

STATE OF ALASKA
DEPARTMENT OF LABOR
RELATIONS AGENCY

)
ALASKA STATE EMPLOYEES)
ASSOCIATION,)
)
Objecting Party,)
vs.)
)
STATE OF ALASKA and)
CONFIDENTIAL EMPLOYEES)
ASSOCIATION,)
)
Respondents.)
_____)
UC 89-1

ORDER AND DECISION NO. 118

The Alaska State Labor Relations Agency (the "Agency") having duly appointed appointed Robert M. Johnson to act as hearing officer in the foregoing matter, adopts as its decision the proposed findings of fact, conclusions of law and recommended decision by Mr. Johnson as attached hereto.

DATED this 20th day of April, 1989.

ALASKA STATE LABOR RELATIONS AGENCY

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

STATE OF ALASKA
DEPARTMENT OF LABOR
LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES)
ASSOCIATION,)

Objecting Party,)

vs.)

STATE OF ALASKA and)
CONFIDENTIAL EMPLOYEES)
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UC 89-1

HEARING OFFICER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW. AND RECOMMENDED ORDER AND DECISION

The State Labor Relations Agency (the "Agency") appointed Robert M. Johnson to act as hearing officer in a hearing to consider requests for unit clarification regarding transfer of four positions from the general government unit to the confidential employees bargaining unit. The hearing was conducted on April 4, 1989, in Juneau, Alaska. Robert M. Johnson, attorney, presided at the hearing. The State of Alaska was represented by Kimberly Gearity, Division of Personnel. Alaska State Employees Association ("ASEA"), as objecting party, was represented by counsel Fredric R. Dichter. Confidential Employees Association ("CEA") was represented by Greg O'Claray. After having considered the arguments and evidence presented, the hearing officer enters the following proposed findings of fact, conclusions of law, and recommended decision.

FINDINGS OF FACT

1. ASEA is the certified collective bargaining representative of the State's General Government Unit ("GGU"). There is no collective bargaining agreement between ASEA and the

State in place, although ASEA and the State are operating under terms and conditions generally similar to the last GGU collective bargaining agreement. CEA represents confidential employees, a unit comprising approximately 180 employees.

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 five positions in the Marine Highway System, Department of Transportation & Public Facilities (DOT/PF) from the GGU to the confidential unit. One request was dropped. Other issues relating to movement into the supervisory unit are being considered separately.

3. The four positions and employees proposed to be moved are: Alice Brown, Accounting Clerk III, with position control number ("PCN") 253096; Rada Tanner, Accounting Clerk II, with PCN 253098; Betty Seguin, Accounting Clerk II, with PCN 253090; and Melanie Munro, Accounting Tech I with PCN 253097. PCN 253097 also carries PCN 250550, but only one position is affected. Munro is the supervisor of the three Accounting Clerk positions. The Accounting Clerks would report through the Accounting Technician I to a Personnel Officer III.

4. The Personnel Officer III is in the confidential unit. Munro (Accounting Technician I) reports directly to the Personnel Officer; the three Accounting Clerks report to Munro. Personnel Officers without significant objection have been historically considered confidential employees within the meaning of 2 AAC 10.220(b)(1).

5. The three Accounting Clerk positions process payroll and various other documents which are of a personally confidential manner for various employees. In addition, the information processed includes addresses and social security numbers which have relevance in collective bargaining election and petition proceedings (i.e., showing of interest and verifications and Excelsior lists). Personnel action forms and evaluation forms potentially at issue in grievances under collective bargaining contracts are processed. The positions also process upon request a substantial amount of data relating to and in support of collective bargaining negotiations and considerations. The regular duties of the Accounting Clerk position is to process and prepare payrolls for marine highway personnel and as such Accounting Clerks are frequently called upon to interpret the collective bargaining agreements respecting contractual provisions and rules and regulations. The positions clearly require the employee to determine and, in a fashion, adjudicate deductions and the like for members of primarily the Inland Boatmen's Union. The Accounting Technician would verify and supervise this work including the delivery of work product to and response to requests from the Personnel Officer.

6. The positions in question have analogs in other departments such as Fish & Game, Corrections, and Health and Social Services, where Accounting Clerk and Accounting Technician positions are in the confidential unit.

7. These DOT/PF Accounting Clerk and Accounting Technician positions have not previously been placed in the confidential unit because no Personnel Officer directed their work product. The Personnel Officer was placed in the hierarchy of this division of DOT/PF in September, 1988. At that time, DOT/PF was delegated authority to ascertain classifications and take other actions involving collective bargaining type issues in which it previously had not been involved.

8. Three of the four incumbents affected by this proposed bargaining unit transfer testified (the fourth was on leave) and asserted that, in their belief, a community of interest existed between the work performed by them and other Accounting Clerks and Technicians who had reporting responsibilities to Personnel Officers. The community of interests related in part to the personally confidential matters of their work, but also to the proximity and access to information critical to collective bargaining.

9. There are Accounting Clerk and Accounting Technician positions elsewhere in state government which are, without controversy, in GGU as opposed to the confidential unit. The similarly-titled positions however are placed in a collective bargaining unit dependent upon actual assignments. In the cases involved here the assignment of the tasks for these incumbents relates to matters of responsibility in the assistance of management in collective bargaining information retrieval and compilation.

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. The parties agreed that these proceedings could be held before a hearing officer with the hearing officer reporting a recommended decision to the Agency.

2. AAC 10.220(b)(1) defines a "confidential employee" as an employee who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the area of collective bargaining. The term "confidential employee" shall be narrowly construed.

This regulation provides that "confidential" status is reviewed in the context of its sensitivity to collective bargaining issues, and not in the sense of personal rights to privacy or confidentiality. NLRB case-law expansion of the definition of "confidential employee" is not necessarily applicable given the existence of 2 AAC 10.220(b)(1).

3. This Agency has reviewed assignments to the confidential unit in Order and Decision Nos. 32 and 44. In each of these decisions there were no reporting responsibilities to a Personnel Officer involved in management policy in the area of collective bargaining. In this case, the Accounting Clerks and Accounting Technician report to a Personnel Officer although obviously the Accounting Clerks report to the Personnel Officer only through the Accounting Technician.

4. The history of placement in the confidential unit has included placement of positions equivalent to Accounting Clerk and Accounting Technician when there is a reporting obligation to a Personnel Officer even when that reporting is subject to one or at most two levels of supervision. The employees, however, work with personnel data relating to collective bargaining activities by way of assembly of data, review, and interpretation of collective bargaining agreements and the like. The evidence suggests a confidential role between the state's managers of collective bargaining issues and the incumbents. No evidence was presented to suggest that other persons placed in the confidential unit historically have not been involved with some collective bargaining type information. The history of placement is entitled to some weight given that community of interest and history are relevant considerations in the composition of a collective bargaining unit. AS 23.40.090.

5. ASEA postulates a scenario where a Personnel Officer can sit on top of a large pyramid of employees who have remote reporting obligations to that Personnel Officer thereby requiring all such employees in the pyramid to be placed in the confidential unit. This hypothetical situation presumes, however, that creation of lines of responsibility through or to a Personnel Officer is for the primary purpose of causing movements from GGU to the confidential unit. This is not the case here, nor has the hypothetical pyramid been demonstrated a reality.

6. There appears to be a sufficient relationship between the description of "confidential employee" in 2 AAC 10.220(b)(1) and the duties to be performed by the incumbents in this matter.

RECOMMENDED DECISION

For the reasons set forth in the foregoing proposed findings of fact and proposed conclusions of law, the hearing officer recommends that the Agency issue an order and decision finding that:

1. The transfer is approved from GGU to the confidential unit for

a)PCN 253096, Accounting Clerk III;

b)PCN 253098, Accounting Clerk II;

c)PCN 253090, Accounting Clerk II; and

d)PCNs 253097 and 250550, respecting one Accounting Technician I position.

2. The Agency would disapprove creation of a hierarchy reporting to personnel officers primarily for the purpose of expanding the CEA unit to the detriment of other units. A chain of confidential reporting to a personnel officer is presumed to end at the level of direct reporting to a personnel officer except in instances (such as demonstrated here) where affected personnel report to an intermediate supervisor who reports directly to the personnel officer. The burden of establishing a "confidential employee" under 2 AAC 10.220(b)(1) increases substantially the more removed the employee in question is from directly reporting to a personnel officer or other member of management charged with collective bargaining responsibilities.

DATED this _19th_ day of April, 1989.

FOR THE ALASKA STATE RELATIONS AGENCY

By _____
Robert M. Johnson
Hearing Officer