

[Labor Relations Agency Stationery]

ORDER AND DECISION PERTAINING
TO UNIT CLARIFICATION PETITION
BY ALASKA PUBLIC EMPLOYEES ASSOCIATION
FIRST DATED AUGUST 29, 1974

ORDER AND DECISION NO. 16

Findings of Fact:

1. On August 8, 1973, following a hearing to determine "whether or not there were additional classifications which could have been appropriately excluded from the unit of general government employees as being more closely related in terms of duties, community of interest, etc., to the aforementioned 'Building and Construction Trades' classifications..." a consent agreement was entered into by all parties and approved by the Labor Relations Agency. This consent agreement set forth the classifications which as a group would be allowed self-determination as to which of two units they wished to join.

At no time did the Agency indicate in any way that these classifications constituted an appropriate unit; to the contrary: the position was maintained throughout that insofar as these classifications were concerned the only appropriate units had already been established and that the only election to be conducted would be a "globe" type of election to determine to which of the two appropriate units these employees wished to be accrued. The election was to determine choice of units, not a choice of collective bargaining representatives per se.

2. On October 24, 1973, the "globe" type election was conducted. That election was won by the Alaska Public Employees Association but was later set aside on the grounds of valid objections by the Tri Trades Public Service Council.

3. In Ordering a re-run of the election, Order and Decision No. 10 states: "Such election shall be for the purpose of determining unit affiliation only." The result of the re-run election, held on April 26, 1974, was a one vote majority voting to affiliate with what had become known as the "Labor Trades and Crafts Unit."

4. On April 29, 1974, the Alaska Public Employees Association timely filed objections to the conduct of the election.

5. By Order and Decision No. 14, dated July 30, 1974, the Labor Relations Agency overruled the objections to the conduct of the election and certified the inclusion of those classifications involved in the election in the Labor Trades and Crafts Unit.

6. On August 29, 1974, the Alaska Public Employees Association filed a petition for Amendment of the General Government Unit by the inclusion of 19 of the classifications that had been involved in the certification described in paragraph 5, above. This petition was supported by attached petitions signed by employees in the classifications concerned stating that in their opinion their jobs are not related to the Labor, Trades and Crafts unit jobs and requesting that their job classifications be "removed from the 'gray collar unit.'"

This petition was further supported by the following arguments:

a. The disputed election indicated a nearly even split among employees concerned.

b. The job classifications sought to be added to the General Government Unit are made up of employees who have repeatedly expressed a preference for being represented by the Alaska Public Employees Association. "At the same time, granting the petition would leave within the Gray Collar Unit job classifications of a more similar nature which have generally expressed a preference for representation by Tri-Trades."

c. Because of contract expiration dates this would be a timely occasion on which to make the sought-for amendments.

d. The petition "is supported by the petitions attached hereto which were signed by members of the subject job classifications in response to the suggestion of the Labor Relations Agency that it would consider such petitions."

7. The Labor Relations Agency had, prior to receiving the petition described above, received petitions, letters and telephone calls asking for information concerning modification or amendment of units. On August 17, 1974, the Labor Relations Agency sent a form response to all such requests which is quoted in its entirety below:

[To addressee]

"In response to your request for information, I hope this will be helpful. Please be sure to understand that this is a factual answer to your questions and is not in any way a suggestion that any of the courses of action available to you should actually be pursued.

"There are two avenues available to state employees in a bargaining unit, as follows:

"1. A petition for decertification of a public employee representative may be filed requesting a decertification election. Such a petition must be supported by a showing of interest by at least 30% of the employees in the unit. If the petition is properly filed during the prescribed period, the Labor Relations Agency may, after verification of the showing of interest, order an election.

"2. The public employee representative certified by the agency or currently recognized by the employer may file a petition for clarification or amendment of a bargaining unit. If such a petition is properly filed and states sufficient reasons for an amendment a hearing will then be held by the agency to determine whether or not the sought-for amendment or clarification would be appropriate.

"If you are covered by an agreement expiring December 31, 1974, the period for timely filing of petitions such as mentioned above is August 4, through September 2 of this year.

"Please feel free to ask for further information if needed.

Sincerely yours,
/s/ C. R. "Steve" Hafling,
Chairman

"Enc: Copy of Regulations that apply."

8. The Labor Relations Agency held a hearing in Anchorage on October 23, 1974. As all parties were not present or represented at this hearing, the hearing was not complete and it was concluded by setting a date for another hearing in Juneau on November 19, 1974.

The Anchorage hearing produced the following arguments made by the Tri-Trades Public Service Council:

a. AS 23.40.100 (2) (c) provides that an "Election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding twelve months." AS 23.40.100 (2) (e) provides that:

"no election may be directed by the Labor Relations Agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a ninety day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later."

The petitioner is merely attempting to have another election in the unit which has been certified as an appropriate collective bargaining unit and represented by the Alaska Tri Trades Public Service Council. It cannot do so under the above criteria.

b. With respect to the only classification concerning which there had been a question of possible misplacement in a unit, namely Highway Engineering Technicians through five grades, those who were performing duties more closely allied with the General Government Unit, twenty-five in number, had already been

reclassified out of the Labor, Trades and Crafts Unit and into the General Government Unit through the process of negotiation with the State Administration.

c. Contrary to the understanding held by the Labor Relation, Agency the agreement between the State and the Tri-Trades Public Service Council was not due to expire on December 31, 1974.

9. The Labor Relations Agency applied for and received, on October 25, 1974, an opinion from the State's Attorney General to the effect that the Tri-Trades Public Service Council's agreement with the State did in fact have an expiration date of December 31, 1974, renewable on a year-to-year basis.

10. At the hearing in Juneau on November 19, 1974, the Alaska Public Employees Association presented the following arguments in support of its petition:

a. The job classifications concerned do not fit neatly into the General Government Unit, the Labor, Trades and Crafts Unit, or a separate unit of their own. The petition offers a fair and equitable solution for all concerned. The Alaska Public Employees Association is of the opinion that no election would be necessary to accomplish the amendments desired, but would have no objection to such an election if ordered by the Labor Relations Agency.

b. Conceding that some of the job classifications involved in the unit accretion election do have a greater community of interest with the Labor, Trades and Crafts Unit, the Alaska Public Employees Association has petitioned only for those classifications it believes more logically belong in the

General Government Unit.

c. The timing for such a change would be appropriate at this time.

d. Technicians are arguably in the category of scientific employees.

e. Prior to the establishment of the Labor, Trades and Crafts Unit technicians had the ability to transfer laterally and to perform drafting work when they came in out of field construction jobs.

f. Under the new Tri-Trades Public Service Council's agreement with the State when the Projects Highway Engineering Technicians are working on are terminated they are also terminated.

g. Testimony was given by ,Materials Lab Technicians and by Highway Engineering Technicians that they were concerned about their job security under the agreement between Tri-Trades Public Service Council and the State.

11. At the hearing in Juneau on November 19, 1974, the Tri Trades Public Service Council presented the following:

a. There will always be certain individuals within classifications who are not going to be satisfied with their representation.

b. The petition has to be construed as a representation petition rather than as a petition for amendment of clarification.

c. Testimony has presented by a Building Custodian to the effect that his classification had never, over 19 years, had any community of interest with employees in the General Government Unit.

d. The Tri-Trades Public Service Council had agreed with the State to the

reclassification of 26 engineering technician employees in the Department of Public Works from the Labor, Trades and Crafts Unit to the General Government Unit. e.

Occupational Safety Compliance Officers generally come from the industries and/or trades which they inspect.

f. There is a long history in private sector collective bargaining of representation of the classifications in question by the three organizations comprising the Tri-Trades Public Service Council [Laborers, Operating Engineers and Teamsters].

12. The State testified as follows at the Juneau hearing:

a. The State's only position with respect to the group of classifications concerned in the "globe" type election had been that there was no very strong evidence one way or the other as to community of interest employees in those classifications had with either the General Government Unit or the Labor, Trades and Crafts Unit and that the employees as a group should be allowed to determine their own destiny.

b. The State had a concern with stability in collective bargaining relationships.

c. The State would like the Labor Relations Agency to issue guidelines as to the correct procedures to be followed when a position is reclassified or the position content undergoes change.

d. The Supervisors, listed as such by title

on the petition, should either go into the Supervisory Unit, the General Government Unit or into the Labor Trades and Crafts Unit with the title of foreman.

13. A statement of position by letter, dated November 12, 1974, addressed to the Labor Relations Agency by counsel for the Tri-Trades Public Service Council, sets forth the background events and makes the following arguments:

a. The subject petition is a petition for amendment or clarification of an existing unit; it is not a petition for certification or decertification.

b. Under NLRB rules the Board may make a determination as to whether or not certain disputed classifications of employees should be in the certified unit where such classifications were non-existent or inactive before issuance of the certification. A clarification request will be denied however if 1) the unit description in the certification is clear; 2) the motion amounts to a request for reconsideration of the bargaining unit itself; or 3) the motion raises an issue that can be resolved only by an election.

c. The question of unit clarification can only be raised by the labor organization representing the employees within the unit or by the employer. Positions that were not covered within the unit classification petitions. Thus the petition filed is inappropriate and consideration of it would be equally inappropriate. The question raised by the petition for certification, which could not be timely filed.

14. The post-hearing memorandum filed by the Alaska Public

Employees Association in support of its petition made the following arguments:

a. Included in the authority delegated to the Agency is the responsibility for determining appropriate bargaining units and the power to correct errors in initial unit determinations when such errors become apparent, particularly during the early years of operation under the statute before the establishment of any significant contrary collective bargaining history.

b. It is relevant that the NLRB has the power to determine units, to sever certain job classifications from existing units or to shift them from one unit to another where policy and circumstances dictate a change.
(Citations)

c. The NLRB can correct errors in initial unit determinations and otherwise modify bargaining unit descriptions. (Citations)

d. Prior unit designations can most readily be changed where, as in this case, the designation is of very short duration, the units were established as a result of consent election agreements, and where the employees involved in the proposed change have consistently resisted inclusion in the present unit.
(Citations)

e. The NLRB and the courts have had some difficulty in establishing federal procedures in this area. However, it is clear that the NLRB does have the power to ensure that established bargaining units are appropriate.

The Alaska State Labor Relations Agency has at least a similar authority and probably a greater authority to determine the

appropriate bargaining units for state employees. The Labor Relations Agency has before it evidence regarding community of interest, lack of any established collective bargaining history and expressions of desire by employees supporting the petition. During the hearing regarding objections to the second election the Labor Relations Agency suggested that concerned employees could petition the Agency and many individual employees acted in response to this invitation. The Alaska Public Employees Association decided that an appeal to the courts to overturn the Agency's decision would only result in another unpredictably close election; therefore the Alaska Public Employees Association filed this petition seeking to resolve the problem by amending the bargaining units so that each of the gray collar job classifications would be designated as part of either the general government or the blue collar unit on the basis of its particular community of interest. An additional reason that certain of these classifications should be included in the General Government Unit is the statutory mandate that merit system principles be maintained.

j. There was testimony by the State that technicians were employees with job skills midway between those of professional employees and those of unskilled workers. The testimony in Juneau showed the strong desire of technical employees to be included in the General Government Unit. This desire is based on the nature of their duties, the

fact that they associate in their work primarily with other employees in the General Government Unit, the fact that their supervision comes from employees in the general government or the supervisory unit rather than the blue collar unit, and the fact that both lateral transfers and vertical progress for such employees can best be accomplished if they are included in the general government unit. Also, there is the fact of historical resistance by professional and semi-professional employees to representation by a labor union rather than an independent association.

k. Inclusion of the technical employees in the Labor, Trades and Crafts Unit precludes them from performing duties that had traditionally been part of their jobs; they now face layoffs and loss of permanent status because of lack of mobility between the different units. The hiring hall procedures violate merit principles.

l. The State testified that it would be preferable to keep employees working on a year-round basis, and that there is no prohibition from the State's point of view on employees performing a broad range of interrelated duties.

m. Occupational Safety Compliance Officers, who work as enforcement officers and advisors regarding health and safety requirements, are in the Division of Occupational Safety and Health Administration under the Department of Labor and are the only employees in that division presently in the

Labor, Trades and Crafts Unit. Their duties and common interests dictate that they should properly be placed in the General Government Unit.

n. A number of the job classes petitioned for involved employees working in state institutions wherein most of the employees are in the General Government Unit. They share common duties and interests in caring for the residents. Since the State rule against fragmentation militates against separate units for institutions, these employees should be placed in the General Government Unit on a whole-institution basis since the employees share their interest on an institution-wide basis.

o. The agreement between the State and the Tri-Trades Public Service Council provides for a Union Shop, whereas the agreement between the State and the Alaska Public Employees Association provides only for Agency fees; the petitioned-for employees do not feel that they belong with a typical trade union which in their minds is associated with the Union Shop.

15. The post-hearing brief submitted by the Tri-Trades Public Service Council contained the following arguments on behalf of its position that the subject petition should be dismissed:

a. The Alaska Public Employees Association fell far short of fulfilling its burden of proof in support of its petition.

b. The Juneau hearings produced little substantive evidence on which the agency can

make a decision.

c. Witnesses for the Alaska Public Employees Association included Engineering Technicians or Material Lab Technicians in the employ of the Department of Highways. They testified that they were engaged in highway construction or highway construction related activities. The crux of their testimony was that they were afraid that they would be laid off on a seasonal basis because they are too highly paid.

d. The State testified that the classifications petitioned for by the Alaska Public Employees Association were manual rather than intellectual in nature, and that the duties were routine.

e. There was testimony by the Tri-Trades Public Service Counsel's representative that [in the private sector] all of the classifications petitioned for have been traditionally represented by Building Trades Unions.

f. The only meaningful and proper testimony was that of Mr. Cates [State Administration], who showed that the community of interest of the classifications petitioned for was, without exception, with the Labor, Trades and Crafts Unit.

16. Because the August 29, 1974, petition by the Alaska Public Employees Association was ,or amendment of an existing bargaining unit and not for a representation or decertification election there was no reason for the Labor Relations Agency to verify the signatures on the supporting petitions and it did not do so. However, the supporting petitions were purportedly signed by approximately 20%

of the number of so-called gray collar employees who voted in the "globe" election. There were approximately 43 of those classes, and the supporting petitions had the facsimile signatures of employees purporting to be in approximately 39 classes. The only classifications in which the purported signatures would possibly represent a majority of the employees in that classification are FOOD SERVICE WORKER (PCN 9125) and COOK (all numerical designations, PCN's 9133, 9134, 9135 and 9136) and SAFETY OFFICER (PCN 1947).

17. A petition for certification or decertification must be accompanied by verified signatures representing 30% or more of the employees in the unit or proposed unit as per AS 23.40.100 (a).

18. Certain broad criteria relating to the appropriateness of bargaining units were laid down by the Labor Relations Agency in its Order and Decision No. 1. on pp. 10-11, para. 8 states:

"Because of the nature of certain other petitions before the Labor Relations Agency it is of great factual importance to note that the membership of the Alaska Public Employees Association in the unit petitioned for includes a substantial number of professionals as defined under the National Labor Relations Act, averaging approximately one-third of all classified employees in the state government. There are 507 classifications in the unit petitioned for that can be defined as professional. The great majority of professional employees in the state government have not petitioned for separate representation. Approximately 90% of the employees in question are professional, technical or clerical. The interests of these groups are intertwined and the distinctions between them are often blurred. This establishes the fact that there is a substantial community of interest among state employees in general.

Para.9, on page eleven, states:

"The foregoing factors notwithstanding, there are significant differences between general government workers and building trades workers.

Para. 10 states:

"The skills required and the working conditions involved in the case of building and construction tradesmen are of a different quality than those of general government workers. Job progression for building tradesmen is generally limited within each craft, and therefore there

is neither the same latitude for transfer nor the same prospect of upward mobility as there is for general government workers, and because of the foregoing factors, as well as long tradition in the private sector there is a community of interest among building tradesmen that they do not share with white-collar, professional and technical personnel."

CONCLUSIONS

1. The Labor Relations Agency has the authority and responsibility to amend or clarify a unit certification upon a proper showing that one of the following conditions applies:

- a. Based on established criteria for previously certified units a position is clearly not in the correct unit;
- b. A new classification is created and a question exists as to the proper unit to which the classification belongs;
- c. A classification that falls within the criteria for a certified unit has been overlooked and omitted.

2. The subject petition sought to do far more than simply amend or clarify any errors that might have been made by the inclusion of all classifications concerned in the "globe" election stipulation. As the finding of fact #16 shows, the petition sought a result that would have had the effect of setting aside the "globe" election if it were granted.

3. The Labor Relations Agency, despite the arguments to the contrary purpose, gave the petitioner every opportunity to furnish evidence as to any errors of inclusion of classifications in the "globe" election. Petitioner failed to meet its burden.

4. Testimony by witnesses tended to show unhappiness with the terms of the collective bargaining agreement and/or fears that their unit placement might adversely affect their job security, rather than showing that the classifications concerned were improperly included in the unit. The Labor Relations Agency is not a forum

for acting upon criticism of the collective bargaining agreement unless there is some violation of statute or regulation involved.

5. The fact that twenty-six technicians were reclassified into positions falling within the scope of the General Government unit by mutual agreement between the State and the Tri-Trades Public Service Council gave recognition to the fact that certain technicians, by virtue of the duties performed, had a greater claim to being included in the General Government Unit rather than in the Labor, Trades and Crafts Unit. While the Labor Relations Agency cannot take this as presumptive evidence that this action corrected all errors of appropriateness, the action did have the effect of leaving no cases wherein there was substantive evidence of misplacement.

6. The status quo of the General Government Unit and the Labor, Trades and Crafts Unit has the following effect:

a. All non-supervisory professional, office and clerical classifications and those technical classifications that are predominantly non-manual and are not construction-related are in the General Government Unit.

b. Unskilled, semi-skilled and skilled classifications whose duties are predominantly manual in nature and those technicians whose work is either predominantly manual in nature or is directly construction-related (and therefore related to the skilled construction tradesmen in state employment) are in the Labor, Trades and Crafts Union. These two units were established and certified in conformity with the desires of the employees concerned as expressed in secret ballot elections. The composition of these two units is in no way arbitrary, capricious or lacking in logic.

7. The allegation is made by the Alaska Public Employees

Association that there are hiring hall procedures in the agreement between the State and the Tri-Trades Public Service Council which are violative of the Alaska Public Employment Relations Act; however, there is no evidence in the record to support this allegation.

8. With respect to Occupational Safety Compliance Officers a partial but inconclusive case is made by the Alaska Public Employees Association, however, testimony in the Juneau hearing indicates that, on balance, they are not improperly placed. These employees come from construction and industry and in many cases have worked as journeymen in a trade; their duties revolve around the work place rather than in administrative or clerical functions.

9. Where was argument advanced without supportive evidence to the effect that those job classes involved which encompass employees working in institutions should be in the General Government Unit because a majority of the employees in those institutions are in the General Government Unit. Even if this statement were supported by evidence, to adopt the conclusion urged by the argument would mean that carpenters, electricians, stationary engineers and so forth who work in those institutions should be transferred out of the Labor, Trades and Crafts Unit and into the General Government Unit, and hence should be overruled.

10. The argument that the petitioned for changes should be made on the grounds that the agreement between the State and the Alaska Public Employees Association only provides for an Agency Shop whereas the agreement with the Tri-Trades Public Service Council provides for a Union Shop must be dismissed; the Alaska Public Employment Relations Act makes either form of organizational security permissible.

11. Given the conclusions drawn above, it is considered unnecessary to determine whether there was a contractual or statutory bar to consideration of the instant petition on the grounds of it being filed in an untimely manner.

DECISION AND ORDER

The petition by the Alaska Public Employees Association dated August 29, 1974, seeking amendment of the bargaining unit is hereby denied.

DATED: April 25, 1975.

C. R. "Steve" Hafling, Chairman

/s/ Morgan Reed
Morgan Reed, Member

/s/ Joe Franich
Joe Franich, Member