

ORDER AND DECISION PERTAINING TO PETITIONS  
FOR CLARIFICATION OF SUPERVISORY STATUS

ORDER AND DECISION NO. 15

Findings of Fact:

1. Petitions (enumerated below) have been filed requesting the Labor Relations Agency to clarify unit certifications by determining that certain positions heretofore considered non-supervisory should be reclassified as supervisory.

2. 2 AAC 10.220. DEFINITIONS. (b) (3), as revised 6/14/74, states: ' "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 of such responsibility is not of a merely routine nature but requires the exercise of independent judgment.'

The hearings leading to the adoption of this definition made clear the intent of the Labor Relations Agency, which was to depart from the National Labor Relations Act's definition of supervisory employee, which states that under the terms of Section 2(11) a supervisor is any person

"having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge,

assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if ... such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." [Emphasis added.]

The difference is substantial and was adopted in the knowledge and belief that the distinction between supervisors in the public and the private sectors is so great as to require a wholly different definition. The adopted definition was borrowed from the State of Washington, which applies a completely literal meaning to "the performance of all or most of the following functions: ", namely, "most" means a majority. This was precisely the intent of the Alaska State Labor Relations Agency in adopting the subject definition.

3. Class specifications developed by the State are, in some cases, broad enough that of two persons having the same position one may be performing duties that are supervisory while the other is not. The Labor Relations Agency took cognizance of this Order and Decision No. 12, wherein the facts showed that the same titles did not necessarily have the same duties in different administrative departments of the State.

4. Classification specifications for all currently disputed classifications have been received by the Agency.

5. Petitions for reclassification to supervisory status have been received as follows:

Edytha M. Hutler, Hospital Services Supervisor, API,  
PCN 5-38

J. R. Birkland, Electrical Engineer, Class Specification  
8627  
Sandra S. Standers, Dietitian, API, class code #5459  
Fred C. Fowler, Acting Regional Administrator, Anchorage  
Office, Probation-Parole  
James Scoles, Probation-Parole Officer III, Spec #4344-18  
Daniel Hoy, Probation-Parole Officer III  
A. Frank Byerly, Probation-Parole Officer III  
Neal J. King, Probation-Parole Officer III  
Robert E. Hubby, Probation-Parole Officer III  
Kenneth E. Brown, Probation-Parole Officer III  
Frederick L. Baird, Probation-Parole Officer III  
Riley S. Hunter, Probation-Parole Officer III  
Barton Penny, Probation-Parole Officer III  
Artie Curtis Masingill Jr., Probation-Parole Officer III  
Lewis H. Reece, Probation-Parole Officer III  
PCN 064-344, Probation-Parole Officer III (signature  
illegible)  
PCN 064-313, Probation-Parole Officer III (signature  
illegible)  
PCN 064-312, Probation-Parole Officer III (signature  
illegible)  
PCN 064-460, Probation-Parole Officer III (signature  
illegible)  
Gail Frank, Probation-Parole Officer III

6. Class Specification #4344-18, Probation Officer III, is attached hereto as Appendix A. The class specification, although referring repeatedly to the term "supervisory", makes no mention of the six functions listed in 2 AAC 10.220 (b) (3).

7. The petition states that in addition to the job duties outlined in the Class Specification "people in this job class handle grievances," which, if true, would meet one of the six criteria.

8. Mr. Duncan C. Fowler, Probation-Parole Supervisor, states that the definition of supervisor in the regulations is too narrow and does not encompass the common understanding of what a supervisor is and does.

9. The Division of Personnel was requested to provide relevant information and responded as follows:

"Probation Officers III may or may not supervise subordinates, depending on work assignment. The class specification states that they are first line supervisors or independently handle probation and parole work in a remote office or district. As a class, therefore, Probation Officers III cannot be considered supervisory. This opinion is backed up by review of job descriptions and the specification for the class. Further, based on overall knowledge of the duties performed, those positions considered supervisory regularly participate in the following with respect to subordinate employees:

- "promote
- "suspend
- "discharge

"Decisions with respect to employment, transfer and adjudication of grievances are made higher up in the organization."

10. With respect to the Hospital Services Supervisor and Dietitian, the Division of Personnel furnished the following information:

"Employees in the classes of Hospital Services Supervisor and Dietitian now head major departments in the two institutions operated by the Division of Public Health. The present incumbents, by their location in the hospital hierarchy, have continued opportunity to regularly participate in the following with respect to subordinate employees:

- "employ
- "promote
- "suspend
- "discharge
- "adjudicate grievances

"However, only the class of Hospital Services Supervisor should be considered supervisory by classification. The Dietitian, by present assignment, is supervisory. By definition, a Dietitian could also serve in a staff capacity responsible for the dietary program in several small institutions or schools, and supervise no subordinates."

11. The Division of Personnel further states;

"In addition, the Department of Health and Social Services considers present positions in the classes of Hospital Services Supervisor and Dietitian to have full supervisory responsibilities. On the other hand, the department considers certain positions in the class of Probation Officer III to be supervisory, but does not consider the class of Probation Officer III as supervisory."



12. Neither the petition from the Electrical Engineer nor the Class Specification indicate that the petitioner meets any of the criteria of 2 AAC 10.220 (b) (3). The Division of Personnel states that the department of Public Works considers the Electrical Engineer as a staff person exercising expertise in his specialty area.

13. Informal testimony was received from Ed Coleman, Probation-Parole Officer IV, on January 31, 1975.

Conclusions:

1. The Labor Relations Agency has the authority and responsibility to act upon unit clarification petitions when such petitions allege misplacement of a position or positions with respect to the established collective bargaining units.

2. The language of 2 AP.C 10.220. (b) (3) is clear and unambiguous, and requires that before an employee can be adjudged to be a supervisor the employee must be shown to have substantial responsibility regularly to participate in the performance of at least four of the following six functions:

- employ
- promote
- transfer
- suspend
- discharge
- adjudicate
- grievances.

3. When a question arises as to different employees performing different levels of duties within the same classification, the Labor Relations Agency should base its decisions on an employee-by-employee basis, that is, on the basis of what each individual actually performs rather than what the Classification

Specification sets forth.

4. The petition of Edytha M. Hutler, Hospital Services Supervisor, should be granted, since the position requires substantial responsibility in the performance of five of the six criteria hereinabove set forth.

5. The petition of Sandra S. Standers, Dietitian, should be granted for the same reason, with the exception noted that her petition should be granted on the basis of duties actually performed and that this ruling would not automatically extend to all persons in the classification of Dietitian.

6. The petitions of the Electrical Engineer and the Probation Officers III should be dismissed for lack of evidence that any of them are supervisors as defined in the regulations. It should be noted that this conclusion is reached despite the statement by the Division of Personnel that some of the employees in the classification of Probation Officer III perform supervisory duties.

The statement indicated that those employees perform no more than three of the six functions set forth, whereas the regulations require the performance of at least four.

DECISION AND ORDER:

1. In recognition of the fact that all parties may not be fully aware of the import of 2 AAC 10.220 (b) (3), the record will remain open for thirty days following issuance of this Decision and Order for the sole purpose of permitting the introduction of additional evidence with respect to the performance or non-performance of a majority of the criteria only. If additional substantive evidence is received within said thirty days, execution

of this Decision and Order will be stayed in whole or in part until such time as the Labor Relations Agency has had the opportunity to weigh such additional evidence and, if indicated, to make the appropriate revisions.

2. The petition of Edytha M. Hutler is granted, and the classification as now occupied shall be considered a part of the unit of supervisory employees in the State Government.

3. The petition of Sandra S. Standers, Dietitian, is granted, with respect only to the particular position of Dietitian she now occupies, and the petitioner shall be considered a part of the unit of supervisory employees in State Government.

4. The petitions of the Electrical Engineer and of the Probation Officers III are denied.

Dated: February 3, 1975

C. R. "Steve" Hafling, Chairman

/s/ Morgan Reed  
Morgan Reed, Member  
[Signature On File]