[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA INSTITUTIONAL SECURITY EMPLOYEES ASSOCIATION,	)
Petitioner,	)
and	)
ALASKA PUBLIC EMPLOYEES ASSOCIATION and PUBLIC EMPLOYEES, LOCAL 71, AFL-CIO,	)
Intervenors,	)
vs.	)
ALASKA STATE EMPLOYEES ASSOCIATION,	)
Intervenor.	)

PET 87-10. 87-10(a), 87-10(b)

ORDER AND DECISION NO. 112

SUBJECT: PETITION FOR CERTIFICATION; SEVERANCE OF EMPLOYEES FROM EXISTING BARGAINING UNIT; INSTITUTIONAL SECURITY EMPLOYEES

The State Labor Relations Agency (the "Agency") convened hearings on March 2 and March 14, 1988, in Anchorage, to consider the petition filed by the Alaska Institutional Security Employees Association ("AISEA") to represent, as collective bargaining representative, a designated group of employees primarily involved in security and hospital-related

activities and who are currently represented (although without a written contract in place) by the Alaska Public Employees Association-General Government Unit ("APEA" or "APEA-GGU"). Alaska State Employees Association ("ASEA") and Alaska State Employees, Local 71, AFL-CIO ("Local 71") intervened. At each of the hearings, Chairman C.R. "Steve" Hafling and members Ben Humphries and Marlene Johnson were present and so constituted a quorum. AISEA was represented by William K. Jermain and Bradley D. Owens; APEA was represented by general counsel John Gaguine; ASEA was represented by Don Clocksin; and Local 71 was represented by Kevin Dougherty. Various witnesses testified for each party. The parties submitted briefs and written evidence. The Agency, having considered the arguments, evidence and testimony of the parties, and deeming itself sufficiently advised, renders the following order and decision dismissing the petition filed by AISEA.

Findings of Fact

1. AISEA, 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 900 employees in several departments of state government described as:

> all non-supervisory, non-confidential employees employed by the State of Alaska directly engaged in providing security in Alaska's jails, prisons and correctional institutions and any employees employed by the State of Alaska in hospitals as defined in AS 18.20.130.

AISEA's petition was filed on December 3, 1987, and contained 324 showing-of-interest cards which were accepted by the Agency, an amount in excess of the estimated 296 cards required to demonstrate a thirty per cent showing-of-interest. On December 18, 1987, ASEA filed a petition in intervention attaching 124 acceptable showing-of-interest cards (98 being the required number for a 10 per cent showing). On February 22, 1988, Local 71 filed a petition in intervention attaching 198 acceptable showing-of-interest cards. As incumbent, APEA was automatically granted intervenor status.

2. Following the filing of AISEA's petition, representatives of the Agency meet in informal conference with representatives of AISEA, APEA, Local 71, ASEA and the State. The Agency accepted the petitions as prima facie acceptable and in substantial compliance with Agency statutes and regulations, and no parties objected to the prima facie acceptability of the petitions. Notice of the hearing

concerning a possible election was posted, and no objection was filed with respect to the appropriateness of the posting. Based upon APEA's initial request for a hearing, this hearing was convened with appropriate advance notice.

3. APEA is the present certified collective bargaining representative for all of the employees ought to be represented by AISEA (or intervenors). All the employees are in the General Government Unit. APEA does not have a valid contract in force and effect for its GGU employees, including those apparently described in the petition. A representation election affecting all GGU employees has been sought by ASEA and Local 71, and APEA does not oppose that election. AISEA's petition was timely and not subject to any window-period for filing.

4. AISEA is not presently the certified collective bargaining representative of any employees. The principals of AISEA and Local 959, its affiliate, previously presented a petition representing only correctional employees through an organization called Alaska Correctional Employees Association (ACE) in 1987. ACE petitioned the Agency to represent approximately 850 employees of the State Department of Corrections. After an extensive hearing including numerous witnesses, the Agency denied the petition: ACE v. APEA, PET 87-1, Order and Decision No. 105 (May 14, 1987). The Superior Court upheld the Agency's decision on an appeal brought by ACE in Alaska Correctional Employees v. State Labor Relations Agency and APEA, 3AN-87-5791 (February 4, 1988). AISEA contends that its unit in this petition is substantially different than that considered in the ACE case, and that in addition conditions have changed supporting a change in analysis and determination by the Agency.

5. On the week-end prior to convening the March 2, 1988 hearing, principals of APEA and principals of AISEA meet and discussed their respective interests. APEA concluded that it would withdraw any opposition to the AISEA petition, and subsequently argued in favor of the severance of the proposed unit from the General Government Unit, reserving however the right to appear on any ballot as a potential representative of the severed group of employees. Local 71, an intervenor, also stated non-opposition to the severance requested by AISEA. ASEA in contrast opposed severance.

6. At the hearing, AISEA without objection from any other party requested the adoption of the record presented in the ACE proceedings. The findings and conclusions of Order and Decision No. 105, and the record of the hearing in PET 87-1 are incorporated into this decision and record. AISEA through counsel argued that the ACE decision in Order and Decision No.

105 did not bind the Agency and indeed Order and Decision No. 106 was more appropriate. ASEA contended the opposite.

7. The petition filed by AISEA set forth a very unclear proposed bargaining unit in paragraph 4 of the petition. At the hearing AISEA argued that the universe of employees to be included were all (and only) Class I employees affiliated with institutions which, in fact, were not readily identifiable from the petition. Such institutions included correctional facilities and jails, but also the Alaska Psychiatric Institute (API), Harborview, Pioneer Homes, and youth detention centers. Within the group of Class I employees, AISEA indicated that its focus was primarily on security oriented personnel, and indeed its testimony was related almost exclusively to correctional employees of the State Department of Corrections.

8. Given the provisions of statutes and regulations and the Mallinckrodt criteria previously considered by the Agency, key factors to be considered with respect to the appropriateness of severing the employees loosely described in the petition from the GGU and the facts adduced at the hearing and as incorporated from the ACE hearing in 1987, demonstrate the following.

9. Inadequate representation by APEA. The cumulative weight of the evidence did not establish a failure by or substantial inadequacy of APEA's representation of the affected employees. APEA (which otherwise supported AISEA's petition) disclaimed inadequate representation, and rather attested to the tailoring of the APEA-GGU general contract to at least correctional employees' needs. ASEA contended that the more appropriate method of representation was through management-labor councils within a larger group rather than severance, and introduced as evidence a recent plan by APEA to create management-labor councils within the broader APEA-GGU umbrella responsive specifically to the needs of at least corrections officers.

10. Desires of Employees. The precise size of the universe of employees affected was unclear, but 324 employees filed showing-of-interest cards for AISEA, and an additional 124 cards were filed for ASEA and 198 for Local 71. Some of the same persons may well have filed showing-of-interest cards for more than one of the petitioner-intervenors. The showing-of-interest cards are not a determinative measure of desires of employees. See, decision of court in ACE v. State, et al. However, in any event, the testimony cumulatively showed that employee interests in the AISEA universe focused as much on antipathy toward APEA per se as upon severance.

11. Tradition of Separate Representation. Correctional employees or security officials, other than uniformed certificated officers such as those represented by the Public Safety Employees Association, have not been represented by any separate bargaining representatives in the past in Alaska. Rather the affected employees here have been represented continually as part of the General Government Unit since inception of the Public Employment Relations Act. The tradition set forth in other states, including Florida where the only unit carved out from a preexisting small number of collective bargaining units was with respect to corrections officers, does not demonstrate an overwhelming preference toward exclusive representation of corrections officers. In any event, the apparent inclusion in the AISEA universe of employees at API, Harborview, and youth facilities, and of probation officers clearly tends to minimize the relevance of collective bargaining units focusing solely on corrections officers in other states.

12. Community of Interest. The cumulative weight of the testimony did not establish a community of interest among the group of affected employees separable or distinguishable from other employees represented in the APEA-GGU.

a. Internal Lack of Community. The interests of the various employees in the AISEA universe are quite different among themselves as established by testimony of witnesses, particularly those presented by ASEA. For example, the Pioneer's Home nurses, psychiatric nursing assistants, and corrections officers presented as many differences among themselves as similarities. As in the ACE proceeding, AISEA illogically excluded Class I employees who are represented by Local 71 from the proposed bargaining unit. Further the lack of clarity with respect to whether all the employees were indeed Class I employees (recognizing however that the Agency is the final arbiter of who are Class I employees) makes the unit all the more nebulous internally.

b. Community with GGU. Similarities between corrections officers and GGU at large were addressed in Order and Decision No. 105. Further, corrections officers, who remained the focus of attention in this petition were shown by evidence to not require particularly meaningful prerequisites for employment. A high school education was all that was needed followed by on the job training including some weapons training and some training with respect to physical restraint techniques. This lack of prerequisites in training is substantially different from the
type of training and prerequisites necessary, for example, in the unit represented by PSEA. The relative lack of prerequisites diminishes separateness from GGU rank and file. Further as was established previously in Order and Decision No. 105, even corrections officers, who are perhaps the "most distinct" of

the employees described in this particular universe, have numerous similarities to other GGU employees with respect to their Class I characteristics as well as their performance skills. The fact that security-type employees work in dangerous surroundings is not a persuasively dominant factor in ascertaining a community of interest separate from other GGU employees. Other GGU employees also work in "dangerous" or "stressful" circumstances. The community of interest of the AISEA universe seems to stress a uniqueness of job requirements, but that uniqueness is by definition the basis for differentiating between any employee classifications.

13. Wages/Hours. The wage scale of the correctional 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. Non-correctional employees in the AISEA universe operate on the GGU scale.

14. Fragmentation. AISEA does not represent any other employee groups in the State. Fragmentation would arise because a new collective bargaining representative for a carved-out group would appear. Fragmentation of the unit proposed by AISEA is no more necessary then would the fragmentation of many other groups of employees each of whose jobs by definition differ from other jobs performed. The Agency was particularly persuaded by the testimony of ASEA's witness Donald Wasserman, that fragmentation from an existing unit must be specifically justified and that the analysis and proof necessary for fragmentation exceeds the level of analysis and proof required when a group of employees are to be represented for the first time. It is evident that Alaska's Public Employment Relations Act encourages a lower number of collective bargaining entities given the relatively low number of state employees compared to the number of employees in larger states. Even in larger states such as New York, relatively few separate collective bargaining units exist. In states such as Oregon and prior to certain statutory changes, Minnesota, chaos reigned because of the multiplicity of collective bargaining units.

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 23.40.07023.40.260, 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 posting of petitions and consideration at a hearing.

3. AISEA's petition was properly filed and the interventions of ASEA and Local 71 were appropriate. APEA was accorded automatic-intervenor status. APEA and Local 71 joined with AISEA with respect to supporting the severance and those

positions were not outside the scope of the rights of intervenors or parties in interest.

4. 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. This Agency has previously given weight to the decision of the NLRB in Mallinckrodt Chemical Works, 162 NLRB 387, 64 LRRM 1011 (1966) in reference to petitions considered in Orders and Decisions 105 and 106 (1987). The Mallinckrodt factors which can be considered include those set forth therein. AISEA (and APEA and Local 71) failed to establish to any significant extent the facts necessary to pass Mallinckrodt muster for severance.

5. The provisions of AS 23.40.090 contain certain unique requirements. No other state labor code, where collective bargaining for economic issues is permitted to public employees, provides that "bargaining units shall be as large as is reasonable". The Agency is persuaded that the legislature in enacting such a unique provision intended a petitioner in a subsequent severance election to carry a significant burden in establishing that substantial reasons exist to carve out and make bargaining units smaller than those initially put into place. While clearly fragmentation is permissible when "necessary," AS 23.40.090 seeks to avoid unnecessary fragmentation. On balance, the Agency is satisfied here that the nebulous universe proposed to be fragmented from GGU by AISEA is unnecessary.

6. The attempt by APEA to adopt management employee councils as a means of tailoring broader-based GGU issues to sub-groups such as correctional employees is an appropriate means of tailoring general terms and conditions to the specifics of employee groups. This method of tailoring through addenda or supplements is common in both public employment and private employment sectors, and, as such, is a clear and reasonable alternative to fragmentation and is an important consideration in determining whether fragmentation is necessary within the meaning of AS 23.40.090.

7. ASEA has argued that the doctrines of res Judicata or stare decisis compel the Agency's dismissal of this petition because of its Order and Decision No. 105. The Agency recognizes that the parties appearing before the Agency need to have some measure of predictability and knowledge as to what the Agency will do with respect to issues presented to it. While the Agency reviews each case on a case-by-case basis, the Agency is compelled to conclude that, in addition to the reasons set forth specifically in this Order and Decision, AISEA has not presented such substantially different or new

information as to compel the Agency to reconsider or reverse its findings of fact and conclusions of law in Order and Decision No. 105.

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 AISEA (and supported by APEA and Local 71) with respect to representation of some 900 employees generally described in the petition is denied, since no justification exists to sever those employees from other employees in the General Government Unit within the intent of AS 23.40.090 and regulations relating thereto.

2. This written Order and Decision reduces to writing the decision rendered orally by the Agency on March 14, 1988.

DATED this 22 day of March, 1988.

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

[Signature on File]