

Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA CORRECTIONAL )  
EMPLOYEES ASSOCIATION, )  
 )  
                  Petitioner, )  
 )  
      vs. )  
 )  
ALASKA PUBLIC EMPLOYEES )  
ASSOCIATION )  
 )  
                  Intervenor. )  
 )  
 )  
\_\_\_\_\_ )

PET 87-1

ORDER AND DECISION NO. 105

SUBJECT: PETITION FOR CERTIFICATION; SEVERANCE OF EMPLOYEES FROM  
EXISTING BARGAINING UNIT; CORRECTIONAL EMPLOYEES.

The State Labor Relations Agency (the "Agency") convened hearings on April 6 and April 20, 1987, to consider the petition filed by Alaska Correctional Employees Association ("ACE") to represent, as collective bargaining representative, designated employees of the State Department of Corrections ("DOC") presently represented by the Alaska Public Employees Association--General Government Unit ("APEA" or "APEA-GGU"). At each of the hearings, Chairman C. R. ("Steve") Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. ACE was represented by James A. Witt, Esq., and APEA was represented by general counsel John Gaguine, Esq. Various witnesses testified for each party. The parties

submitted post hearing briefs. The Agency, having considered the arguments, the evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following Order and Decision dismissing the petition filed by ACE.

#### Findings of Fact

1. ACE, in affiliation with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Independent Local 959 ("Local 959"), filed a petition for certification as public employee representative of approximately 850 employees of the DOC. The employees sought to be represented pursuant to the petition included all APEA employees classified as correctional officer, probation officer, administrative officer, clerk, clerk-typist, mail clerk, carrier, secretary, executive secretary, statistical clerk, accounting clerk, physician's assistant, pharmacist, pharmacy technician, registered nurse, licensed practical nurse, transportation officer, educational associate, recreation officer and supply worker. Some of these classifications had different grades or levels. ACE specifically excluded from its proposed bargaining unit all supervisory employees and those employees in DOC currently represented by Public Employees Local 71 AFL-CIO ("Local 71"), which group includes the classifications of maintenance mechanic, maintenance worker, electrician, food service manager and cook. ACE is not presently the certified collective bargaining representative of any employees.

2. The petition filed by ACE was timely in that it was filed on February 6, 1987, a date falling within the appropriate window period of 150 to 120 days prior to the expiration of the APEA-GGU contract scheduled to expire on June 30, 1987. The petition was supported by 369 showing-of-interest cards (more than 30 percent of the proposed unit). A previous petition filed by ACE was not timely filed and was rejected.

3. Following the filing of the petition, representatives of the Agency met in informal conference with representatives of ACE, Local 959, APEA, and the State (DOC and the Division of Labor Relations). The Agency accepted the petition as prima facie acceptable and in substantial compliance with Agency statutes and regulations. Notice of the hearing concerning a possible election was posted, and no objection was filed with respect to the appropriateness of the posting. APEA was deemed automatic intervenor and indicated that it specifically would request a hearing. This hearing was convened with appropriate advance notice.

4. DOC was organized as a separate department in 1984. Prior to that time, the responsibility for corrections was as a division within the Department of Health and Social Services. Presently there are ten or eleven correctional institutions throughout the State, fourteen parole and probation offices throughout the State, and a central headquarters for the department in Juneau. Approximately three percent of the department's 1,100 employees work in the central office, the rest being located throughout the State. The size of the DOC, in terms of employees, numbers of inmates, and budget, has grown dramatically in the last five years.

5. APEA-GGU has represented the employees in positions identified by ACE since the inception of APEA, and this Agency has not segregated those employees from the general government collective bargaining unit throughout the history of the Public Employment Relations Act of 1972. In DOC, most of the employees are represented by APEA although the "blue-collar" workers are represented by Local 71. Approximately 150 are represented by Local 71. The blue-collar workers are employed generally in the institutions.

6. Given the provisions of the statutes and regulations, the factors to be considered with respect to the appropriateness of severing DOC employees from APEA representation and the facts adduced at the hearing demonstrate the following.

7. Inadequate representation by APEA. The cumulative weight of the evidence did not establish a failure by or substantial inadequacy of APEA's representation of corrections employees. George Hiller, primary organizer of ACE, contended he was unable to make changes in APEA with respect to needs of correctional officers. There was a split among correctional officers as to the desirability of 12-hour shifts, and certain officers felt that APEA had not argued in their best interest with respect to shifts. APEA's site visits had increased substantially since ACE served notice of its intention to represent correctional employees. Prior to that time, however, APEA field representatives testified that they faced a substantial amount of apathy with respect to any involvement by corrections employees, and found it difficult to establish management committees and enlist employee representatives. There appeared to be a history of grumbling by correctional officers without working with APEA to resolve their circumstances. APEA maintained that it engaged in frequent site visits to corrections sites and had solved numerous grievances, issues such as asbestos in institutions, lunch break policies, and the like. APEA presented a list of grievances involving corrections employees. A number of corrections employees

testified that they were dissatisfied with the contact with, in particular, one field representative in Anchorage. APEA noted that correctional officers had served on APEA's negotiating teams and had senior positions in the APEA hierarchy.

8. Desires of Employees. Of the 850 corrections employees sought to be represented, 329 or 39% filed showing of-interest cards. The number of cards filed was sufficient to indicate a statistically significant ground swell of support, but was not in and of itself overwhelming.

9. Tradition of Separate Representation. Correctional officers (or corrections employees generally) have not been represented by any separate bargaining representatives in the past in Alaska. A study cited by former Commissioner Endell with respect to creation of a separate Department of Corrections made numerous recommendations on how best to implement the department but did not include among those recommendations, any comment on separate bargaining unit representation for correctional officers or other employees of the new department. The record did not demonstrate that corrections employees had a clear tradition of being separately represented in other states or other jurisdictions.

10. Community of Interest. The cumulative weight of the testimony did not establish a community of interest among corrections employees significantly separate or distinguishable from other employees represented in the APEA-GGU. ACE separated Local 71 employees from the proposed bargaining unit without justifying differences among those employee from APEA-GGU employees. However, with respect to those APEA employees sought to be represented by ACE, ACE asserted that the bulk of those employees (i.e., those employees not employed at the central office in Juneau, where no inmates were incarcerated) had certain unique characteristics common only to corrections employees such as:

- (a) uniforms and badges within a paramilitary operation and method of employment;
- (b) firearms training and special certification from State Troopers, particularly with respect to transportation officers;
- (c) continual contact with incarcerated inmates, many of whom are dangerous criminals;
- (d) unique training offered at the Goose Bay Academy;

(e) no interchangeability of and limited contact among employees of DOC with State employees in other departments;

(f) a unique wage scale reflected in an addendum to the general APEA-GGU collective bargaining agreement, which scale provides an employee-unique pay bonus for 69 percent of the corrections employees.

APEA contended that, while correctional officers are unique, other employees in the State of Alaska are unique with respect to their own job types and duties, and have characteristics similar to those of corrections employees. APEA adduced testimony that, like correctional officers:

(a) Other State employees are engaged in hazardous occupations.

(b) Other State employees are engaged in shift work and long hours.

(c) Other employees work at remote sites and are outside of frequent or other contact with other State employees.

(d) Other State employees have special training although not necessarily at a particular academy such as the Goose Bay Academy.

(e) Other employees carry firearms.

(f) Other employees come into contact with incarcerated people, such as inmates at Alaska Psychiatric Institute, McLaughlin Youth Detention Facility, and other locations.

(g) the unique addendum to the APEA-GGU contract was an example of APEA sensitivity to particularized needs.

11. Wages/Hours. The wage scale of 69% of corrections employees was addressed in a separate APEA-GGU contract addendum, but that distinct wage scale was based upon a presumption of certain overtime and the APEA-GGU wage scale itself. There was, thus, a relationship to APEA-GGU general wage and hour scales.

12. Fragmentation. ACE does not represent any other employee groups in the State. Thus, if the corrections

employees were segregated from APEA, a new collective bargaining unit, ACE, would appear. Within DOC, there would still be at least two bargaining units representing classified employees, ACE and Local 71.

13. The State of Alaska Division of Labor Relations commented on the proposed bargaining unit at the hearing. The State was not recognized as an intervenor, and the State subsequently filed a letter with the Agency stating that it had no position to set forth concerning the petition.

#### Conclusions of Law

1. The Agency is charged with responsibility for conducting elections including certification of elections pursuant to AS 23.40.100. AS 23.40.090 prescribes the analysis to be applied to fashioning bargaining units:

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 23.40.07023.40.260, 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.

2. The Agency's regulations address the election process, and contain provisions for petitions for certification which will sever employees from an existing bargaining unit. 2 AAC 10 020 provides for the content of a petition for certification of public employee representatives, including certain additional requirements when the petition for certification is one which would sever employees from an existing bargaining unit. The additional information required under 2 ACC 10.020(b) includes:

(1) why the employees in the proposed bargaining unit are not receiving adequate representation in the existing unit;

(2) whether the employees in the proposed bargaining unit are employed in jobs which have traditionally been represented by their own representatives;

(3) why the employees in the proposed unit have a community of interest which is not identical with that of the employees in the existing unit;

(4) how long the employees in the proposed bargaining unit have been represented as part of the existing unit;

(5) why the grant of the petition will not promote excessive fragmentation of the existing bargaining unit.

2 AAC 10.020(d) provides that the Agency will consider a petition "substantially fulfilling the requirement of (a), (b) and (c)" of that regulation. The petition filed by ACE "substantially" fulfilled the requirements for purposes of being accepted by the Agency for further action.

3. The timing of the filing of the petition by PSEA was appropriate in that the petition was filed, as required under 2 AAC 10.060(b), during "the period between 150 calendar days and 120 calendar days before the expiration date of the APEA collective bargaining agreement...". Because the Agency found that ACE's proposed bargaining unit was a "prima facie appropriate unit for collective bargaining purposes," the Agency could and did schedule a hearing with respect to the petition consistent with 2 AAC 10.060(c).

4. APEA was an automatic intervenor in the matter pursuant to 2 AAC 10.080(f). No other parties intervened, although one written objection to the petition was filed with the Agency by a corrections employee and the State filed a statement.

5. While this Agency gives great weight to NLRB precedent in determining what constitutes unfair labor practices (2 AAC 10.250(c)), the NLRB is also a source of guidance where NLRB precedent parallels the intent and purpose of the Public Employment Relations Act. There has been no order and decision by this Agency considering a severance petition such as the instant case, but severance petition criteria parallel the elements considered by the NLRB in Mallinckrodt Chemical Works, 162 NLRB 387, 64 LRRM 1011 (1966) where, among others, the following factors would be considered:

(1) the employees must be skilled craftsmen or have worked in a separate department and had a tradition of separate representation;

- (2) a showing must be made that no undue disruption of a stable bargaining relationship occur due to severance;
- (3) the affected employees must have maintained a separate identity in a larger, homogeneous unit; their
- (4) there must exist within the industry generally an historical pattern of separate representation for the employees who seek severance;
- (5) the functional integration of the employees who seek severance must be analyzed in light of the overall operation of the employer; and
- (6) the background of the union which would represent the severed group of employees is examined to determine their prior representation on behalf of other like employees.

Here, evidence has shown that ACE has failed to establish none of the six Mallinckrodt factors. The regulations contained in 2 AAC 10.020(b) and 060 adopt elements similar to the Mallinckrodt analysis with the exception of a craft-separate department provision, although corrections employees would presumably constitute skilled craftsmen by analogy. Analysis under Mallinckrodt (and the analogous Agency regulations) follows at paragraphs 6 through 9.

6. (Mallinckrodt factors 1 and 4). There has been no tradition of separate representation of corrections employees in Alaska, and indeed only recently have those employees been placed into a separate department (with APEA-GGU and Local 71 representing classified workers in that department). While some evidence was submitted suggesting a pattern of separate representation in other states, the practice varied considerably, and, often, while corrections employees had a separate "union" each prison or site bargained separately. Further the separate corrections units did not apparently include the support staff sought in ACE's petition. See ACE Exhibit 8.

7. (Mallinckrodt factor 2). Disruption (or fragmentation) would be exacerbated by addition, without an otherwise recognizable purpose, of a new bargaining representative. While corrections employees (or most of them) are class I



employees, APEA-GGU represents a large number of other class I employees as well as class II and class III employees with their greater rights to strike. A tradition of severing class I employees from other units was not adopted in Alaska and there has been a blend of representation of classes.

8. (Mallinckrodt factors 3 and 5). The unit proposed by ACE is differentiated from the greater universe of APEA-GGU membership as a consequence of being situated in a separate department. But that segregation is only recent, and Local 71-represented employees are also in that department. Beyond the separateness of the department, there is not a compelling separation of identity of corrections employees from other state employees beyond the uniqueness that each job description would naturally have as distinct from another.

9. (Mallinckrodt factor 6). There was no showing that ACE or its affiliate Local 959 have ever represented corrections employees.

10. Dissatisfaction with APEA membership is not a conclusion which naturally follows from a filing of interest cards representing substantially less than 50% of the proposed bargaining unit.

11. APEA contended that ACE committed error in failing to disclose ACE's Teamster affiliation in advertisements designed to obtain the showing-of-interest cards submitted with petition 87-1. Because of the decision reached in this matter, the Agency did not reach a conclusion with respect to that allegation.

#### Order and Decision

Based on the foregoing findings of fact and conclusions of law, the Agency unanimously orders and decides that:

1. The petition filed by ACE with respect to representation of designated employees of the Department of Corrections is denied since no justification exists to distinguish Department of Corrections employees from other employees represented by APEA through a separate bargaining unit in a manner consistent with the intentions of AS 23.40.090 and regulations adopted relating thereto.

2. As requested by the Agency, the conclusion (without written rationale) was related to the affected parties on May 6 and 7, 1987.

DATED this 14 day of May, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

By \_\_\_\_\_  
C. R. "Steve" Hafling, Chairman

[Signature on File]