

[Labor Relations Agency Stationery]

PETITION OF CENTRALIZED CORRESPONDENCE
STUDY EDUCATION ASSOCIATION FOR
CERTIFICATION AND DETERMINATION OF
APPROPRIATE BARGAINING UNIT NO. UA79-2

ORDER AND DECISION 56B

BACKGROUND

On November 23, 1979 the Correspondence Teachers, organized as an association known as the Centralized Correspondence Study Education Association, (Teachers) submitted a petition seeking recognition as a bargaining unit. The Alaska Labor Relations Agency entered Order and Decision No. 56 dated December 21, 1979, and Order and Decision No. 56A dated February 7, 1980. Order and Decision No. 56A dated February 7, 1980. Order and Decision No. 56A stayed Order and Decision No 56 pending the Agency's action upon the request for reconsideration by the State of Alaska. The Labor Relations Agency has carefully reconsidered the prior decision, held new hearings and received extensive briefing from the State of Alaska, the Teachers, APEA, and NEA. The Labor Relations Agency has informally discussed the facts between parties involved, and has even made special trips to Seward to speak to the Seward Skill Center Teachers.

There are currently sixteen Teachers in the program, the program is centrally located in the Community Building

at Third and Main Streets in Juneau, Alaska. During the last school year, 1979-80, almost a thousand kindergarten through twelfth grade students and adults studied at home through the Centralized Correspondence Study Program. There has been a Correspondence Study Program in Alaska since 1938 (see the report of Commission of Education for the biennium ended June 30, 1962 pp.). The Program has been recognized as a "school" both by its employers, and to some extent by the Alaska Supreme Court In Hootch v. Alaska State Operated School System 536 P2d 793 (Alaska 1975). It is presently operated under the legislative mandate of Alaska Statute 14.07.020 (9) which states the Department of Education shall "provide a credited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of Correspondence Studies." The school is accredited by the Northwest Association of Schools and Colleges.

After consideration of all factors the Agency has decided that the appropriate bargaining unit for the Teachers is for them to have their own bargaining unit, or no representation. In making that decision the Board has reviewed and

discussed the following criteria.

I. Jurisdiction The Labor Relations Agency has investigated the petition and has determined that a question of representation exists. We have also found that the proposed bargaining unit is a prima facie appropriate unit for collective bargaining purposes.

There was a considerable discussion by the parties as to whether the Board had jurisdiction pursuant to 23.40.090 Et seq., the Public Employees Relation Act; or if the actual jurisdiction is held by the Board of Education pursuant to Alaska Statute 14.20.050. Alaska Statute 14 was enacted in approximately two years before Alaska Statute 23. The Board has followed the law of the State of Alaska, as found in Hafling v. Inland Boatman's Union of the Pacific 585 P2d (Alaska 1978) and construed the two Statutes together. We also note the Attorney General's opinion dated February 7, 1979 would give the Board jurisdiction. The Board finds that it has jurisdiction while not ruling on whether or not the Board of Education has jurisdiction. The Legislative intent was clear that all employees of the State of Alaska

have coverage under Alaska Statute 23.40 et seq. The Board finds that the teachers are employees of the State of Alaska and are public employees. They specifically find that they are not teachers of school districts and are therefore outside the limitations of Alaska Statute 23.40.250 (5).

II. The Requirements of Alaska Statute 23.40.090.

(a) With the background in mind we look to the criteria set forth in Alaska Statute 23.40.090. The first criteria is community of interest. We find specifically that Teachers do not have a community of interest with the Seward Skill Center. There is no interchange of employees between the two groups; no geographic proximity, as the Seward group is located in Seward,; no integration of operation, although this could be administratively changed; no common administrative control; the working conditions are dissimilar as the Seward group teaches face to face with students and the Teachers are solely correspondence related.

The Board found in original Order and Decision No. 56 that there is a substantial community of interest between the Teachers and the employees presently in the General Government Unit represented by APEA. And if it were not for the difference in the wages, hours, or working conditions

which the Board has reconsidered, this decision could have been identical to the first Order and Decision No. 56. In fact, if the Legislature would reclassify this small group of teachers to classified employees in the future, that fact alone could swing the pendulum to find the appropriate unit is the General Government Unit.

(b) Wages, Hours, and Working Conditions

This factor is the main one which separates the Teachers from the General Government Unit. The Board has found that the Teachers are not covered by the State Personnel Act, Alaska Statute 39.25 and the provisions therein. Their work schedule and the accompanying privileges are different from other state employees; their vacation is set by the Department of Education consistent with the needs of the students; and the Teachers are not under the general Public Employee Retirement System but under the Teacher Retirement System.

The Teachers have a similar but different health benefit program than GGU; the work year is set by the Department of Education consistent with the needs of the students.

(c) The history of collective bargaining by the General

Government Unit has been consistent in that it has separated the classified and exempt employees. Order and Decision No. 1, 21, and 46 have reached that conclusion. The Board realizes there is not a Legislative mandate to separate classified and non-classified employees. We have reviewed the laws of other States and are aware that many other States mix and match classified and non-classified employees. And while realizing that there is no restriction on putting the teachers into the GGU, the Board finds there are sound policy and factual reasons consistent with the differences in wages, hours, and other working conditions to separate these employees so long as they are exempt employees. The history of collective bargaining in Alaska has separated classified and exempt employees, and that system has worked. This case is not the one to change the present alignment.

We note that there are other certified teachers in the General Government Unit, as there are no doubt throughout State government.

And the Board specifically finds that the certified Teachers within GGU do not perform the same function and tasks that these sixteen correspondence Teachers do.

The history of collective bargaining in the State of Alaska is relatively new, as it is in all States since

collective bargaining by state employees started in the early 1960's. Historically, the history of teachers bargaining collectively has its own source of case law separate and apart from other public employees. The Alaska Supreme Court has already cited several teacher cases including Kenai Peninsula Borough School District v. Kenai Peninsula Education Association 572 P.2d 416 (Alaska 1977). That decision only perfected the rights of Teachers pursuant to Alaska Statute 14. However, the guidelines set forth there may or not be applicable to the Teachers and the Board will meet those issues when they are raised. The Board has taken cognizance of the fact that Teachers within Alaska have separate Statutes granting them collective bargaining rights, and is another factor upon which the Board relies to separate the sixteen correspondence study Teachers from General Government Unit at this place and at this time.

(d) The overriding desires of the employees is to have their own unit. Their own unit is what many public employees want, and was the Teachers' number one request. The employees would have no objection of being placed within the GGU, but we have granted them their basic request in this Order and Decision.

(e) Unnecessary Fragmentation The labor Relations Agency has placed emphasis on the unnecessary fragmentation language in the statute. The Legislature in enacting the law and the Board in pulling the law has studied the "horror" stories of other States. Other States have had several hundreds of units for their employees. Alaska's system has been one which has been designed to have thousands of employees but very few units. The benefits of this concentrated system has allowed the State to deal with thousands of employees and their ten bargaining representatives more effectively and more efficiently. While the unnecessary fragmentation factor must be weighed in light of all the other legislative criteria, the Legislature has specifically ordered "unnecessary fragmentation shall be avoided." The Board, in Order and Decision No. 56 decided that granting the teachers a separated unit would be unnecessary fragmentation. It is a very close decision today to Order that the employees should be granted a separate bargaining unit. However, in balancing the facts and the interests of the parties, we find that the history of collective bargaining, and the differences in the wages, hours, and other working conditions of the Teachers, require us to grant them their own bargaining

unit. The Teachers unit is exhaustive of all similar positions statewide; an important element of any fragmentation issue.

The Board has in the past and will in the future closely scrutinize any and all requests for separate bargaining units. This decision today is limited to the peculiar facts and circumstances of these sixteen Teachers. It appears to the Board that these Teachers were overlooked by broad and sweeping legislation enacted ten years ago. The legislation granted all school district Teachers the right to bargain collectively; and replaced the Statewide school system with a local school district system. This change left the Teachers as non-classified employees when in fact they are treated as classified employees in many respects. Their assimilation into the classified system is the Legislature's prerogative. As classified employees, these Teachers might easily be placed into GGU, but as significant differences exist in wages, hours, and conditions, these Teachers should be placed in their own unit.

ORDER AND DECISION NO. 56

It is the Order of the Alaska Labor Relations Agency:

1. The petition for representative submitted by the Centralized

Correspondence Study Education Association is granted.

2. The Centralized Correspondence Study Education Association is ordered to contact the Labor Relations Agency within thirty (30) days of receipt of the Order and Decision and notify the Agency as to whether a question of representation exists and whether an election is necessary to determine their exclusive representative.

DATED this 19th day of December, 1980.

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

SIGNED: _____
Morgan Reed, Member

SIGNED: _____
Ronald M. Henry, Member

[Signatures on File]