

STATE OF ALASKA
DEPARTMENT OF LABOR
LABOR RELATIONS AGENCY

PUBLIC SAFETY EMPLOYEES)
ASSOCIATION,)
)
Petitioner,)
)
vs.)
)
ALASKA STATE EMPLOYEES)
ASSOCIATION and STATE OF)
ALASKA,)
)
Respondents.)
)
)
_____)
PET 88-1

ORDER AND DECISION NO. 120

SUBJECT: PROPER UNIT PLACEMENT OF FISH & WILDLIFE ENFORCEMENT OFFICERS AND FISH & WILDLIFE AIDES; PROPRIETY OF PETITION FOR CERTIFICATION

The Alaska State Labor Relations Agency (the "Agency") convened a hearing to consider the proper unit placement, whether through order or through election, of positions in the State Department of Public Safety entitled Fish & Wildlife Enforcement Officers (FWEOs) and Fish & Wildlife Aides (FWAs). FWEO and FWA positions are currently placed in the general government Unit (GGU) represented by the Alaska State Employees Association (ASEA), but the Public Safety Employment Association (PSEA) contends that the positions should be in the unit represented by PSEA. A hearing was conducted in Anchorage, Alaska on June 14, 1989, and all members of the agency were present and so constituted a quorum. ASEA was represented by counsel Bill Jermain, and the State of Alaska was represented by Director of Labor Relations Bruce Cummings. The parties presented written and oral arguments and witnessed, and further presented post-hearings briefs. The Agency having considered the arguments and evidence, renders the

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following Order and Decision dismissing PSEA's petition to effectuate unit transfer of FWEO and FWA positions.

FINDINGS OF FACT

1. FWEO and FWA positions are currently within the GGU included represented in these classifications, with the majority of these positions comprising seasonal appointments during the summer. At the time of the hearing, there were 21 FWEOs and 7 FWAs.

2. PSEA represents the Regularly Commissioned Public Safety Officers Unit (RCPSOU). In January 6, 1988, PSEA filed a "Petition for Amendment of Certification" with the Agency for the purpose of representing the FWEO and FWA positions. Attached to the petition were showing-of-interest cards representing over 30 percent the then existing universe of FWEO and FWA employees. The petition was filed pursuant to regulations respecting decertification or certification election petitions, and the FWEO and FWA positions from the GGU.

3. At the time PSEA's petition was filed, the GGU was represented by the Alaska Public Employees Association (APEA). However, while PSEA's petition was being considered, a decertification challenge was underway against APEA's continued representation of GGU. PSEA agreed to put its petition on hold given the notoriety of the challenge to GGU representation- On September 11, 1988, ASEA was certified to be the new collective bargaining representative of the GGU.

4. Following ASEA's certification, attention could again focus on PSEA's petition. ASEA moved to dismiss PSEA's petition on the grounds of election bar and other issues. The Agency considered briefs regarding this matter, dismissed ASEA's summary dismissal request, and ordered a hearing to be held, focusing particularly on (a) whether FWEOs and FWAs were properly excludable from the GGU and (b), if excludable, whether an election was necessary.

5. The RCPSOU was created in 1977, when certain police-certified employees were severed from GGU by the Agency's Order and Decision No. 28. That decision and subsequent decisions focused upon certification of officers as a key factor in segregating the RCPSOU from GGU. In 1987, the Agency issued Order and Decision No. 106 pursuant to which Airport Safety Officers were severed from GGU and placed within the RCPSOU form GGU. In 1987, the Agency issued Order an Decision No. 106 pursuant to which Airport Safety Officers were not certificated. Non-certificated Court Service Officers were placed in the RCPPSOU by Order and Decision No. 111. In contrast, the Agency declined in Order and Decision No. 105, to place

Corrections Officers in the RCPSOU. The parties in this case staked out their relative positions based upon these decisions; the State, while advocating placement of the FWEO and FWA positions in GGU, argued for consistency and clarity rather than from the perspective of adversity to ASEA.

6. The FWEO positions are the senior of the two positions considered in this matter and these employees are granted limited police type authority within Title 16 relating to fish and game violations. Evidence demonstrated that:

(a) FWEOs wore uniforms and caps similar to and often mistaken for that of those Fish & Game Alaska State Troopers commonly called "Brown Shirts";

(b) FWEOs had a cap and badge similar in some respect to Brown Shirt equipment but would only wear this equipment on duty;

(c) FWEOs carried weapons but unlike Brown Shirts did not carry these weapons as concealed, could not carry them off duty, and had no training in "shoot/don't shoot" situations;

(d) FWEOs did not take polygraph tests as Brown Shirts;

(e) FWEOs are minimally trained compared to Brown Shirts; minimum qualifications require either police certificate or six months as an FWA or VPSO, which positions do not have specific training prerequisites;

(f) FWEOs were entitled to public employees general government retirement benefits rather than police retirement benefits;

(g) FWEO arrest power is limited to Title 16 fish and game violations and was not greater with regard to any other state laws than that held by the ordinary citizen;

(h) All but three FWEOs were hired seasonally, unlike the Brown Shirts who are non-seasonal permanent hires;

(i) While many FWEO participants aspired to be Alaska State Troopers there was no consistent pattern of advancement from FWEOs and Alaska State Troopers;

(j) FWEOs often worked alone or regularly with other GGU non-police officials, such as park rangers; some FWEOs are, however, dispatched with Brown Shirts.

7. FWAs are junior level, seasonal positions with primary responsibilities to act as mechanical assistants and

general aides to FWEOs or State Troopers. The FWAs are not a training class for FWEOs, although FWA experience can be used to satisfy FWEO minimum qualifications. The evidence further indicated:

- (a) FWAs wore no uniforms, caps or badges;
- (b) FWAs carried weapons only as necessary for self protection from wildlife;
- (c) FWAs had no arrest powers either under Title 16 or any other title except those powers of a private citizen;
- (d) FWAs had no training prerequisites and essentially learned their responsibilities on the job;
- (e) FWAs received general government retirement system benefits.

8. No evidence was presented to suggest specific dissatisfaction with ASEA, the currently certificated representative of GGU. Some dissatisfaction with APEA was represented by testimony of witnesses.

Frank Bell expressed dissatisfaction with both APEA and ASEA when he was not able to obtain a desired position on the basis of seniority, but it appeared that relief to Mr. Bell by any union for those reasons was not likely. No inquiries or grievances had been filed with ASEA by FWEOs or FWAs since ASEA became certificated representative. ASEA had sent around a survey to all FWEOs and FWAs seeking advice and input, and some but not all FWEOs and FWAs responded.

9. There was no history of representation or prior desires for representation of FWEOs and FWAs by any unit other than the GGU.

CONCLUSIONS OF LAW

1. The Agency has authority to ascertain and consider the proper placement of employees within appropriate bargaining units pursuant to AS 23.40.160, and the unit appropriate for representing such employees must be based upon factors such 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.
AS 23.40.090.

2. Until Order and Decision No. 106 (1987) the Agency required certification as a prerequisite to placement in the RCPSOU. Certification is no longer an absolute requirement. Other factors, such as those set forth with respect to Court Service Officers and Airport Safety Officers, who were placed in

the RCPSOU without being certificated (Order and Decisions Nos. 106 and 111), and Correctional Officers, who were not carved out of the GGU (Order and Decision No. 105), are on point.

3. A consistent theme in placement in the RCPSOU is demonstrated authority and responsibility to respond to an essentially unlimited scope of police-type activities, even if working in a relatively proscribed environment (i.e., airports and court houses). In contrast, Correctional Officers worked in a stressful environment, but operated under a far more limited scope of duty. So also do FWEOS and FWAs. While circumstances may arise under this limited power which could compel drastic responses similar to those undertaken by other police officers, those elements are not frequent and are discouraged.

4. The necessity for substantial police training is an ingredient for placement in the RCPSOU. Unlike State Troopers, FWEOS and FWAs receive relatively modest training. FWEOS might in certain instances be certificated, because certification is an alternative for meeting minimum qualifications but in many instances the training is only from on the job experience as an FWA, which classification requires no specific police training. Evidence in this case suggested that some FWEOS received no formal training until after five years on the job.

5. Placement of incumbents in the police retirement system is a strong independent indicator of RCPSOU eligibility. FWEOS and FWAs do not have such independent verification of police-type status.

6. The carve-out criteria described by the NLRB in Mallinckrodt Chemical Work, 64 L.R.R.M. 1011 (1966) have not been met in this instance. There has been no tradition of separate representation of FWEOS and FWAs, and the carve would end 12 years of consistent bargaining representation. The FWEOS and FWAs have never demonstrated maintenance of a separate identity in the larger GGU. The cumulative weight of the evidence presented indicates a community of interest in working conditions among FWEOS and FWAs with other uniformed, in-field members of the GGU, with no compelling reason or justification to carve out these workers from the GGU and place them in the RCPSOU.

7. Because of its decision in this matter, the Agency is not required to determine whether an election is necessary in this matter.

ORDER AND DECISION

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

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1. The FWEO and FWA positions, currently placed in the GGU represented by ASEA, shall remain in GGU.

2. PSEA's petition is denied.

3. This Order and Decision sets forth the determination of the Agency following review of briefs and evidence presented at the hearing on June 14, 1989 and thereafter.

DATED this 28th day of August, 1989.

ALASKA STATE LABOR RELATIONS AGENCY

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