

August 8, 1976

ORDER AND DECISION NO. 26 PERTAINING  
UNIT ALLOCATION OF INDIVIDUALS

FINDINGS OF FACT

2 AAC 10.110. GENERAL CRITERIA FOR BARGAINING UNITS. (a),  
states:

"At the state level, a proposed bargaining unit is not considered  
an appropriate bargaining unit if it:

"(1) combines supervisory personnel with non-supervisory personnel;"

2 AAC 10.220. DEFINITIONS, (b) (3), 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."

ORDER AND DECISION NO. 1, dated February 2, 1973, on page 14  
states:

"3. The Labor Relations Agency will consider joint stipulation by  
the Department of Administration and the Alaska Public  
Employees Association as prima facie evidence that  
positions thus jointly stipulated are supervisory as  
defined in 2 AAC 10.220 (4).

"4. In the case of each position as to which there is disagreement  
as to whether or not it is supervisory, the Department  
of Administration and the Alaska Public

"Employees Association shall, within 15 days following the issuance of this decision, furnish the Labor Relations Agency with descriptions for each classification in dispute together with brief written statements as to how each disputed classification has similar or dissimilar responsibilities compared with classifications previously stipulated to as being supervisory. The Labor Relations Agency will, as soon as practicable thereafter, decide on each disputed classification."

The entire question was **temporarily** resolved by stipulation between the Department of Administration and the Alaska Public Employees Association, and, following an election, the .APEA was certified as the collective bargaining representative for the Supervisory Unit.

ORDER AND DECISION NO. 8 includes the following statement:

"It is hereby ordered that an election be expeditiously conducted by mail ballot in the proposed supervisory unit. The unit shall consist of the job classifications found on the attachment to this order labelled Exhibit "A" and by this reference incorporated herein."

The "Exhibit 'A'" referred to above has the stipulated list agreed upon by the State and the APEA. This did not signify that the Labor Relations Agency was by ORDER AND DECISION NO. 3 taking a position that the question of supervisory status could be determined by position title or that the definition of supervisory employees in 2 AAC 10.220 (b) (3) did not apply.

ORDER AND DECISION NO. 15 pertained to petitions for clarification of supervisory status. It pointed out the significant differences between the definition of supervisory employee in 2 AAC 10.220 (b) (3) and the definition of supervisor under the National Labor Relations Act, stating:

"The difference is substantial and was adopted in the knowledge and belief that the distinction between super-visors 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 'per-formance 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 people having the same position one may be performing duties that are supervisory while the other is not.

"Conclusions:

"...2. The language of 2 AAC 10.220 (b) (3) is clear and unambiguous, 2nd 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."

ORDER AND DECISION NO. 15-A stated:

"1. The State shall make first determination of the proper unit placement of individuals according to the regulations and the Orders and Decisions of the Labor Relations Agency and subject to the requirements of collective bargaining agreements between the State and employee organizations.

"2. Such determinations by the State shall be appealable to the Labor Relations Agency by the employee(s) and/or the

employee organization(s) concerned, and if such

"appeal is made the parties will be heard by the Labor Relations Agency on the first available agenda. "

Commencing in 1975, the State Division of Personnel surveyed all questionable positions to ascertain the facts relating to the supervisory or non-supervisory status of the individuals concerned in both the General Government Unit and the Supervisory Unit, both of which units are represented by the Alaska Public Employees Association. This survey indicated that over three hundred individuals were in a questionable status. In November, 1975, the Labor Relations Agency met with both parties to begin the process of resolving the questions. The parties were encouraged to clarify any facts in dispute with a view to resolving the question of supervisory or non-supervisory status where agreed upon facts would clearly indicate the proper allocation of the individual position according to the criteria set forth in the regulations. This process reduced the number of questionable positions to approximately 65. The Agency designated James R. Lucas to act as hearing officer, to ascertain the facts and to make recommendations to the Agency. Such hearing were commenced in Juneau on July 22 and 23, 1976. The hearing officer's report and recommendations follow below.

#### Hearing Officer's Report and Recommendations

The Alaska Public Employees Association, the State Division of personnel and the individuals concerned were given full opportunity to present all material and relevant evidence and

arguments.

Certain preliminary distinctions were found necessary in order properly to apply the criteria set forth in the regulations, as follows:

1. The fact that person may be a professional does not, per se, mean that that person is a supervisor. An engineer, a lawyer, or a medical doctor, for example, may be in a high-level professional capacity and yet supervise nobody.

2. A person may be in a "lead" capacity, with responsibilities for allocating work loads, training new employees and directing work, and yet not meet the criteria for supervisor because of not having substantial responsibility regularly to participate in a majority of the six functions described in the definition of supervisor.

3. A person may nominally have substantial responsibilities in a majority of those six functions and yet not regularly participate in those functions because the span of actual supervision is small enough so that little or no opportunity to do so exists. A further distinguishing feature of this kind of a position is where the person involved is actually spending a substantial percentage of time performing a function as opposed to spending most of the time in guiding, training, allocating and directing work done by others. This kind of a position would not be considered supervisory.

4. A person who has substantial responsibilities regularly to participate in a majority of the six functions concerned, and who also spends the great majority of time in supervising work (training, guiding, allocating, reviewing, etc.), as opposed to performing a function, but who because of a situation where there is little or no turnover, few or no grievances, little or no occasion for transfers or promotions, does not actually participate regularly in a responsible capacity in a majority of the six functions concerned, would nonetheless be considered a supervisor provided that the authority can be clearly established as well as the amount of time spent in supervision.

Following are the recommendations for the eight persons for whom hearings were held:

1. Eugene M. Durkee, PCN 025040, Mail Room Supervisor, was found to have substantial responsibilities in only two of the six criteria involved, namely: promotion and grievance handling. In general he was found to have "lead" rather than supervisory responsibilities, and it is therefore recommended that he be allocated to the General Government Unit.

2. With respect to Gerald White, PCN 025009, Purchasing Agent III, a further hearing is recommended.

3. With respect to Ray C. Pagenkopf, PCN 068095, Regional Assistant Payment Manager, the hearing brought out the fact that his questionnaire was not properly filled out (a fact conceded by the Division of Personnel), and that he has substantial responsibilities to appoint, promote, transfer, and adjudicate grievances, thereby meeting the criteria for supervisor, and therefore it is recommended that he be allocated to the Supervisory Unit.

4. With respect to Robert M. Davis, PCN 051604, Education Administrator II, the facts indicated that he has substantial responsibility only in the area of grievance adjudication and that he is professional rather than supervisory. Therefore it is recommended that he be allocated to the General Government Unit.

5. With respect to Stanley L. Kenniston, PCN 130060, Supply Officer III, the facts indicated that he has substantial responsibility in the area of appointment and possibly substantial responsibility in the area of promotion, and that he thereby does not meet the definition of supervisor. It is therefore recommended that he be allocated to the General Government Unit.

6. With respect to Paul E. Cowles, PCN 131175, Realty Officer III, the facts indicate that although he may have professional level responsibilities he meets none of the criteria under the definition of supervisor in the regulations. It is therefore recommended that he be allocated to the General Government Unit.



7. With respect to Mr. Baumgardner, State Claims Engineer, (who was not on the list of those scheduled for hearing but was nonetheless given a hearing in order to express his views) by his own admission he supervises nobody. He argued that the professional level of his responsibilities should place him in the supervisory unit. It is therefore recommended that he should be allocated to the General Government Unit.

8. With respect to Timothy W. Mitchell, PCN 140286, Bridge Design Engineer II, the facts indicate that although he is at a professional level he has responsibility in only one of the six areas concerned, namely grievance adjudication. It is therefore recommended that he be allocated to the General Government Unit.

ORDER AND DECISION

The report and recommendations of Hearing Officer Lucas are hereby adopted.

SIGNED: \_\_\_\_\_  
C.R. "Steve" Hafling, Chairman

SIGNED: \_\_\_\_\_  
Ronald M. Henry, Member

SIGNED: \_\_\_\_\_  
Morgan Reed, Member

Decision dated July 23, 1976

[SIGNATURES ON FILE]