

[LABOR RELATIONS AGENCY STATIONERY]

November 28, 1978

ORDER AND DECISION NO. 38 PERTAINING TO A PETITION FOR UNIT
CLARIFICATION CONCERNING FORESTRY TECHNICIANS I, II, III,
IV.

FINDINGS OF FACT

1. In 1977, following transfer of responsibility for certain forest lands from the Federal Bureau of Land Management to the Department of Natural Resources, Division of Forestry of the State of Alaska, the Division of Forestry perceived a need for the created of a new position series, to be known as Forestry Technicians. Although position descriptions were drawn up aimed at satisfying the requirements for the new series, the actual job content during 1977 did not change from the previous job content of Laborer-Firefighters. However, the employees concerned were re-titled and transferred to the General Government Unit of the state employees. As described in Order and Decision No. 33, the Labor Relations Agency concluded that this transfer was premature and it was rescinded.

2. In 1978, a new series of job descriptions for Forestry Technicians I, II, III and IV had been draw up and people were hired into these positions. The object of the Division of Forestry was to create a technical series who would be capable of performing other duties than firefighting, such as timber scaling, reseeding, etc. The State Department of Administration assigned this series to the General Government Unit of the state employees, as was its prerogative

to do under previous decisions of the Labor Relations Agency.

3. There can be very little dispute about the actual facts concerning the duties performed by the 1978 Forestry Technicians, since each such technician was required to keep an accurate diary setting forth all of his duties.

4. Some of the duties, in 1978, a rather small percentage, are no different from the duties previously performed by the Laborer-Firefighters. Other duties have been added and do require a certain amount of training. A future mix of duties is impossible to predict with any high degree of accuracy because of the fact that such mix of duties will depend on the number of fires in the season.

5. The Forestry Technician I, II, III, and IV series can safely be described as a technical series. Neither the entry requirements nor the training required to advance are extremely technical or onerous; however, such requirements do exist.

6. The facts do not support any conclusion that the series is a professional series.

7. These positions have been temporary and it is contemplated that they will be permanent-seasonal, meaning that they are not year-round jobs.

8. Following assignment by the State Department of Administration of this series to the General Government Unit, Public Employees Union Local No. 71, representative of the Labor Trades and Crafts Unit filed a unit clarification petition with the Labor Relations Agency requesting that these positions be placed in the Labor Trades and Crafts Unit.

9. Section 23.40.090 of the Alaska Public Employment Relations Act reads as follows:

"Collective Bargaining Unit. The labor relations agency shall decide in each case, in order to assure employees the fullest freedom in exercising the rights guaranteed by Secs. 70-260 (Secs. 23.40.70 to 23.40.260) of this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors 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. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided."

10. Insofar as community of interests is concerned no evidence was produced at the hearing that could be taken to indicate that the Forestry Technician series had any greater community of interest with the General Government Unit than with the Labor Trades and Crafts Unit or vice versa. They work with and receive training from foresters; however, they were receiving supervision in some cases from labor foremen who were members of the Labor Trades and Crafts Unit. Many of the Forestry Service Technicians were formerly members of the Labor Trades and Crafts Unit. The community of interests factor in this situation is clouded by the genesis of the Labor Trades and Crafts Unit. The Labor Relations Agency had originally authorized a blue collar unit, composed entirely skilled craftsmen, in the meaning usually given the term in the building and construction industry. All other employees except for supervisors and confidential employees were assigned to the General Government Unit. However, as a result of litigation, a settlement agreement was reached between the Labor Relations Agency, the Alaska Public Employees Association and the Tri-Trades Public Service Council (predecessor organization to Public Service Employees Local No. 71) whereby a Globe-type election would be held among those employees who came to be known as "gray-collar"

employees to determine their choice as to which of the two units they wished to be represented by. An election followed and the so-called "gray collar" employees decided by majority vote to adhere to the Labor Trades and Crafts Unit. In other, words, there were no definite guidelines whereby the so-called "gray-collar" classifications were allocated to either one unit or the other. Among the "gray-collar" classifications who voted to affiliate with the Labor Trades and Crafts Unit were a number of the technician series, such as Highway Engineering Technician. Other technical series are to be found in the General Government Unit. Therefore, the mere existence of a technical series does not provide any useful guidepost as to which unit should represent the employees now in question.

11. Insofar as wages, hours and other working conditions of the employees involved are concerned, this is not precisely applicable since this is a new series. If it were applicable, the weight should probably go to the Labor Trades and Crafts Unit.

12. With respect to the history of collective bargaining, again, technically, there is no history of collective bargaining since this is a new series; however, the Laborer-Firefighters who went into this series did have a collective bargaining history with the Labor Trades and Crafts Unit.

13. The Public Employment Relations Act is modelled closely after the National Labor Relations Act. Consequently, a long standing decision by the National Labor Relations Board is of significance in this matter. It is quoted in pertinent part as follows:

"In such a case where the considerations are so evenly balanced, the determining factor is the desire of the men themselves. (Cites omitted.) ... On the results of these elections will depend the determination of the appropriate unit for the purposes of collective bargaining. (Emphasis added.) Globe Machine and Stamping Co., 1-A LRRM 122 (1937).

CONCLUSIONS

Since the factors mentioned above, community of interests, wages, hours and other working conditions of the employees involved, and the history of collective bargaining do not provide definitive answers as to which unit these employees should most properly accrue, leaves one fact, and that is the desires of the employees. By virtue of the provisions in the statute for petitions, elections, etc., it is clear that the desires of the employees shall be given great weight, unless there are other factors that are overwhelming. Therefore, it is concluded that in this situation the only appropriate course of action under the statute is to determine the desires of the employees concerned, and that an election should be held at the earliest possible opportunity.

ORDER AND DECISION NO. 37

1. It is hereby ordered that an election will be held among the Forestry Technician series as soon as practicable in the spring of 1979 after a majority of those to be hired for the season have been hired pursuant to the revised regulations, 2AAC 10.165 (b):

"The ballot will contain, in addition to the choice of possible representatives, a place where the choice of 'no representative' may be indicated."

2. Unit allocation of the forestry technician series will become effective upon certification of the results of the election. This shall have no effect retroactive from the date of certification of the election results.

SIGNED: _____
C.R. "Steve" Hafling, Chairman

SIGNED: _____
Ronald M. Henry, Member

SIGNED: _____
Morgan Reed, Member

[SIGNATURES ON FILE]