, Casagranda teaches classes to students who are enrolled in an educational institution. He evaluates the students at AVTEC, using a scale of 1 to 4, and gives this information to the instructors, who use it to help decide the certificate level the student will receive. The position descriptions that are contained in Exhibit C show that the training specialists consult with managers and others on an on-going basis to determine what training needs to be offered to meet the various departments' needs. In contrast, the training provided by Casagranda is part of the required course work at AVTEC. Some of the training specialists are expected to generate income from the training they provide. Exh. C, at 31. The cost of the classes that Casagranda teaches is included in the students' tuition costs at AVTEC. Casagranda does some work with students on an individual basis to learn their expectations about employment, to help them modify their resumes, and to provide information about their work searches. The other training specialists work almost exclusively with groups. Some training specialists do not teach interviewing skills. Instead, they prepare Professional Services Contracts to bring someone in from the public or private sector to teach interviewing skills classes. Exh. C, at 17. Casagranda does teach interviewing skills.

54. Overall, while there are both similarities and differences among the various training specialist positions, a significant difference is that Casagranda occupies the only training specialist position that is housed in an educational facility, and he teaches courses that are a part of the curriculum to AVTEC students. Casagranda evaluates the student's work and gives that

information to the instructor who has primary responsibility for determining the level of certificate a student receives. In contrast, the attendees at some of the training conducted by other training specialists evaluate the training specialist and the course content. Exh. C, at 18 and 23.

55. Although there are no other training specialists at AVTEC, there is one employee who assists the instructor in the electrical program. His duties include taking attendance; assisting students, under the teacher's direction; and working on projects in his area of expertise. The position this person occupies is a classified position, which is in the GGU.

56. All AVTEC employees work together to ensure the students' success and to get them employed. However, some employees have a more direct role than others. As a counselor, Dixon had interaction with other teachers through in-person contacts, phone calls, and e-mail. Dixon worked with the teachers as a team to help students get a job, which is a significant part of AVTEC's mission. Casagrande acts in a similar way. Instructors have some interaction with classified staff. For example, they may speak with a member of the classified staff about supplies that need to be ordered.

57. The State stipulated that the AVTEC training specialist position, PCN 05-8530, at the Department of Education and Early Development clearly plays a role in the mission of AVTEC, and that it also interacts with teachers and counselors in its role to attain the mission of AVTEC.

58. Casagrande interacts with both members of the AVTECTA bargaining unit and the GGU. He spends an equal amount of time, 20 hours a month, interacting with both groups. Response to Questionnaire Regarding Duties, at 1 (Sept. 1, 2000).

59. The history of bargaining shows that PCN 05-8530 has resided historically in the AVTECTA bargaining unit. Mark Ganser is employed at AVTEC as head of the Information Technology Instruction Department. Ganser recalls that the position that is now classified as a training specialist position has been at AVTEC and in the AVTECTA unit for about 20 years. It was called a job placement counselor when he began work in 1981. The position was vacant for some years when the person in it was on disability leave.

60. Ganser was involved with bargaining in the early nineties. He recalled that the negotiations were contentious because the State had filed a unit clarification petition that resulted in three positions being removed from the AVTECTA bargaining unit. Bargaining unit members were concerned that additional positions might be removed. He recalls being told by Jennie Thomas, who worked for the Department of Administration, and Dave Stewart, who then was the Department of Education and Early Development's human resource manager, that additional positions would not be removed from the bargaining unit. When the State removed the placement counselor position from the bargaining unit, AVTECTA members were upset because the bargaining unit was suffering further erosion, and the State was going back on its promise that it would not remove additional positions from the bargaining unit.

61. Wages are determined by placement in the State's classification system. Wages for a classified training specialist in the general government unit are substantially less than the wages for an exempt teacher or counselor in the AVTECTA unit. Fouts stated that the difference can be \$20,000 to \$30,000 per year.

62. Benefits, such as health insurance and the amount and type of leave, are determined by the contract for the bargaining unit in which the position is placed.

63. Casagranda works 37.5 hours a week. The normal days and times are Monday through Friday from 8 a.m. to 4:30 p.m., although Casagranda works evenings on occasion. Response to Questionnaire Regarding Duties, at 3 (Sept. 1, 2000). Casagranda stated that the hours he works are similar to the hours worked by the other employees in his area.

64. The instructional staff usually does not work during the summer, but the classified staff does unless they are in seasonal positions.

65. Casagranda did not state a preference for being in either the GGU or the AVTECTA bargaining unit. When responding to questions asked by the personnel specialist during her investigation, he states his belief that the duties of the position make the position appropriately placed in the GGU. Response to Questionnaire Regarding Duties, at 3.

66. The parties did not discuss the reclassification of PCN 05-8530 during negotiations for a reopener, which resulted in their most recent contract. AVTECTA sent a letter to reopen negotiations on October 13, 1999. Exh. H. Prior to the reopener, AVTECTA's contract with the State was effective from July 1, 1999, to June 30, 2002. Exh. G, at 1. According to Wilson, the parties met in November for three or four face-to-face meetings, and they met telephonically two or three more times. The negotiations needed to conclude in early April of 2000 due to the time limit for submitting the results to the legislature. Wilson testified that when the parties conducted a reopener for the contract, the focus was to be on wages and benefits (Article 19). Wilson does not recall exactly when he first heard about the intent to reclassify PCN 05-8530, but he believes it was pretty close to the date that contract negotiations closed in March or April. He recalled that the negotiations had been closed for six weeks before the contract was signed in mid-May. During the reopener, each party was allowed to open two other items. Each party brought up one additional item. The State's focus was on changing the duration clause because it wanted all State contracts to be on the same three-year cycle, July 1, 2000, to June 30, 2003. According to Wilson, the State said the duration of the contract had to be changed in order for any agreement to be reached on wages and benefits; it was an all or nothing situation. As a result of the negotiations, AVTECTA and the State reached an agreement that was effective July 1, 2000, through June 30, 2003. Exh. I. The evidence demonstrates that the Association had limited, if any, time to address AVTEC's intent to reclassify PCN 05-8530 through the negotiation process.

67. The preponderance of the evidence shows that, based on its teaching, and to a lesser

extent, counseling duties, PCN 05-8530 shares a greater community of interest and working conditions with members of the AVTECTA unit than with members of the GGU, despite the fact that it is no longer an exempt position.

DISCUSSION

1. Is there a contract bar to the transfer of PCN 05-8530 from the AVTECTA bargaining unit to the general government bargaining unit on July 1, 2000?

AVTECTA contends that there is a contract bar to the transfer of PCN 05-8530 from the AVTECTA bargaining unit to the general government unit on July 1, 2000. In support of its position, AVTECTA relies on *Alaska State Employees Ass'n, AFSCME Local 52, AFL-CIO v. State*, 990 P.2d 14, 21-22 (Alaska 1999), wherein the Supreme Court adopted the superior court opinion in 3 AN-95-9083 CI, and published it as an addendum to its *per curiam* opinion. AVTECTA asserted in its prehearing brief:

Judge Gonzales's approved opinion recognizes the principle, enunciated in *Edison Sault Electric Company*, 313 NLRB 753, 19934 WL 68425 (1994), that it is disruptive to the parties' collective bargaining relationship to entertain changes to a bargaining unit which is clearly defined in the negotiated collective bargaining agreement. *Id.*, at 22. Under the peculiar facts of *AFSCME Local 52 v. State*, Judge Gonzales and the Supreme Court concluded, in Judge Gonzales's words, that

the petitions were filed by the State at a time when the contract was clearly open to negotiation; thus the stability of the collective bargaining relationship was not jeopardized.

Id.; Emphasis added.

The clear implication is that a petition to remove a position from a bargaining unit in the midst of a contract term, while the contract is not "clearly open to negotiation" would jeopardize the goal of stability in the collective bargaining unit.

It is a fundamental principle of labor law that employees and their union who enjoy the benefits of a collective bargaining agreement shall not be disturbed in that enjoyment while that agreement remains in effect. This principle, promoting stability, is designed to avoid the need to repeatedly revisit the frequently unpleasant and disruptive task of negotiating new agreements. Hardin, *The Developing Labor Law*, at 396-414, 1779-80 (BNA 3rd Ed. 1992).

This principle

is based upon the rationale that to entertain a petition for unit

clarification during the midterm of a contract which clearly defines the bargaining unit would disrupt the parties' collective bargaining relationship.

Edison Sault Electric Company, supra.

The Alaska Labor Relations Agency itself has recognized the importance of this principle, promulgating the regulation at 8 AAC 97.060(e)(3) requiring the dismissal of a petition raising, in the words of 8 AAC 97.060, "a question of representation, unit clarification, or amendment", if

a collective bargaining agreement is in effect unless the petition is filed between 150 calendar days and 90 days before the expiration date of the agreement.

AVTECTA Pre-hearing Brief on Unit Certification for Petitioner, at 4-5 (June 4, 2001).

The State argues that there is no contract bar to the petition. In its prehearing brief, it contends that,

As a preliminary matter, the only provision under the Public Employees Relation Act that addresses a contract bar is AS 23.40.100(e). AS 23.40.110(e) concerns the Agency directing an "election in a bargaining unit" when there is a valid contract in force. The present matter concerns a unit clarification, not an election. Therefore, AS 23.40.100(e) is not applicable. In this regard, a public employee representative may file a petition seeking clarification of an existing bargaining unit, where no question of representation exists, in order to resolve a question of unit composition raised by changed circumstances since certification. See 8 AAC 97.050(1). Under this regulation, the Agency is expressly authorized to hear unit clarification matters. In addition, for purposes of a collective bargaining unit, the Agency shall decide in each case the unit appropriate for purposes of collective bargaining under AS 23.40.090.

AVTECTA argues that moving the training specialist position to the general government unit position would violate a labor law principle that says that changes in a clearly defined bargaining unit should not be made while a collective bargaining agreement is in effect. This private sector N.L.R.B. principle that AVTECTA relies on is based on the rational[e] that to entertain a unit clarification action during the midterm of a contract that clearly defines the bargaining unit would disrupt the collective bargaining relationship. See AVTECTA's response to prehearing conference citing Edison Sault Electric Co., 313 N.L.R.B. 753. 1994, WL 68452 (1994) Footnote 4. Citing ASEA v. State, 990 P2d 14, AVTECTA suggests that the Alaska Supreme Court has adopted the labor law principle set out in Edison Sault.

That clearly is not the holding in ASEA v. State. Rather, the Court was simply addressing the N.L.R.B. policy that was invoked by ASEA in the case. The Court did not adopt that labor policy for purposes of the Alaska Public Employees Relations Act. However, if such a policy were followed, it would require that AVTECTA's petition be denied.

AVTECTA's reliance on this labor law principle is misplaced. The labor law principle set out in Edison Sault addresses the situation where one of the parties attempts to change a bargaining unit boundary that is clearly defined in a contract. The contract in force in Edison Sault defined the bargaining unit boundary to include "foremen special" positions. The employer in Edison Sault removed the "foreman special" positions from the contractually defined bargaining unit. Edison Sault at p.2. Because the employer in Edison Sault removed the "foreman special" positions from the unit, it effectively changed the defined bargaining unit midterm. Under this situation, it was found that it disrupted the bargaining relationship because the action was contrary to the parties agreement which expressly included "foreman special" positions in the unit. This is not the situation before this Agency in the present matter.

In the present matter, the State is not asking the Agency to change a unit boundary that is defined in the contract. Under the Edison Sault policy, a unit boundary clearly defined in a contract should not be unilaterally changed. This labor policy, if found to be applicable by the Agency, supports a "contract bar" against AVTECTA, not the State. This is because, as shown below, it is AVTECTA, not the State, who is seeking a change to the membership boundary terms in the contract.

The party's contract clearly defines the unit boundary to be a teacher "who engages in planning and or instructing in an exempt teaching, counseling, or librarian position at the Alaska Vocational Technical Center." Footnote 5. See AVTECTA Contract, Article 1, Section 1. AVTECTA asks this Agency to change the unit boundary definition in the contract so that the unit boundary would include the "non-exempt training specialist position" (PCN 05-8530). Footnote 6. See AVTECTA prehearing filing (faxed 5/15/01), p.4.

Clearly AVTECTA is asking for a change to the contract when it asks the Agency to add training specialist positions to the defined bargaining unit boundary of exempt teaching, counseling or librarian positions. Footnote 7. See AVTECTA prehearing filing (faxed 5/15/01), p.7 ("the Agency should include the "training specialist" position in the AVTECTA teacher's bargaining Unity.") Adding training specialist positions to the unit boundary terms would be a change to the parties negotiated agreement and thus contrary to the labor law policy enunciated in Edison Sault. As shown above, if the labor law policy AVTECTA relies upon in Edison Sault is applicable, this petition should be denied pursuant to that policy. Footnote 8.

AVTECTA was aware of the classification action as early as April 13, 2000. AVTECTA did not raise issues about expanding the unit boundary during negotiations, which were opened by AVTECTA on October 13, 2000 and concluded into an agreement effective July 1, 2000.

Respondent's Prehearing Brief on Legal Position, at 4-6 (June 4, 2001). [Emphasis in original]

We find that there is no contract bar to the petition, but not necessarily for the reasons articulated by the State. Although the State was the moving party in deciding to reclassify PCN 05-8530, it is not the petitioner in this case. AVTECTA filed the petition. Because AVTECTA is the petitioner, finding that a contract bar exists would mean that AVTECTA's petition must be dismissed. This would result in the training specialist position remaining in the general government unit. Indeed, if a contract bar were found to apply under 8 AAC 97.060(e)(3), the petition should have been dismissed shortly after it was filed, without an investigation being conducted, a preliminary finding issued, or a hearing held.

The previous regulation that governed unit clarification petitions during most of the history of PERA was 2 AAC 10.050. It did not address a contract bar for unit clarification petitions. The only contract bar was found in 2 AAC 10.060, which pertained to representation petitions. In 1993, 8 AAC 97.050 replaced 2 AAC 10.050. Action on a petition is described in 8 AAC 97.060. Included in 8 AAC 97.060(a) are petitions that concern questions of representation, unit clarification, or unit amendment. Regulation 8 AAC 97.060 (b), (c), (d), (e), and (f) discusses representation matters. A representation petition generally results in an election, unless the employer objects to the proposed bargaining unit and the Agency finds that an election is inappropriate. Regulation 8 AAC 97.060 (b) addresses obtaining an employee roster, which is used to check interest cards to determine if the petitioner has met the 30 percent showing of interest required to proceed with the representation petition. Regulation 8 AAC 97.060(c) discusses the showing of interest check used to confirm that 30 percent of the employees in the proposed bargaining unit support the petition. The confidentiality of the interest cards is discussed in 8 AAC 97.060(d). Regulation 8 AAC 97.060(e) discusses supplementing interest cards if they are insufficient to establish the showing of interest; the appropriateness of the bargaining unit; the contract bar; and the election bar.

Both the election bar and the contract bar are contained in AS 23.40.100, which pertains to representatives and elections. See AS 23.40.100(c) and (e). Regulation 8 AAC 97.060 (f) discusses hearings on representation matters if there is reasonable cause to believe that a question of representation exists. Regulation 8 AAC 97.050(a)(1), which pertains to unit clarification, specifies that there cannot be a question of representation in a unit clarification matter. This is a key difference between unit clarification petitions and representation petitions.

Since 8 AAC 97.060 was adopted in 1993, the Agency has accepted and processed hundreds of unit clarification petitions that have been filed while contracts were in effect. This is the second time that a party has raised a contract bar issue. The issue of a contract bar to unit clarification

petitions was first raised in *Alaska State Employees Ass'n, AFSCME Local 52, AFL-CIO v. State*, 990 P.2d 14, 21-22 (Alaska 1999). In that case, the State's petition was filed before the contract became effective. The Agency found that a contract bar did not exist under those circumstances. It addressed ASEA's argument "that reaching agreement alone should bar the petitions regardless whether the agreement is in effect" and concluded that the "policies in Edison Sault do not fit the facts of this case." *State of Alaska v. Alaska State Employees Association/AFSCME Local 52, AFL-CIO and Alaska Public Employees Association/AFT, AFL-CIO*, Decision & Order No 219, at 19-20 (May 27, 1997), *aff'd* No. 3AN-95-9083 CI (July 7, 1998), *aff'd* No. S-08756 (October 15, 1999).

After *ASEA v. State, supra.*, the Agency continued to accept unit clarification petitions whenever they were filed. Subsequently, in its next regulation project, the Agency clarified that a contract bar applies only to representation petitions. It removed references to 8 AAC 97.050, which pertains to unit clarification and amendment petitions, from 8 AAC 97.060(a). Now, the entire unit clarification and unit amendment procedure is addressed in 8 AAC 97.050, which eliminates any ambiguity about whether the Agency intended a contract bar to apply to unit clarification petitions. The only contract bar pertains to representation petitions, and it is contained in 8 AAC 97.060. The new regulations became effective May 18, 2002. (am 5/18/2002, Register 162)

The Agency's workload establishes a practical reason for permitting unit clarification petitions to be filed whenever a unit clarification issue arises that the parties are not able to resolve. The State typically enters into three-year contracts with the labor organizations that represent its employees. Almost all of these contracts have the same expiration date. Nearly all of the unit clarification petitions filed at the Agency involve the State and its bargaining units. It would be impractical and an administrative burden to have all State unit clarification petitions filed during a 90-day period once every three years. It is considerably more efficient to process unit clarification petitions on a continuous basis.

2. What is the appropriate bargaining unit for PCN 05-8530?

The second issue that the Agency must decide in this unit clarification petition is the appropriate unit for the training specialist position at AVTEC, PCN 05-8530. AS 23.40.090 establishes the criteria the Agency must use to determine the appropriate unit:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 -- 23.40.260, the unit appropriate for the 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. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

We find that the appropriate bargaining unit for PCN 05-8530 is the AVTECTA unit. We make this finding even though the State has determined that the position is most appropriately

classified as a training specialist position, and the other training specialist positions are placed in the GGU. We recognize that the State, not the Agency, determines the appropriate classification for positions in State government. *Alaska Public Employees Ass'n v. State of Alaska*, 831 P.2d 1245 (1992); *Henry T. Munson v. State of Alaska and Vernon L. Gilliam v. State of Alaska*; Decision and Order No. 206, at 26 - 27 (Sept. 20, 1996). Thus, it is not for this Agency to decide whether the State classified PCN 05-8530 correctly.

Likewise, the Agency cannot decide whether a position is exempt or in the classified service. In *Alaska State Employees Ass'n, AFSCME Local 52, AFL-CIO v. State of Alaska*, Decision and Order No. 200, the Agency stated that,

This Agency has no jurisdiction over the application of the personnel rules to employees. Movement of positions between exempt and classified status is under the jurisdiction of the personnel board. See AS 39.25.070 and 39.25.130; *Alaska Public Employees Ass'n/AFT AFL-CIO v. State*, 831 P.2d 1245 (1992).

Alaska State Employees Ass'n, AFSCME Local 52, AFL-CIO v. State of Alaska, Decision & Order No. 200, at 8 (Feb. 9, 1996).

As the Agency noted in the same decision, “the Public Employment Relations Act, AS 23.40.070—23.40.260 applies to employees without regard to application of the personnel rules. . . . with only a few exceptions, regardless of status as classified or exempt. . . . Thus, status as an exempt employee does not exclude a position from bargaining rights or placement in a bargaining unit.” *Id.*, at 8-9. The Agency further noted that, “status as an exempt employee, however, may affect community of interest and placement in a particular bargaining unit.” *Id.*, at 9. Accordingly, we will consider the classified status of the training specialist position when we look at the community of interest factor.

Of the factors listed above, community of interest, working conditions, the history of collective bargaining, and the requirement that bargaining units be as large as is reasonable support placing the training specialist position in the AVTECTA bargaining unit. We find that the training specialist position shares a greater community of interest with the members of the AVTECTA unit than it does with members of the GGU because Casagranda teaches classes that are an integral part of AVTEC’s curriculum to students who attend an educational facility.⁵ Failure to attend the classes Casagranda teaches or to complete them in a satisfactory manner can affect the level of certificate a student receives from AVTEC. While there are other training specialist positions in the GGU, none of them are placed in an educational institution with responsibility to teach classes that are an

⁵ Unlike the facts in a 1994 decision the Agency issued concerning the removal of three positions from the AVTECTA unit, the facts in this case show that Casagranda’s position has significant teaching responsibilities, whereas the other three positions did not. *State of Alaska v. Alaska Vocational Technical Center, Teachers INEA & Alaska State Employees Ass'n, AFSCME Local 52, AFL-CIO*, Decision & Order No. 168, at 15 (Mar. 14, 1994).

integral part of the curriculum. We find that the community of interest the position shares with members of the AVTECTA unit is great enough that it justifies placing what is now a classified position in the bargaining unit with exempt AVTECTA positions.

Casagranda has a significant amount of interaction with the exempt teachers/instructors and counselors in the AVTECTA unit. The teaching duties that Casagranda performs can be and have been performed by the counselors, and the instructors also teach Casagranda's classes when there are more students at one time than he can teach who need the classes. Exempt, not classified staff, cover Casagranda's teaching responsibilities when he is unable to handle them.

By working closely with the instructors regarding placement, Casagranda avoids duplication of effort in placing students in employment. He works closely with students to try to discover if there are any barriers that would prevent the student from going to work. Placing students in a job is an integral part of AVTEC's mission, and both the teachers and counselors supplement Casagranda's efforts in this area.

The evidence shows that the position's duties have not changed substantially from the time the position was classified as a counselor/teacher to the time it was reclassified to a training specialist position. The training specialist position is still supervised by the same supervisor, Fouts. It still interacts with individuals in the same positions, in essentially the same manner, as it did when the position was classified as a counselor/teacher. The position has resided historically in the AVTECTA unit.

The requirement that "bargaining units shall be as large as is reasonable" supports placing the position in the AVTECTA bargaining unit. The GGU, which is the State's largest bargaining unit, is numerically much larger than the AVTECTA unit. Reducing the GGU's size by one position that has not resided historically in that unit should not affect the GGU bargaining unit members' bargaining strength. However, the testimony established that the State's removal of PCN 05-8530 from the AVTECTA unit concerned the remaining bargaining unit members. They believed their bargaining unit was being eroded. Fewer employees in a unit can result in loss of bargaining power.

The factor "unnecessary fragmenting" in AS 23.40.090, when considered in the context of creating a new unit, does not weigh in favor of placing the position in either bargaining unit because a new unit would not be created. The position would be placed in one of two existing units: AVTECTA or the GGU. Further, we believe that any fragmenting that could occur by placing one classified position in a unit of exempt employees is necessary in this instance based on the type of work performed by the training specialist, the interaction the position has with the exempt employees in the AVTECTA unit, and the bargaining history for the position. *See, e.g. Alaska State Employees Association, AFSCME Local 52 v. State of Alaska*, Decision & Order No. 164, at 17 & 20 (Sept. 27, 1993) (The Agency determined that the work, interaction, and bargaining history of certain positions justified placing exempt employees in the general government unit, which had consisted only of classified employees.), *aff'd State v. Alaska State Employees Ass'n*, No. 3AN 93-10311 CI & 3AN 93-11539CI (Consol.), *aff'd in part, rev'd in part State v. Alaska State Employees*

Ass'n/AFSCME Local 52, 923 P.2d 18 (Alaska 1996) (Superior Court decision vacated on issue that “AHFC as a successor employer is obligated to bargain with ASEA and the GGU remains an appropriate bargaining unit for the former DCRA employees. These questions must be remanded for Agency consideration in light of the statutory factors concerning employee preference, unit size, and avoidance of unnecessary fragmentation.” Petitioner ASEA withdrew petition prior to Agency’s consideration of the remand order). Since the State has determined that the training specialist position is a classified position, and the AVTECTA positions are exempt positions, we recognize that the parties will be required to expend additional effort to negotiate terms and conditions of employment for the training specialist position. However, we believe that any fragmentation that may occur is necessary under the facts presented in this case.

Because wages and hours are determined by the contract for the bargaining unit in which the position resides, the factors “wages” and “hours” do not weigh in favor of placing the training specialist position in either the GGU or the AVTECTA unit.

The factor “desires of the employees” provides somewhat weak support for placing the position in the GGU because Casagrande believes the position’s placement duties are more like duties performed by positions in the GGU. Casagrande, however, did not explicitly state whether he would rather be in the GGU or the AVTECTA bargaining unit. An inference can be drawn from his response to the questionnaire that he would prefer that the position be placed in the GGU.

CONCLUSIONS OF LAW

1. The State is a public employer as defined by AS 23.40.250(7) and the Alaska Vocational Technical Center Teachers’ Association, NEA-Alaska (AVTECTA) and the Alaska State Employees Association/AFSCME Local 52, AFL-CIO (ASEA) are labor organizations under AS 23.40.250(5).

2. The Alaska Labor Relations Agency has jurisdiction to consider and hear requests for unit clarification under AS 23.40.090 and AS 23.40.160. However, the State's classification plan and assignment of salary ranges are outside the jurisdiction of this Agency. *Alaska Public Employees Ass'n/AFT AFL-CIO v. State of Alaska*, 831 P.2d 1245 (1992); *Henry T. Munson v. State of Alaska & Vernon L. Gilliam v. State of Alaska*, Decision & Order No 206, at 26-27 (Sept. 20, 1996). Movement of positions between the exempt and classified service is under the jurisdiction of the personnel board and the Agency has no jurisdiction over the matter. See AS 39.25.070 and 39.25.130; *Alaska Public Employees Ass'n v. State of Alaska v. State, supra*.

3. Petitioner AVTECTA has the burden to prove each element necessary to its cause by a preponderance of the evidence under 8 AAC 97.350(f).

4. On balance, under AS 23.40.090, we conclude that the training specialist position occupied by Casagrande is more like the positions in the AVTECTA bargaining unit than similar positions in the general government unit. The factors community of interest, working

conditions, and the history of collective bargaining strongly support placing the position in the AVTECTA bargaining unit. The requirement that bargaining units be as large as is reasonable also supports placing the training specialist position in the AVTECTA unit.

5. The factor “desires of the employees” provides weak support for placing the training specialist position in the GGU.

6. The contract for the unit that the position is placed in governs the wages and hours. Because factors, such as the amount of pay and hours worked, are determined by bargaining unit placement, they are neutral when they are applied to the facts in this case and do not support placing the training specialist position in either the GGU or the AVTECTA bargaining unit.

7. When considered in the context of creating a new unit, the factor prohibiting unnecessary fragmenting is neutral because a new unit is not being created for the training specialist position. Instead, it is being placed in one of two existing units. Any fragmenting that may occur because a classified position is being placed in a unit of exempt positions is necessary fragmenting based on the community of interest, working conditions, and the history of collective bargaining that PCN 05-8530 shares with members of the AVTECTA bargaining unit.

8. Under AS 23.40.090, the appropriate unit for the training specialist position is the AVTECTA unit.

9. There is no contract bar to the State’s movement of the training specialist position, PCN 05-8530, to the general government unit on July 1, 2000.

ORDER

1. AVTECTA's petition to clarify the unit is GRANTED.
2. The training specialist position, PCN 05-8530, is ordered placed in the AVTECTA unit.
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, personally serve each employee affected. 8 AAC 97.460.

ALASKA LABOR RELATIONS AGENCY

Aaron T. Isaacs, Jr., Chair

Raymond 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 mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of *Alaska Vocational Technical Education Center Teachers' Association, NEA-Alaska v. State of Alaska and Alaska State Employees Association, AFSCME Local 52, AFL-CIO*, Case No. 00-1047-UC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 19th day of February, 2003.

Arvella Thomas
Administrative Clerk III

This is to certify that on the 19th
th day of February, 2003, a true
and correct copy of the foregoing
was mailed, postage prepaid to
Kent Durand, State
Don Oberg, AVTECTA
Jim Duncan, ASEA

Signature