

[Labor Relations Agency Stationery]

BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES	)
ASSOCIATION,	)
	)
Objecting Party,	)
	)
vs.	)
	)
STATE OF ALASKA and ALASKA	)
PUBLIC EMPLOYEES ASSOCIATION,	)
	)
Respondents.	)
_____	)

UC 89-1

ORDER AND DECISION NO. 117

SUBJECT:           WHETHER A PERSONNEL DESCRIPTION QUESTIONNAIRE  
PREPARED  
                  BY THE STATE OF ALASKA SATISFIES THE INQUIRIES  
                  NECESSARY TO DETERMINE SUPERVISORY STATUS OF EMPLOYEES.

The State Labor Relations Agency (the "Agency") convened a hearing on April 4, 1989, in Juneau, Alaska, to consider a personnel description questionnaire put into issue in a unit clarification petition filed by the State of Alaska regarding the movement of employees from the general government unit to the supervisory unit. Chairman C. R. "Steve" Hafling and Members Marlene Johnson and Mike Andrews were present at the hearing and so constituted a quorum. The State of Alaska was represented by Assistant Attorney General Kathleen Strasbaugh. Objecting party Alaska State Employees Association ("ASEA") was represented by counsel Don Clocksin and Fred Dichter. Interested party Alaska Public Employees Association ("APEA") was represented by Bruce Ludwig. The Agency having considered the arguments, evidence and testimony of the parties, and deeming itself sufficiently advised renders the following order and decision dismissing ASEA's objections.

## FINDINGS OF FACT

1. ASEA is the certified collective bargaining representative for the general government unit ( "GGU" ) of State employees, although there is not presently in force and effect a binding collective bargaining agreement between ASEA and the State. APEA represents the supervisory unit of State employees and has in place a binding collective bargaining agreement with the State. Until September 1988, APEA was also the certified collective bargaining representative for the GGU.

2. Pursuant to the procedures and practice before the Agency, the State of Alaska petitioned for a unit clarification to determine the propriety of the movement of employees from the GGU to the confidential employees unit represented by the Confidential Employees Association ( "CEA" ) and from the GGU to the supervisory unit. The movement into CEA was considered in a separate hearing. The propriety of movement into the supervisory unit, upon agreement of the parties, was contingent in part on review of a personnel description questionnaire (PDQ) utilized by the State of Alaska to ascertain employment position characteristics including supervisory responsibilities.

3. Initially at issue in this matter are nine positions moved into the supervisory unit and described in the unit clarification petition filed by the State. There are in addition some 25 additional positions at issue although those positions are not yet named in a petition before the Agency.

4. Under the last APEA GGU Agreement, the terms of which are generally being implemented during the pendency of any new contract with ASEA, the union had 15 days in which to object to a proposed bargaining unit transfer by the State. APEA-GGU Agreement, Art. 2, Sec. 1 ("15 days from the date of notification."). Over time, this 15-day period has been interpreted to run from the date notice was mailed by the State to the union. Other specified notice provisions of the APEA-GGU Agreement measure the trigger date as the "date of receipt". See, for example, APEA-GGU Agreement, Art. 10, sec. 15. In this instance, ASEA did not file within 15 days after the date the notices were sent, but did file within 15 days after receipt of the notices. ASEA did not apparently have actual knowledge of the APEA-State interpretation of the notice period.

5. The PDQ utilized to determine supervisory status was initially established in 1975 as a consequence of Agency decisions implementing regulation 2 AAC 10.220(b)(2) defining supervisory employees. Following subsequent Agency decisions, the form was revised in 1981 to the form introduced in this matter. There evidently was no objection respecting the utilization of the 1975 form, nor have there been any objections

to the 1981 form during the period when APEA represented both GGU and the supervisory unit.

6. ASEA has objected to use of the 1981 PDQ with respect to the transfers described in this case, but also generally respecting past movements from GGU to the supervisory unit. ASEA contends that the practice of the state is to focus upon paragraphs 26 and 27 of the PDQ only. Assuming those questions alone are analyzed, ASEA contends that there has been a failure to account for Agency requirements that a position's duties be "substantial" as to at least four of the six criteria specified in 2 AAC 10.220(b) (3) and that the employee dedicate a "substantial percentage of the time" or "most of the time" to supervisory duties, with proof of regular participation by the candidate in four of six criteria. ASEA contends that the 1981 form dilutes or collapses previous inquiries on these points and fails to ascertain whether a candidate needs to obtain prior approval from a supervisor or merely inform a supervisor. These errors, according to ASEA, preclude proper review in trying to ascertain supervisory status.

7. ASEA has cited, as factually absurd, examples of some of the nine positions being considered including the movement of a GGU Clerk V position to supervisory status with the Clerk V being supervised by a GGU employee.

8. The testimony indicated that paragraphs 26 and 27 of the PDQ are not reviewed in a vacuum, and that the information contained within the four corners of the PDQ is ascertained and reviewed. There are a number of questions throughout the PDQ which, if properly filled out, would generate information respecting supervisory status. Issues such as "substantial percentage of responsibilities" and "substantial duties" may be contained in responses to paragraphs 13 and 14, for example. Paragraphs 17, 18, 19, 20, and 31 seek responses relevant to ASEA's concerns that merely informing a superior does not make a supervisor. Paragraph 32 requires identification of other employees to be supervised. Moreover there are places, following paragraph 29 and in paragraph 34, where the supervisor of the candidate would in fact review the application for accuracy before submission to a personnel officer.

#### CONCLUSIONS OF LAW

1. The Agency has jurisdiction to hear and consider requests for unit clarification pursuant to AS 23.40.090 and AS 23.40.160.

2. The general applicability of a 15-day objection period for contesting bargaining unit transfers is unclear given the absence of a binding collective bargaining agreement between

The GGU and the State of Alaska. Moreover, the APEA-GGU collective bargaining agreement is not crystal clear on precisely how 15 days are to be computed ("15 days from date of notification"). While APEA and the State may have acquiesced in an interpretation that the "date of notification" was the date of notice mailing, ASEA is not necessarily bound by that precedent without clear notice thereof. In any event, ASEA's filing within 15 days of notice receipt rather than within 15 days from the date of the letter is not so prejudicial, in this instance, to the State.

3. The controlling regulation relating to supervisory status is contained at 2 AAC 10.220(b) (3) which provides as follows:

"Supervisory Employee" means an individual having substantial responsibility on behalf of the public employer regularly to participate in the performance of all or most of the following functions: employ, promote, transfer, suspend, discharge or adjudicate grievances of other employees, if in connection with the foregoing, the exercise as such responsibility is not of a merely routine nature but requires the exercise of independent judgment.

4. The Agency has had cause to determine the applicability of supervisory status in several cases. In Order and Decision No. 15, the Agency determined that supervisory status existed when the candidate met four of the six conditions outlined in 2 AAC 10.220(b) (3). In Order and Decision Nos. 26 and 63, the Agency determined that there had to be a showing of substantial participation for four of the six elements shown and that there had to be a substantial percentage of the employee's time (or "most of the time") applied to those supervisory duties with regular participation in four of the six criteria. Further, even if recommendations by the employee were adopted by an employer 80 - 90% of the time, that fact alone did not elevate an employee from a non-supervisory "advisor" to a supervisor.

5. The Agency has never been asked to rule on the specific propriety of the 1981 version of the PDQ at issue in this matter. The PDQ was however presented as part of a study presented to the Board's members in their role as Personnel Board. (The membership is concurrent pursuant to AS 23.40.250(3)). The PDQ was not however specifically adopted by either the Personnel Board or the Agency as the definitive guide to ascertain supervisory versus general government status.

6. The cumulative weight of the evidence indicates that the criteria required by regulation are substantially addressed within the four corners of the existing PDQ.

Obviously, a PDQ which is improperly filled out raises questions, or in certain instances the reviewer of the completed PDQ may make errors in ascertaining supervisory status. However, all parties concede that it is the Agency which has final review authority over the propriety of movements between bargaining units, and those reviews may be made on a case by case basis. AS 23.40.090.

#### ORDER AND DECISION

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

1. The PDQ in the form presently used by the State contains sufficient questions, when considered in its entirety, to ascertain supervisory status of an employee position. Whether or not the form is filled out properly or what conclusions are drawn from the answers in the PDQ are subject to review and consideration on a case by case basis.

2. There is no basis to amend or overturn the form of the PDQ used by the State; however the PDQ, as any other form, might be written differently.

3. The parties are requested to meet within thirty (30) days from the date of this decision to ascertain whether the proposed transfers factually comport with the regulations and Agency decisions regarding supervisory status. The parties are urged to resolve as many issues as possible. If and to the extent any issues remain outstanding respecting the movement of GGU employees to the supervisory unit, the Agency directly or through a hearing officer will review those issues on a case by case basis.

4. For purposes of this proceeding, ASEA's objections to the bargaining unit transfers are deemed timely, and the State and ASEA are urged to formulate a consistent interpretation on filing timely objections.

5. ASEA's request, as presented in this proceeding and format, to re-evaluate past movements from GGU to the supervisory unit is denied.

6. This written decision sets forth the rationale for the decision reached by the Agency following the April 4, 1989 hearing and delivered orally thereafter to interested parties.

DATED this 20 day of April, 1989.

STATE OF ALASKA LABOR RELATIONS AGENCY

BY \_\_\_\_\_  
C. R. "Steve" Hafling  
Chairman

[Signature on File]

Certification block with signatures on file