

STATE OF ALASKA

LABOR RELATIONS AGENCY

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BEFORE THE ALASKA STATE LABOR RELATIONS AGENCY

IN THE MATTER OF SUPERVISORY
UNIT CLARIFICATION:

ALASKA STATE EMPLOYEES
ASSOCIATION,

Objecting Party,

vs.

ALASKA PUBLIC EMPLOYEES
ASSOCIATION and STATE OF
ALASKA,

Respondents.

UC 89-5

ORDER AND DECISION NO. 125

SUBJECT: Distinctions between supervisory unit and general government unit; professional classifications.

The Alaska State Labor Relations Agency ("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 November, 1989.

ALASKA STATE LABOR
RELATIONS AGENCY

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

THIS IS TO CERTIFY THAT ON THIS 22d DAY
OF NOV, 1989, A TRUE AND CORRECT
COPY OF THE FOREGOING WAS HAND DELIVERED/
MAILED, POSTAGE PREPAID, TO
J. JOHNSON (ASSEA); B. MAUPIN
(ASEA); K. GEARITY (STATE)
MOHLFORTH, ARGETSINGER, JOHNSON & BRECHT

A2401380

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UC 89-5

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

The Alaska State Labor Relations Agency ("Agency"), appointed Robert M. Johnson to act as hearing officer in hearings to consider unit placement of certain employees with apparent supervisorial criteria. Alaska State Employees Association ("ASEA"), as representative of the general government unit ("GGU"), opposed placement of the positions in the supervisory unit represented by Alaska Public Employees Association ("APEA"). Hearings were held before Mr. Johnson on November 8, 1989 in Juneau, Alaska. ASEA presented its case through Buddy Maupin. APEA presented its case through Jim Johnsen. The State presented its case through Kimberly Geariety. Each side examined witnesses and presented arguments. After having considered the arguments and evidence presented, the hearing officer enters the following proposed findings of fact and conclusions of law, and recommended decision.

FINDINGS OF FACT

1. As a part and parcel of various re-organization efforts, the State proposed movement of certain employee positions placed in GGU into the supervisory unit. The State, APEA and ASEA considered various aspects of these proposed movements and initially sought an Agency determination respecting five to seven positions in Juneau. Upon mutual agreement, proper placement of all but three of the positions was stipulated prior to the hearing, and an additional position's placement was stipulated in the course of the hearing. As such the hearing officer was requested to rule upon two proposed movements from the GGU to the supervisory unit.

2. ASEA is the certified collective bargaining representative of the State's GGU, and APEA represents the State's supervisory unit. There is no collective bargaining agreement in place between ASEA and the State, although at the time of these hearings ASEA and the State are operating under terms and conditions generally similar to the last GGU collective bargaining agreement.

3. At issue before the Agency is the movement of two positions, involving professional services, in the Department of Fish and Game: the Assistant Director position (PCN 11-5034) currently held by J. S. Holland, Jr. and the position of Fisheries Biologist IV (PCN 11-1398) held by Benjamin Van Alen. In presenting each of these matters, the parties considered Position Description Questionnaire's (PDQ's) prepared sometime ago and revised immediately prior to the hearing, a position allocation memorandum, and interviews with the incumbents. The recent PDQ revisions were purportedly in response to the Agency's recommendation in Order and Decision No. 123 that PDQs be current. ASEA objected that the PDQs had been revised immediately prior to the hearing for the sole purpose of supporting the State's pre-disposition to move the positions into the supervisory unit. Nevertheless ASEA agreed that it had sufficient opportunity to review the new PDQs and further delay in consideration was not necessary.

4. The position held by incumbent J. S. Holland, Jr. was as Assistant Director in the FRED Division, Department of Fish and Game. ASEA maintains that the position was that of an administrative professional but with only the general supervisory oversight typified by many other GGU positions which are not classified as supervisory. Both the State and

APEA contended that Holland engaged in supervision most of his time, and pursuant to appropriate Agency criteria met the supervisory test. The position was characterized by the following:

A) the incumbent supervised three employees directly and four to five others indirectly;

B) the incumbent had full authority to appoint;

C) while the incumbent noted in his PDQ that transfer authority was limited, the incumbent's supervisor had recently noted to him that the incumbent had full transfer authority;

D) while the incumbent believed he had authority only to recommend promotions, his supervisor had recently advised the incumbent that he had full authority to promote;

E) while the incumbent had not yet suspended anyone, he had full authority without limitation to suspend;

F) while the incumbent had not discharged anyone, he had full authority to discharge;

G) while the terms of the last GGU Agreement, the bulk of which are followed, preclude a GGU member from considering a grievance brought by another GGU member, the incumbent testified that he had been advised that in the absence of the contract bar he would be able to resolve step 1 grievances;

H) while an earlier PDQ suggested that the incumbent supervised only 20% of his duty time, the newer PDQ indicated 55% of his time to be in supervision, and the incumbent further testified as to the earlier 20% figure that additional percentage increments needed to be added on as a consequence of supervisory responsibilities respecting data management, budget and other areas.

5. The employees supervised by Mr. Holland were skilled professionals. However, even professionals need supervision. This is particularly so in the FRED Division which encompasses over 400 employees and as such the review of employees is particularly acute and comprises more than simply professional interaction. The fact that a primary duty of Mr. Holland's section is to produce the annual report on FRED does not render Mr. Holland's obligations purely professional and non-supervisory. Indeed, Mr. Holland's supervisory duties

logically follow from the mandate to him to deliver that report. Mr. Holland testified that on typical days he was in meetings three-quarters of the time supervising employees. Mr. Holland writes evaluations for the three directly-supervised professional employees and spends, according to his testimony, more than four hours per day supervising his subordinates.

6. Benjamin Van Alen's position, as a Fisheries Biologist IV in the Commercial Fisheries Division of the Department of Fish and Game, is described as primarily supervising the staff of the Salmon Stock Assessment Program. ASEA contends that Mr. Van Alen, somewhat like Mr. Holland, works primarily as a professional or lead-worker delivering a professional service in consultation with other professionals rather than as a supervisor. The position was characterized by the following:

A) the incumbent directly supervised six employees and indirectly supervised up to fifty-five employees typically hired on a seasonal and part-time basis.

B) the incumbent has full authority to appoint employees, although the PDQ suggests appointment authority is limited solely to permanent/seasonal employees, a discrepancy explained by the incumbent as a lack of certainty as to the scope of the question given that he prepared that answer in the PDQ when he first was promoted in April, 1989;

C) the incumbent has full authority to transfer employees between PCN's although he has not yet done so, although the PDQ implied the same limitations noted in paragraph B) above;

D) the incumbent apparently has full authority to promote in that he could move and has moved employees from a Fisheries Biologist II to a Fisheries Biologist III classification, although the PDQ implied the same limitations noted in paragraph B) above;

E) the incumbent has full authority to suspend employees although he has not yet done so;

F) the incumbent has apparent full authority to discharge employees although he has not yet done so, and although the PDQ implied the same limitations noted in paragraph B) above;

G) the incumbent has full authority to settle grievances if the GGU contract bar did not preclude such grievance considerations;

H) the latest PDQ suggests the incumbent spends greater than 80% of his time in actual supervision including a minimum of four hours per day with respect to the six directly-supervised employees.

7. Mr. Van Alen no longer performs actual biology studies and his work in biology is now solely that of managing biology programs, a difference from his previous position as a Fisheries Biologist III when he was delivering such studies. Indeed Mr. Van Alen, somewhat to his regret, does very little field work.

8. ASEA contended that Mr. Van Alen's recasting of the percentages of time devoted to supervisory work in a revised PDQ shortly before the hearing was questionable in that it was arguably prepared for the sole purpose of supporting the transfer among bargaining groups. Mr. Van Alen indeed referred to a "master list" provided by the State relating to the criteria of supervisory classifications, although he testified that the recasting of the percentage numbers was performed prior to his having read that "master list".

9. The facts deduced at the hearing strongly supported the supervisory status of each of the employees presented to the hearing officer.

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. The hearing officer stated that his findings would be consistent with the determinations approved in Order and Decision No. 123.

2. 2 AAC 10.220 (b)(3) defines a "supervisory employee" as:

An individual having substantial responsibility on behalf of a public employer regularly to participate in the performance of all or most of the following functions:

employee, promote, transfer, suspend, discharge, 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.

This regulation has been applied by the Agency in a number of cases, particularly Order and Decision Nos. 15, 26, 63, and 123. These cases set forth a number of guidelines including the following:

- a. Transfers must be reviewed on a case by case basis for factual determination;
- b. The supervisor must "supervise" at least two subordinates;
- c. The majority of the 6 criteria identified in 2 AAC 10.220(b)(3) (i.e., 4) must be demonstrated;
- d. An employee must dedicate "most" or in excess of 50% of his or her day-to-day responsibilities to supervisory tasks;
- e. The fact that a particular supervisory criterion (such as promotion or discharge) has not yet been exercised does not render that criterion unsatisfied for purposes of applying the test in 2 AAC 10.220(b)(3).

3. The Agency has previously found that the performance of a professional function is not in and of itself supervisory, although the performance of such duties may be supervisory. It does not follow that performance of professional functions precludes supervisory status consideration. Geriatrics, Inc., 99 LRRM 1606 (NLRB 1978). While the delivery of professional services is not supervisory, professionals are themselves capable of being supervised, and such supervision includes reviewing and dictating the completeness and performance of reports and other tasks performed by other professionals. See for example, NLRB v. Yeshiva University, 63 L.Ed 2d 115, 125 (1980) and NLRB v. Doctors' Hospital of Modesto, Inc., 489 F.2d 772 (9th Cir. 1973). In this case, Messrs. Holland and Van Alen performed

substantially most of their work by supervising other professionals even though aspects of this work constituted professional interaction. Because Messrs. Holland and Van Alen were each respectively charged with delivery of products from their section, they necessarily were charged with supervising the preparation of that product by subordinate employees.

4. The cumulative weight of the evidence on a case by case basis and the application of the analyses set forth above justify the movement of the positions held by Messrs. Holland and Van Alen to the supervisory unit from the GGU.

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 following incumbents (and positions) should be placed in the supervisory unit represented by APEA:

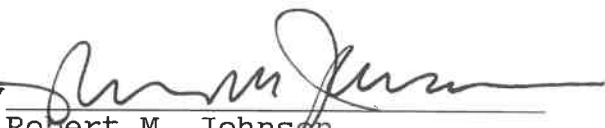
a. J. S. Holland, Jr., Assistant Director, FRED, Department of Fish and Game, PCN 11-5034.

b. Benjamin Van Alen, Fisheries Biologist IV, Commercial Fisheries Division, Department of Fish and Game, PCN 11-1398.

DATED this 17th day of November, 1989.

FOR THE ALASKA STATE LABOR
RELATIONS AGENCY

By


Robert M. Johnson
Hearing Officer

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OF NOV, 1989, A TRUE AND CORRECT
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