STATE OF ALASKA

LABOR RELATIONS AGENCY

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LEGAL COUNSEL

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 90-1

ORDER AND DECISION NO. 126

SUBJECT: Distinctions between supervisory unit and general government unit.

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 12 day of APRIL, 1990.

ALASKA STATE LABOR RELATIONS AGENCY

By: C.R. "Steve" Hafling

C.R. "Steve" Hafling
Chairman

THIS IS [illegible] THAT ON THIS 10th DAY OF APR 1990, A TRUE AND CORRECT COPY OF THE FOREGOING WAS ~~HAND DELIVERED/~~ MAILED, POSTAGE PREPAID, TO ASEA (QUINN); APEA (WILKERSON). STATE (HUNGERFORD, DIV PERSONNEL)

WOHLFORTH, ARGETSINGER, JOHNSON & BRECHT

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Respondents.

UC 90-1

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 March 28, 1990 in Juneau, Alaska. ASEA presented its case through Michelle Castanedo and Bill Quinn. APEA presented its case through Joan Wilkerson. The State presented its case through Tamara Hungerford. 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 of various re-organization efforts, the State advised ASEA and APEA of its intention to move a number of employees from GGU classification to supervisory unit status. The State duly notified the Agency of its intention to move up to 16 employees, and the parties informally met with respect to any objections to these proposed moves. By the time of the hearing set in this matter, the total number of objections had been reduced to consideration of only the two positions currently held by Salee V. Duncan and Bonnie G. McEwen. As such the hearing officer was requested to rule only 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. The position held by Salee Duncan, PCN 10-0311, was formerly classified as a Recording Clerk II and the state proposes to reclassify it as a Recording Clerk III. The position is in the Department of Natural Resources, Division of Management, Recording/UCC section, Anchorage. A recent PDQ prepared by Ms. Duncan, and a prior PDQ were considered, as well as the allocation memorandum. Ms. Duncan was present and responded to questions from representatives of each of the State, APEA, and ASEA. The information cumulatively demonstrated that:

a) Ms. Duncan supervises three subordinates, and the general description and purpose of her duties were to primarily supervise the recording functions of a unique, independent group of recording clerks charged with reviewing and entering recordation from 34 remote districts;

b) Ms. Duncan's testimony and her most recent PDQ demonstrated that she engages in supervisory activities some 60% of the time, and the supervisory activity was not simply that of a lead employee role or one requiring a substantial amount of actual hands-on performance of the same types of duties as performed by her subordinates. Rather the position emphasized training, cross-checking, reviewing, and overseeing the work performed by her three subordinates. These tasks are not routinized but require independent judgment.

c) At least four Recording Clerk III positions contended by ASEA to be analogous to Ms. Duncan's position were alleged by ASEA to be in the GGU unit. Upon uncontested representation by the Department of Natural Resources, the positions were identified as in the supervisory unit.

d) The position held by Ms. Duncan satisfied at least five of the criteria established by the Agency for determining supervisory status. The incumbent had full authority to appoint; promote (by flex-staff appointment) at least two positions while a realistic opportunity for promotion of the third employee who filled the highest range in that job classification was not available; transfer; suspend; discharge; and in the event that a contract bar did not prohibit such activities settle grievances. It was further noted however that with respect to these activities, Ms. Duncan had not had the opportunity to in fact promote, suspend, discharge or settle grievances.

e) Ms. Duncan had not had any training respecting supervisory performance particularly respecting suspension or discharge.

4. The position held by Bonnie McEwen, PCN 06-3075, was formerly classified as an Accounting Technician II and is proposed to be re-classified as an Accounting Supervisor I. The position is in the Accounts Payable Section of the Division of Family & Youth Services, Department of Health & Social Services. A recent PDQ and allocation memorandum were considered, and Ms. McEwen was present and testified to questions posed by the State, ASEA and APEA. The information cumulatively demonstrated that:

a) Ms. McEwen would supervise three subordinates.

b) The functional intent of the position is primarily that of a supervisor. Of some concern in the hierarchy however was the existence of an Accounting Supervisor, who under the re-organization proposed by

DHSS would supervise in essence only Ms. McEwen and an Accountant III who in turn would be supervising three or four members in a Budget Section. Nevertheless, Ms. McEwen's testimony and her PDQ indicated that her supervisory functions on a day-to-day basis exceeded sixty percent of the time.

c) Ms. McEwen more probably than not satisfied four or five of the six criteria set by the Agency for supervisorial status. Ms. McEwen had full authority to appoint, transfer, suspend up to three days and settle grievances but for a contract bar. Ms. McEwen had no realistic prospect of exercising promotional opportunities inasmuch as all of subordinates were Clerk Typists III's with no upward mobility within that classification. Ms. McEwen had authority to make only recommendations respecting discharge. Ms. McEwen had appointed three persons but had not yet engaged in any actual suspension, discharge, or grievance settlement actions although she had engaged in informal talks to remedy problem areas.

d) Ms. McEwen has taken classes on supervision. In instances where she is absent, some of her functions are picked up by her subordinates but many of the supervisorial functions implied in her certification authority go only to the co-equal supervisory of the budget section or to her supervisor.

e) Examples of Ms. McEwen's supervisory activities include timing, setting of priorities, planning, and setting procedural guideline. These tasks are not routinized but require independent judgment.

5. ASEA contends that the positions held by Ms. Duncan and McEwen should remain in GGU because, while they are positions of substantial responsibility, they nevertheless constitute "lead positions" rather than supervisory positions. The evidence however suggests that, rather than being merely lead positions wherein the employee would be in fact performing a substantial amount of the same duties as the subordinate employees, these positions in fact constitute supervisorial ones. The facts adduced at the hearings strongly support the supervisory status for 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.

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: employ, 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, 123, and most recently 125. 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).