

STATE OF ALASKA

LABOR RELATIONS AGENCY

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C.R. "STEVE" HAFLING
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BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES
ASSOCIATION,

Objecting Party,

VS

STATE OF ALASKA and
CONFIDENTIAL EMPLOYEES
ASSOCIATION,

Respondents.

UC 89-1

ORDER AND DECISION NO. 118

SUBJECT: UNIT CLARIFICATION, MOVEMENT OF EMPLOYEES FROM GENERAL
GOVERNMENT TO CONFIDENTIAL UNIT.

The State Labor Relations Agency (the "Agency") having
duly appointed Robert M. Johnson to act as hearing officer in the
foregoing matter, adopts as its decision the proposed findings of
fact, conclusions of law and recommended decision by Mr. Johnson
as attached hereto.

DATED this 20 day of April, 1989.

ALASKA STATE LABOR RELATIONS AGENCY

By C. R. "Steve" Hafling
C. R. "Steve" Hafling
Chairman

THIS IS TO CERTIFY THAT ON THIS 21st DAY
OF APRIL, 1989, A TRUE AND CORRECT
COPY OF THE FOREGOING WAS HAND DELIVERED
MAILED, POSTAGE PREPAID, TO
F. Dichter, K. Gearty, Div
9 Personnel, Greg O'Clary
WOHLFORTH, ARGETSINGER, JOHNSON & BELL

ORDER AND DECISION NO. 118

Page 1

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Respondents.

UC 89-1

HEARING OFFICER'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER AND DECISION

The State Labor Relations Agency (the "Agency") appointed Robert M. Johnson to act as hearing officer in a hearing to consider requests for unit clarification regarding transfer of four positions from the general government unit to the confidential employees bargaining unit. The hearing was conducted on April 4, 1989, in Juneau, Alaska. Robert M. Johnson, attorney, presided at the hearing. The State of Alaska was represented by Kimberly Geariety, Division of Personnel. Alaska State Employees Association ("ASEA"), as objecting party, was represented by counsel Fredric R. Dichter. Confidential Employees Association ("CEA") was represented by Greg O'Claray. After having considered the arguments and evidence presented, the hearing officer enters the following proposed findings of fact, conclusions of law, and recommended decision.

FINDINGS OF FACT

1. ASEA is the certified collective bargaining representative of the State's General Government Unit ("GGU"). There is no collective bargaining agreement between ASEA and the

State in place, although ASEA and the State are operating under terms and conditions generally similar to the last GGU collective bargaining agreement. CEA represents confidential employees, a unit comprising approximately 180 employees.

2. Pursuant to the procedures and practice before the Agency, the State of Alaska petitioned for a unit clarification to determine the propriety of the movement of five positions in the Marine Highway System, Department of Transportation & Public Facilities (DOT/PF) from the GGU to the confidential unit. One request was dropped. Other issues relating to movement into the supervisory unit are being considered separately.

3. The four positions and employees proposed to be moved are: Alice Brown, Accounting Clerk III, with position control number ("PCN") 253096; Rada Tanner, Accounting Clerk II, with PCN 253098; Betty Seguin, Accounting Clerk II, with PCN 253090; and Melanie Munro, Accounting Tech I with PCN 253097. PCN 253097 also carries PCN 250550, but only one position is affected. Munro is the supervisor of the three Accounting Clerk positions. The Accounting Clerks would report through the Accounting Technician I to a Personnel Officer III.

4. The Personnel Officer III is in the confidential unit. Munro (Accounting Technician I) reports directly to the Personnel Officer; the three Accounting Clerks report to Munro. Personnel Officers without significant objection have been historically considered confidential employees within the meaning of 2 AAC 10.220(b)(1).

5. The three Accounting Clerk positions process payroll and various other documents which are of a personally confidential manner for various employees. In addition, the information processed includes addresses and social security numbers which have relevance in collective bargaining election and petition proceedings (i.e., showing of interest and verifications and Excelsior lists). Personnel action forms and evaluation forms potentially at issue in grievances under collective bargaining contracts are processed. The positions also process upon request a substantial amount of data relating to and in support of collective bargaining negotiations and considerations. The regular duties of the Accounting Clerk position is to process and prepare payrolls for marine highway personnel and as such Accounting Clerks are frequently called upon to interpret the collective bargaining agreements respecting contractual provisions and rules and regulations. The positions clearly require the employee to determine and, in a fashion, adjudicate deductions and the like for members of primarily the Inland Boatmens Union. The Accounting Technician would verify and supervise this work including the delivery of work product to and response to requests from the Personnel Officer.

6. The positions in question have analogs in other departments such as Fish & Game, Corrections, and Health and Social Services, where Accounting Clerk and Accounting Technician positions are in the confidential unit.

7. These DOT/PF Accounting Clerk and Accounting Technician positions have not previously been placed in the confidential unit because no Personnel Officer directed their work product. The Personnel Officer was placed in the hierarchy of this division of DOT/PF in September, 1988. At that time, DOT/PF was delegated authority to ascertain classifications and take other actions involving collective bargaining type issues in which it previously had not been involved.

8. Three of the four incumbents affected by this proposed bargaining unit transfer testified (the fourth was on leave) and asserted that, in their belief, a community of interest existed between the work performed by them and other Accounting Clerks and Technicians who had reporting responsibilities to Personnel Officers. The community of interests related in part to the personally confidential matters of their work, but also to the proximity and access to information critical to collective bargaining.

9. There are Accounting Clerk and Accounting Technician positions elsewhere in state government which are, without controversy, in GGU as opposed to the confidential unit. The similarly-titled positions however are placed in a collective bargaining unit dependent upon actual assignments. In the cases involved here the assignment of the tasks for these incumbents relates to matters of responsibility in the assistance of management in collective bargaining information retrieval and compilation.

CONCLUSIONS OF LAW

1. The Agency has jurisdiction to hear and consider requests for unit clarification pursuant to AS 23.40.090 and AS 23.40.160. The parties agreed that these proceedings could be held before a hearing officer with the hearing officer reporting a recommended decision to the Agency.

2. 2 AAC 10.220(b)(1) defines a "confidential employee" as

an employee who assists and acts in a confidential capacity to a person who formulates, determines, and effectuates management policies in the area of collective bargaining. The term "confidential employee" shall be narrowly construed.

This regulation provides that "confidential" status is reviewed in the context of its sensitivity to collective bargaining issues, and not in the sense of personal rights to privacy or confidentiality. NLRB case-law expansion of the definition of "confidential employee" is not necessarily applicable given the existence of 2 AAC 10.220(b)(1).

3. This Agency has reviewed assignments to the confidential unit in Order and Decision Nos. 32 and 44. In each of these decisions there were no reporting responsibilities to a Personnel Officer involved in management policy in the area of collective bargaining. In this case, the Accounting Clerks and Accounting Technician report to a Personnel Officer although obviously the Accounting Clerks report to the Personnel Officer only through the Accounting Technician.

4. The history of placement in the confidential unit has included placement of positions equivalent to Accounting Clerk and Accounting Technician when there is a reporting obligation to a Personnel Officer even when that reporting is subject to one or at most two levels of supervision. The employees, however, work with personnel data relating to collective bargaining activities by way of assembly of data, review, and interpretation of collective bargaining agreements and the like. The evidence suggests a confidential role between the state's managers of collective bargaining issues and the incumbents. No evidence was presented to suggest that other persons placed in the confidential unit historically have not been involved with some collective bargaining type information. The history of placement is entitled to some weight given that community of interest and history are relevant considerations in the composition of a collective bargaining unit. AS 23.40.090.

5. ASEA postulates a scenario where a Personnel Officer can sit on top of a large pyramid of employees who have remote reporting obligations to that Personnel Officer thereby requiring all such employees in the pyramid to be placed in the confidential unit. This hypothetical situation presumes, however, that creation of lines of responsibility through or to a Personnel Officer is for the primary purpose of causing movements from GGU to the confidential unit. This is not the case here, nor has the hypothetical pyramid been demonstrated a reality.

6. There appears to be a sufficient relationship between the description of "confidential employee" in 2 AAC 10.220(b)(1) and the duties to be performed by the incumbents in this matter.

RECOMMENDED DECISION

For the reasons set forth in the foregoing proposed findings of fact and proposed conclusions of law, the hearing officer recommends that the Agency issue an order and decision finding that:

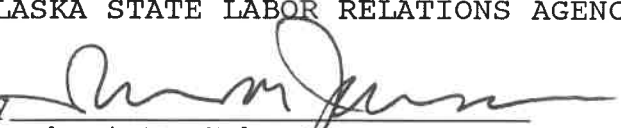
1. The transfer is approved from GGU to the confidential unit for

- a) PCN 253096, Accounting Clerk III;
- b) PCN 253098, Accounting Clerk II;
- c) PCN 253090, Accounting Clerk II; and
- d) PCNs 253097 and 250550, respecting one Accounting Technician I position.

2. The Agency would disapprove creation of a hierarchy reporting to personnel officers primarily for the purpose of expanding the CEA unit to the detriment of other units. A chain of confidential reporting to a personnel officer is presumed to end at the level of direct reporting to a personnel officer except in instances (such as demonstrated here) where affected personnel report to an intermediate supervisor who reports directly to the personnel officer. The burden of establishing a "confidential employee" under 2 AAC 10.220(b)(1) increases substantially the more removed the employee in question is from directly reporting to a personnel officer or other member of management charged with collective bargaining responsibilities.

DATED this 19th day of April, 1989.

FOR THE
ALASKA STATE LABOR RELATIONS AGENCY

By 

Robert M. Johnson
Hearing Officer

STATE OF ALASKA

LABOR RELATIONS AGENCY

STEVE COWPER, GOVERNOR

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C.R. "STEVE" HAFLING
CHAIRMAN

BEN HUMPHRIES
MARLENE JOHNSON

ROBERT M. JOHNSON
LEGAL COUNSEL

BEFORE THE ALASKA LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES ASSOCIATION,)
)
Objecting Party,)
)
v.)
)
STATE OF ALASKA, and CONFIDENTIAL)
EMPLOYEES ASSOCIATION,)
)
Respondents.)
)

UC No. 89-1

RECONSIDERATION OF ORDER AND DECISION NO. 118

The State Labor Relations Agency (the "Agency"), having considered the arguments of the parties respecting reconsideration of its Order and Decision No. 118 entered April 20, 1989, having reviewed the record in said proceedings, and deeming itself fully advised, unanimously finds and orders:

1. The Agency will reconsider Order and Decision No. 118;
2. The testimony and evidence presented to date are not complete enough to permit the Agency, without a further hearing, to rule definitively on whether movement of the four positions at issue from the General Government Unit to the Confidential Unit or retention of those positions in the General Government Unit is justifiable and supportable;
3. It is necessary to reconvene a further hearing before a quorum of the Agency for the purpose of taking additional factual testimony relating primarily to the day to day responsibilities of the four positions

in question with respect to matters related to collective bargaining;

4. The decision reached in Order and Decision No. 118 held in abeyance until the conclusion of the hearing required to be held pursuant to this determination; and
5. A hearing will be held at the earliest convenience of the parties and the Agency.

DATED this 7 day of July, 1989.

ALASKA STATE LABOR RELATIONS AGENCY

By

C. R. "Steve" Hafling

C. R. "Steve" Hafling
Chairman

THIS IS TO CERTIFY THAT ON THIS 7th DAY
OF July, 1989, A TRUE AND CORRECT
COPY OF THE FOREGOING WAS HAND DELIVERED/
MAILED, POSTAGE PREPAID, TO
Clocks in, Dichter, Gentry
(Div-Pers); Cummings (Div-LR); O'Clarry
WOHLFORTH, ARGETSINGER, JOHNSON & BROWN

STATE OF ALASKA

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BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

ALASKA STATE EMPLOYEES)
ASSOCIATION,)
)
Objecting Party,)
)
vs.)
)
STATE OF ALASKA and)
CONFIDENTIAL EMPLOYEES)
ASSOCIATION,)
)
Respondents.)
)
)

UC 89-1 (partial)

ORDER AND DECISION NO. 118A

SUBJECT: UNIT CLARIFICATION, MOVEMENT OF EMPLOYEES FROM
GENERAL GOVERNMENT TO CONFIDENTIAL UNIT;
RECONSIDERATION OF ORDER AND DECISION NO. 118.

The Alaska State Labor Relations Agency (the "Agency") convened a hearing on August 3, 1989 in Anchorage, to hear further evidence upon reconsideration of its Order and Decision No. 118 dated April 20, 1989. All members of the Agency were present at the hearing and so constituted a quorum. Alaska State Employees Association ("ASEA") was represented by counsel Fred Dichter, Confidential Employees Association ("CEA") was represented by Greg O'Claray, and the State of Alaska was represented by Kimberly Geariety. The Agency having considered the further arguments and evidence presented, and deeming itself sufficiently advised, renders the following order and decision upholding Order and Decision No. 118.

Findings of Fact

1. The hearings officer's proposed findings of fact underlying Order and Decision No. 118 are adopted and incorporated herein by reference. Additional findings of fact set forth in the following paragraphs are also adopted.

2. ASEA timely objected to Order and Decision No. 118, and following a hearing on June 15, 1989, the Agency decided to reconsider its decision by entertaining further evidence. A written order granting reconsideration was entered July 7, 1989.

3. ASEA conceded that the Accounting Tech I position (PCN 253097) held by Melanie Munro, could be justifiably placed in the confidential unit based upon the facts presented previously.

4. Betty Seguin, Accounting Clerk II (PCN 253090) and one of the three Accounting Clerk positions at issue, testified to the role played by her and the two other Accounting Clerks in the collective bargaining process. During negotiation of contracts with maritime unions, the Accounting Clerks were regularly informed on the progress of negotiations, invited to comment on and suggest contract modifications which would be easier to administer, invited to react to maritime union counter-proposals, and further instructed to prepare statistical and other documentary data necessary to support State presentations at the negotiating table. Seguin, for example, was required to prepare a specific study on sick leave policy and sick leave use which became an instrumental part of an IBU contract ultimately adopted.

5. The Accounting Clerks regularly provided information and data to their supervisor Kelly Mitchell who regularly met with the maritime unions and acted as the primary contact person between the State and maritime unions.

6. Personnel Officer III Ginger Griffin, while not a direct supervisor of the Accounting Clerks, was on the State's negotiating team and, with authority, regularly consulted and utilized the assistance of the Accounting Clerks. Griffin utilized Accounting Clerk expertise both as to the mechanics of administering the Marine Highway System and to opinions and options for cost effectiveness.

7. While integrity is presumed on the part of all employees, labor analyst Ron Hamilton testified to an expectation of very specific confidentiality regarding employees entrusted with collective bargaining information. Having a secure source of information was critical to the negotiating and bargaining process and to the State's ability

to effectively negotiate collective bargaining contracts and administer grievances thereunder. This was particularly so since the State employed common concepts to many of its collective bargaining relationships.

Conclusions of Law

1. The conclusions of law recommended by the hearing officer and adopted by the Agency in Order and Decision No. 118 are incorporated herein by reference. Additional conclusions of law set forth in the following paragraphs are also adopted.

2. ASEA contends that a basis for placement in the confidential unit does not arise if employees, such as the Accounting Clerks in this case, are already in a bargaining unit separate from the unit they are administering. There however is no regulatory or statutory basis for such a distinction. See, 2 AAC 10.220(b)(1). Furthermore, the State of Alaska, as the single employer of employees in the general government unit, necessarily negotiates with a number of different unions and that negotiation process frequently involves common concepts and goals. As such, confidential relationships respecting the maritime unions may be consistent with issues respecting GGU. This is unlike circumstances presented to the NLRB where confidential employees in many circumstances could be relevantly segregated from employees in other bargaining units. See also Order and Decision No. 122 (1989).

3. Even though employees such as the Accounting Clerks at issue in this matter are not in a decision-making role respecting collective bargaining, their participation in information gathering and responses to requests by decision makers may, on a case-by-case basis, place them in the category of a "confidential employee" within the meaning of 2 AAC 10.200(b)(1). That regulation does not require the confidential employee to be a decision maker. A person who assists and acts in a confidential capacity to a decision maker, such as a member of the State's negotiating team, is a confidential employee within the regulations.

4. The cumulative weight of the evidence presented in the earlier proceeding before the hearing officer and in the instant proceeding before the Agency compels the conclusion that the Accounting Clerks fall within the definition of "confidential employee". Because ASEA conceded that the Accounting Tech previously considered was factually a "confidential employee", no basis exists to change the previous decision rendered by this Agency.

Order and Decision

Based on the foregoing findings of fact and conclusions of law (including those findings and conclusions incorporated by reference), the Agency unanimously orders and decides that:

1. No basis exists to reverse the determinations made in Order and Decision No. 118, and Order and Decision No. 118 is upheld.

2. The reconsideration motion filed by ASEA respecting Order and Decision No. 118 is denied.

3. This written decision sets forth the rationale for the decision reached by the Agency following the August 3, 1989 hearing on reconsideration.

DATED this 28 day of August, 1989.

STATE OF ALASKA
LABOR RELATIONS AGENCY

By: C. R. "Steve" Hafling
C. R. "Steve" Hafling
Chairman

THIS IS TO CERTIFY THAT ON THIS 29 DAY
OF MAY, 1989, A TRUE AND CORRECT
COPY OF THE FOREGOING WAS ~~HAND DELIVERED~~
MAILED, POSTAGE PREPAID, TO
Dichter (ASEA); O'Leary (CEA);
K. Gearity (State)
WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT
