[Labor Relations Agency Stationery]

ORDER AND DECISION #66

RE: UA 80-1

On or about the 27th of October, 1980, the Labor Relations Agency received a petition for certification of a public employer representative. The adjunct faculty of the Alaska Community Colleges Federation of Teachers Local 204 petitioned to form a unit of all regular and permanent part-time employees engaged in teaching and/or counseling at the Alaska Community Colleges throughout the State of Alaska. This would involve approximately thirteen (13) different locations or divisions. The unit would involve between five hundred (500) and seven hundred and seventy-five (775) part-time instructors employed by the Community College system. Only four (4) persons were alleged to be permanent employees within the meaning of 2ACC 10.220. The evidence at the hearing was that three (3) persons met the definition.

A pre-hearing conference was held before the first hearing of January 23, 1981. Counsel for the state of Alaska expressed great surprise at the hearing that the petitioner, on the basis of three (3) authorization cards, wanted an election ordered of a unit comprising approximately seven hundred seventy-five (775) members. Notwithstanding the

prior pre-hearing conference, the Board granted the request for a continuance. The Board received a Motion to Dismiss prior to the second hearing of March 20, 1981, and allowed the petitioner to present his full case in front of the Board before ruling on the Motion to Dismiss.

The University's Motion was based on the following arguments:

1. That the ACCFT petition proposes a violation of AS 23.40.100 which requires a showing of interest from thirty percent (30%) of the employees of a proposed bargaining unit accompanying the petition. Even if the petitioner followed the criteria set forth by the Agency and Alaska Administrative Code 2AAC 10.020 (a)(3) and 2AAC 10.220 (a)(2) (which requires the petition to have a statement at thirty percent (30%) of the permanent and probationary employees, meaning employees who are entitled to retirement and vacation benefits by the public employer,) these regulations cannot permit temporary employees to be in bargaining units but disenfranchise them by not allowing them to vote. Such an interpretation eliminates the very essence of the employees' constitutional freedom
of

association and the right to organize, or refusal to do so, by majority rule.

The petitioner responded by admitting that the Union seeks to have the vote of a small minority (those eligible to vote under Agency regulations) determine the status of the entire proposed bargaining unit. The petitioner argued that Agency regulations could be interpreted to allow teachers with a fifty percent (50%) work load teaching more than ninety (90) days as being entitled to vote because they are eligible for teacher retirement benefits. The petitioner argued that the teacher retirement system grants retirement to all persons working at a fifty percent (50%) load who are not temporary substitute teachers. (The petitioner's teacher retirement system argument was submitted in his brief and not formally as a Motion to Amend).

The Public Employment Relations Act, AS 23.40.070 et seq., addresses public employees, not full-time or part-time public employees. It is the Labor Relations Agency's regulations that define who is entitled to vote in a representative election (see AS 23.40.170). The Agency, in promulgating its regulations in 1972, did not foresee part-time

public employees forming bargaining units. The Agency does note that the National Labor Relations Agency, California, Massachusetts and New York, presently allow part-time faculty the right to organize (See Part-Time Faculty and the Law, New Directions for Institutional Research, Vol. 18, summer 1978). Those States and the NLRB, had serious questions concerning the status, compensation and bargaining unit determination of the part-time employees.

The Agency also realizes that AS 23.40.090 authorizes the Labor Relations Agency to decide each case in order to assure the employees the fullest freedom in exercising the rights under the State law. Under State law the Board has to consider the appropriate unit for the purposes of collective bargaining based on the factors of community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees (AS 23-40-090).

The evidence presented at the hearing consisted of six (6) long term, part-time faculty members from the

Anchorage and Mat-Su campuses discussing their needs for collective bargaining. The Agency did not have any other showing of interests before it and less than one percent (1%) of the total members of the proposed unit. In fact, when the Agency questioned both the University and the Petitioner as to how often the "normal" part-time faculty instructors taught, neither could answer the question. Part-time faculty teachers might teach one (1) semester and then not teach for the next four (4) semesters. The Agency does know that the fields of teaching are broad as to include basket weaving, log home building, and all the arts, humanities and sciences. However, there is no showing of any continuity by the faculty members. The Agency notes that long time part-time faculty members
appeared at the hearing. It appears to the Agency that their community of interest is very different from the individual who teaches one (1) semester and then does not teach for the next four (4) or five (5) semesters. The very nature of the Community College system is to have courses taught when the community expresses a

desire to have the courses taught.

The National Labor Relations Board has found the concept of "appropriate bargaining unit" as an illusive one. The NLRB has not employed the discretion conferred by the act to establish) hard and fast rules defining it for all cases. (See The Developing Labor Law, 1971 edition, page 200). This Agency is not Persuaded by the Petitioner's evidence that anyone who teaches one (l) semester at the Community College system for six (6) hours, or three (3) hours, or two (2) hours, had the same community of interests as the individual who repeatedly and consistently teaches at the Community College.

A lengthy exhibit was submitted showing the wages, hours and other working conditions of the employees involved for the Community College system in the most recent semester past.

There is a great disparity of wages, hours and other working conditions. The Community College pays its employees at different rates depending upon their class content, size of the class, course offered, etc. Of course there is a

history of collective bargaining in the full-time Community College faculty although there is not a history in the Community College adjunct faculty.

The Agency must also consider the desires of the employees. The Agency is persuaded that collective bargaining within Alaska is based on majority rule, notwithstanding any regulation promulgated by this Agency. And the Board is persuaded that the legislature meant what it said under AS 23.40.100; it described a petition that alleges that thirty percent (30%) of the employees of the proposed bargaining unit want to be represented for collective bargaining by a laborer or employee organization as exclusive representative....

By a thirty percent (30%) showing, the desires of the employees are clearly shown. The Agency is not Persuaded by the testimony presented there is more than a nominal showing of interest.

The Board is not persuaded that its present regulations limiting those eligible to vote should be disregarded. Nor

is the Board persuaded that three (3) voters should govern the rights of five hundred (500) to seven hundred seventy-five (775) part-time faculty members. The present regulations of the Agency do not allow part-time faculty members the opportunity to form bargaining units. The Agency's regulations do not allow part-time employees of the State to bargain collectively unless they receive retirement or vacation benefits.

The Board realizes that other States allow part-time employees to bargain. And the Board will conduct hearings pursuant to Alaskan law to determine if there is a need to change its regulations concerning part-time employees.

FINDINGS OF FACT

1. Petitioner did not COMPLY with AS 23.40.100 (a)(l), which requires a thirty percent (30%) showing of interest from employees of the proposed bargaining unit to accompany the ?petition. The petitioner did comply with 2SC 10.020 (a) (2) and (3).

2. Of the five hundred (500) to seven hundred seventy-

five (775) members of the proposed unit, only three (3) are eligible to vote in a representation election according to Agency regulations and the Alaska Administrative Code 2AAC 10.020 (a)(3) and 2AAC 10.220 (a)(2). These regulations define eligible voters as those entitled to vacation or retirement benefits.

3. Only three (3) members of the proposed unit signed valid authorization cards.

4. Competent substantial evidence to determine exactly who is eligible for inclusion in the proposed bargaining unit was not presented.

5. The Agency has set standards to determine who is eligible to vote in representation elections. In this case, eligible employees only three (3) out of a proposed unit of five hundred (500) to seven hundred seventy-five (775) employees. The Agency finds it inequitable that three (3) employees shall determine Union recognition for the proposed five hundred (500) to seven hundred seventy-five (775) member unit. Thus the Petitioner's proposed election

would be a flagrant violation of the principle of majority re-presentation.

CONCLUSION OF LAW

1. The petition fails to satisfy the conditions precedent under AS 23.40.100.

2. The Agency does not find adequate showing of community of interest among the employees of the proposed bargaining unit, based on the petition, testimony, exhibits, and arguments heard by the Board.

3. If the unit were granted based on the presented authorization cards, unnecessary fragmentation or bargaining units would result.

4. The petition is denied without prejudice. Petitioners may refile if they comply with AS 23.40.100.

DATED this 12th day of May, 1981

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C. R. "Steve" Hafling

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Morgan Reed, Member

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Ronald M. Henry, Member

[Signatures of Hafling and Henry on File]