

[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

PUBLIC SAFETY EMPLOYEES)
ASSOCIATION, INC.,)
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 Petitioner,)
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 and)
)
ALASKA PUBLIC EMPLOYEES)
ASSOCIATION,)
)
 Intervenor.)
)
_____)

PET 87-2

ORDER AND DECISION NO. 106

SUBJECT: PETITION FOR CERTIFICATION; SEVERANCE OF EMPLOYEES FROM
EXISTING BARGAINING UNIT; AIRPORT SAFETY OFFICERS

The State Labor Relations Agency (the "Agency") convened a hearing on April 15, 1987 in Anchorage, Alaska, to consider objections by the Alaska Public Employees Association ("APEA") to a petition filed by the Public Safety Employees Association ("PSEA") to represent, following an election, certain airport safety officers already represented by APEA. Chairman C.R. "Steve" Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. PSEA was represented by William K. Jermain, Esq. and APEA was represented by general counsel John Gaguine, Esq. Various witnesses

testified for each party. The Agency, having considered the arguments, documentary evidence and testimony provided by the parties, having reviewed the briefs filed at the time of hearing and after the hearing, and deeming itself sufficiently advised, renders the following Order and Decision granting the petition filed by PSEA.

Procedural Background

1. The State of Alaska employs approximately 85 Airport Safety Officers ("ASO's") of various grades at the Anchorage, Fairbanks, and Cold Bay airports in Alaska. ASO's are currently represented by APEA's general government unit ("APEA-GGU"). APEA has a contract in force and effect with a valid extension expiring June 30, 1987.

2. On February 19, 1987, PSEA filed a petition for election seeking to represent the 85 ASO's already represented by APEA. The petition was filed within the applicable window period for the filing of petitions, and was further supported by a sufficient number of cards.

3. At a prehearing conference, representatives of APEA, PSEA and the State discussed the nature of the petition and ground rules and timing for any election. APEA objected to the appropriateness of the petition for election contending that the petition did not satisfy the Agency's requirements, and that the petition was unclear as to whether it intended to create a wholly separate bargaining unit consisting of only 85 ASO's or whether the 85 ASO's would be joined to the existing PSEA bargaining unit which represents commissioned and certificated public safety officers employed by the State of Alaska. Subsequent to the prehearing conference, PSEA filed an amended petition to clarify that the 85 ASO's sought to be represented by PSEA would be joined to the existing PSEA bargaining unit rather than forming a stand-alone bargaining unit. The amended petition was filed on March 24, 1987.

4. The Agency determined that PSEA's petition, particularly as amended, was acceptable for purposes of further proceedings. As such, notices of a hearing with respect to a certification procedure was posted at appropriate locations where ASO's worked. There was no objection as to the sufficiency of the posting.

5. The notices were entitled "Notice of Petition for Certification/Clarification and Hearing." The parties agreed that the petition was for a certification election and not a clarification. The notices set a specific time for the hearing in as much as APEA signified that, as automatic intervenor, it would object to the appropriateness of an election or

to the collective bargaining unit proposed by PSEA. The hearing was held.

Findings of Fact

1. Airport Safety Officers are employed by the State Department of Transportation and Public Facilities (DOT/PF) and all are represented by APEA-GGU. Relevant facts concerning the severability of ASO's from their existing bargaining unit and joining that severed group to PSEA may be broken down into the criteria set forth in AS 23.40.090 and implementing regulations such as 2 AAC 10.020. Identifiable factors addressed in the facts adduced at the hearing include the following.

2. Non-representation by APEA. The petition and amended petition asserted that APEA's failure to represent the majority of ASO's was evidenced by the significant number of showing-of-interest cards submitted to the Agency (paragraph 1) and the assertion that APEA-GGU represented primarily those classifications "traditionally found within State service without a police function" (paragraph 7). The thrust of testimony favoring PSEA representation related to the apparent desire for a more "job-relevant" representation. APEA representation was described as a "fair job" and "fine" as a general matter, although the orientation of APEA was perceived to relate to a larger common denominator rather than being focused on PSEA interests. APEA, however, did undertake active representation of ASO complaints and the DOT/PF personnel officer described APEA as aggressively enforcing ASO interests. APEA resolved ASO complaints relating to hazardous pit fires, resolved a problem with Anchorage Airport management's decision to unilaterally modify work schedules during the holiday season, resolved problems regarding Air National Guard issues, and sought improved field training programs. The ASO's had a higher per capita incidence of grievances, although evidently as a consequence of a good system of employee representatives in Fairbanks, fewer actual grievances existed in Fairbanks.

3. Desires of Employees. Of the 85 ASO's, 75 ASO's or 88% filed showing-of-interest cards. Thus, an overwhelming number of ASO's indicated at least an interest in considering severance from APEA and representation by PSEA.

4. Tradition of Representation. While ASO's have consistently been represented by APEA during the history of public collective bargaining in Alaska, there has been a tradition of separate representation of police officers in Alaska. PSEA represents State Troopers as the group of commissioned officers, and to the extent that certain non-State Troopers carry police type responsibilities, there have been additions of those positions to the PSEA covered group. This arose with

respect to clarification by the Agency of the PSEA bargaining group through the addition of Motor Vehicle Inspectors in Order and Decision 30. While other State employees not represented by PSEA have quasi-police functions and are engaged in the enforcement of laws or at least the prevention of escapes (Alaska Psychiatric Institute, Corrections Officers, McLaughlin Youth Detention Center Employees and the like), there has been a recognition that if primary focus is on public safety stressing police-type activity, an interest separate from the general government unit has been accepted. APEA has recognized some distinction among ASO's given the specialization of some employee representatives with ASO issues.

5. Community of Interest. The cumulative weight of the evidence indicates a greater common relationship between ASO's and employees currently represented by PSEA in the law enforcement bargaining unit, than between ASO's and other APEA-GGU members. The single greatest distinction remaining between ASO's and those currently represented by PSEA is that all current members of the PSEA bargaining unit are certified as peace officers by the Alaska Police Standards Council and ASO's are not.

ASO's engage in police type responsibilities similar to those activities engaged in by the Alaska State Troopers, the group represented by PSEA, as distinct from general government unit, in that among other things:

- A. The ASO series is defined as one which performs and supervises crash, fire, rescue, law enforcement and safety functions, albeit at State owned airports as opposed to general jurisdiction throughout the state.
- B. An ASO I is a one-year probationary appointment which requires successful completion of training and basic fire crash rescue and law enforcement.
- C. An ASO II independently performs law enforcement and crash, fire, and rescue duties.
- D. ASO duties include: Security patrol, enforcement of State and Federal statutes, issuance of citations, effecting arrests, transporting prisoners, testifying in court, investigating vehicle accidents and crime scenes, directing traffic and impounding illegally parked vehicles, assisting officers of other law enforcement agencies, performing special security and escort duties and preparing reports pertaining to these activities. There is a general need of airport safety officers pursuant to the Federal Aviation Act to meet local police standards.

E. ASO's must have a working knowledge of Alaska and Criminal and Vehicle Codes, Alaska Administrative Code pertaining to traffic violations, State and Federal laws relating the control of dangerous substances, law enforcement methods and techniques.

F. ASO's are trained in the use of assigned vehicles, fire, crash, rescue and security equipment, and firearms.

G. ASO's are trained and operate in a para-military style, wear para-military type uniforms with the word "police" on shoulder patches and badges.

H. ASO's operate vehicles clearly identifiable to the general public as police type vehicles (i.e. marked "Airport Police") and equipped with emergency warning lights, flashing lights and the like.

I. ASO job responsibilities are exclusively performed by these employees and other state employees are not capable of or trained to function in lieu of ASO's.

J. There is a history of interest in progressing from ASO ranks to police officer ranks, although various obstacles arise with respect the literal transferability of skills. ASO's apparently think of themselves as police.

APEA produced evidence that ASO's are not unique among general government unit employees with regard to certain attributes argued by PSEA to distinguish ASO's in that, similarly to ASO's, other APEA-GGU employee members:

A. Work odd shifts including round the clock shifts;

B. Wear uniforms of some types;

C. Undertake hazardous duties (fish & game officers, correctional officers, and the like);

D. Issue citations;

E. Carry firearms and are authorized to make arrests (probation officers, park rangers);

F. Have standard operating procedures unique to their particular department or division;

G. Fight fires (forestry fire technicians);

H. Are so called "class I " employees in that there is no right to strike.

6. Avoidance of Fragmentation/Reasonably Large Units Preferred. PSEA's original petition, by its terms, purported to create a unit comprised solely of some 85 ASO's represented by PSEA. This petition filed during the window period was amended to specify that the 85 ASO's concerned would be linked to the existing PSEA bargaining unit. Joinder of the 85 employees to the PSEA bargaining unit would not increase the number of bargaining units in State government, but would simply be shift of a portion of one existing bargaining unit to another. APEA, the largest collective bargaining unit, represents approximately 7,500 state employees, and PSEA (without the addition of the 85 ASO's) presently represents approximately 800 employees.

7. Wages/Hours. The wage scales of ASO's fall within the APEA-GGU scales, and the hours were based primarily on shift work. Shift work predominated and was more akin to shift work faced by PSEA-represented employees in police-type functions.

Conclusions of Law

1. The agency is charged with responsibility for conducting elections including certification 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 23.40.070 - 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.

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 AAC 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 requirements of (a), (b) and (c)" of that regulation. The petition filed by PSEA "substantially" fulfilled the requirements, although the petition could ideally have clarified to a greater extent (than as noted in paragraph 3 of "Procedural Background," above) the inadequacy of representation issue and the linkage of the proposed unit to an existing one.

3. The timing of the filing of the original 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 PSEA'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. To the extent that the initial petition was filed during the window period, the amended petition can fairly relate back to the date of filing the initial petition. Such a relation-back is consistent with the principles of Civil Rule 15(c) concerning amendments of complaints curing defects in the initial filing. In this case, the filing of the initial petition and convening a prehearing conference adequately informed APEA as automatic intervenor of the general scope of the petition and the issues involved. The amended petition clarified the intent of PSEA as petitioning party and that

amended petition did not surprise or otherwise specifically prejudice APEA. Shooshanian v. Wagner, 672 P.2d 455 (Alaska 1983).

5. APEA was an automatic intervenor in the matter pursuant to 2 AAC 10.080(f). No other parties intervened.

6. 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 instance 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;
- (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 is persuasive to suggest that elements 2, 3, 4, 5, and 6 have been met and that element 1 has likely been met. 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 ASO's would presumably constitute skilled craftsmen by analogy.

7. While ASO's are class I employees, APEA-GGU represents a large number of other class I employees as well as class II and class III employees who have specified rights to strike. Severing class I employees from other classes was not adopted as a doctrine in Alaska and there has been a blending in representation of classes.

8. The Agency's previous decisions on appropriate bargaining units considered the facts as presented when presented. See O & D 1 (general principles); O & D 28 (PSEA); O & D 30 (PSEA); O & D 56 (correspondence teachers); O & D 90 (University maintenance employees); and O & D 94 (certain University support staff). However, facts can change (as noted in O & D 94, where the maturity of collective bargaining in Alaska was noted). Here, the limitation of PSEA only to those police-type officers with certificates is arguably not a dominant criterion given the increased emphasis on the police/public safety role of ASO's. The factors considered here, when balanced against each other, do not make severance of ASO's from APEA-GGU representation inconsistent with the above-noted Orders and Decisions of this Agency.

9. A review of collective bargaining cases in other states indicates that police-type officers are generally severed from other groups of employees for reasons which include but are not limited to restrictions on rights to strike. Police type employees have been segregated from other officials frequently. Reasoning has included, for example, a finding that police officers need a separate unit since there always remains a inherent conflict of interest by virtue of their law enforcement function as distinct from other employees. Village of Skaneateles, 16 PERB para. 3070 (N.Y. PERB 1983). Other states have created separate units comprising law enforcement including crime investigation (New York), fire fighters (South Dakota), emergency dispatchers (Oregon), city sheriffs as distinct from civilian jail guards (Wisconsin) and units based on police officers' status through the arrest power as distinct from other non-law enforcement personnel (New Jersey). See cases cited in PSEA's pre-hearing brief with respect to segregation (recognizing, however, that Alaska's Public Employment Relations Act is unique).

Order and Decision

Based on the foregoing findings of fact and conclusions of law, the Agency by a vote of two-to-one (Hafling dissenting) orders and decides that:

1. The petition filed by PSEA to hold an election respecting the representation of airport safety officers employed by the State of Alaska is approved because it satisfies (and does not conflict with) AS 23.40.090 and 2 AAC 10.020-060; that is, PSEA has sufficiently demonstrated reasons why ASOs may and should be represented by PSEA rather than APEA-GGU to better achieve the collective bargaining goals and rights of ASO's.

2. An election shall be convened by mail ballot according to procedures previously discussed among APEA, PSEA in the State of Alaska, and pursuant to a schedule and calendar insuring a count of received mailed ballots on June 29, 1987 in Anchorage, Alaska. The choices to appear on the ballot shall be: APEA, PSEA, or "No representation".

3. This written decision sets forth the determination of this Agency following the hearing and after reviewing briefs filed by the parties thereafter. Upon instruction of the Agency, the decision (without written explanation) was conveyed to APEA and PSEA on May 6, 1987.

DATED this 14 day of May, 1987.

STATE OF ALASKA LABOR RELATIONS AGENCY

By _____
C. R. "Steve" Hafling, Chairman

[Signature on File]