



State of Alaska
LABOR RELATIONS AGENCY

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October 17, 1977

ORDER AND DECISION NO. 30 PERTAINING TO
A PETITION FOR AMENDMENT/CLARIFICATION
OF THE LAW ENFORCEMENT BARGAINING UNIT

FINDINGS OF FACT

The history of the establishment of the Law Enforcement Bargaining Unit is to be found in Order and Decision No. 28, from which is quoted the following:

"The Public Safety Employees Association, Inc., State of Alaska, an employee organization as defined by Alaska Statute 23.40.250(4), and which has filed Articles of Incorporation with the State of Alaska Labor Relations Agency, made timely filing of a petition for authorization of a collective bargaining unit consisting of employees in the State of Alaska Department of Public Safety other than supervisory, managerial and confidential employees.

"The petition contained verified signatures of more than eighty percent of the affected employees.

"...Those classifications also listed in the petition by the Public Safety Employees Association are indicated ... as follows:

"Constable
Judicial Services Officer
State Trooper
Corporal, Public Safety
Sergeant, Public Safety
Staff Sergeant, Public Safety
Investigator I & II, Public Safety
Demolition Specialist
Building Security Specialist I & II
Weights & Measures Inspector, I, II & III
Radio Dispatcher I, II & III
Protection Aide
Latent Fingerprint Examiner II
Fire Dispatcher I & II
Trooper Operations Assistant
Investigator - 7719
Police Photographer
Warrant Officer, Public Safety
Lab Technician

"Pilots, Public Safety
Fire Marshals
Fish and Wildlife Protection Officers
Fish and Wildlife Protection Aides
Inspectors of the Division of Fire Prevention"

During the hearing on October 18, 1976, on the matter, the petitions were modified to include the classification of Fire Protection Engineer.

At the close of the hearing the Alaska State Labor Relations Agency reached unanimous conclusions and described in general terms the decisions reached therefrom, subject to appropriate revisions as to wording and form, which revisions were included in Order and Decision No. 28.

A secret mail ballot was conducted and the results tallied on November 29, 1976, certified on December 3, 1976, which showed the Alaska Public Safety Employees Association the winner by an overwhelming majority.

Alaska Statute 23.40.090. Collective Bargaining Unit, states:

"The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by Secs. 70-260 of this chapter, the unit appropriate for the purposes of collective bargaining, and other working conditions of the employees involved, the history of collective bargaining, and the desires of employees. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided."

The Labor Relations Agency found that the classifications set forth in Order and Decision No. 28 have a clearly demonstrable community of interest in that they are sworn public safety officers who wear or may wear badges, who are or may be armed, and who have full penal arrest powers. Furthermore, all of these classifications are in the Department of Public Safety and have the same management.

The Labor Relations Agency found that one or more of the above-listed criteria did not apply to various classifications petitioned

for by Public Service Employees Local No. 71 which are not in the Department of Public Safety. The Agency further found that one or more of the above criteria did not apply to certain classifications included in the petition by the Public Safety Employees Association, namely:

Laboratory Technicians
Latent Fingerprint Examiner
Protection Aide
Fish and Wildlife Protection Aide
Dispatchers
Pilots per se

In Order and Decision No. 28, the following pertinent conclusions were reached:

"With certain modifications discussed during the hearing and herein, a Unit of Public Safety Employees is appropriate and the Alaska Public Safety Employees Association, Inc. has been certified as the collective bargaining representative for that Unit."

The oral decision at the close of the hearing used the term "regularly commissioned" because that term was used by witnesses in the hearing. However, that term apparently has no meaning except by usage, and therefore the general description of the Unit should be modified to include all of those classifications within the Department of Public Safety (other than Supervisory and Confidential as defined in the regulations) which have primary responsibility for the prevention and detection of crime and the enforcement of the fish and game, penal, traffic or highway laws of the State and require certification as a police officer by the Alaska Police Standards Council. In addition, job classes established for training purposes, where satisfactory completion of training and promotional advancement requires such certification, should also be included in the Unit.

On August 9, 1977, the Labor Relations Agency received a petition for amendment/clarification of the Law Enforcement bargaining unit

from the Public Safety Employees Association. These employees are currently represented by the Alaska Public Employees Association under the General Government bargaining Unit for the State of Alaska.

The proposed clarification of the bargaining unit would add the following positions to the bargaining unit:

Weights & Measures Inspector I
Weights & Measures Inspector II

The petition for clarification/amendment of the Unit was opposed by the Alaska Public Employees Association. There were no other intervenors or objectors, and the Department of Administration of the State of Alaska took no position with respect to the question.

Clarification/amendment of the bargaining unit was requested for the reasons set forth in the petition as follows:

"A. Position of Weights and Measures Inspectors appropriately fall within the Public Safety Employees bargaining unit as established by the Labor Relations Agency.

"B. The position of Weights and Measures Inspectors were transferred to the Department of Public Safety subsequent to the public hearing conducted on the petition of the Public Safety Employees Association in October, 1976. At that time, the Division Director of the Alaska State Troopers testified that in the event the Weights and Measures Inspector positions were transferred into the Department of Public Safety, those positions would appropriately be included within the Public Safety Employees Association bargaining unit.

"C. A large percentage of the Weights and Measures Inspectors have requested inclusion within the Public Safety Employees Association bargaining unit.

"The public employer involved in this petition is the State of Alaska Department of Public Safety. The State of Alaska has approximately 8,000 employees, and the Department of Public Safety employs approximately 700 Supervisory and General Government employees. The appropriate executive within the Department of Public Safety to contact with respect to this matter is Commissioner of Public Safety Richard Burton, whose address is Pouch "N", Juneau, Alaska 99801.

"At least thirty percent of the permanent and probationary employees in the classification for which inclusion in the Public Safety Employees in requested have signed authorization cards.

" Petitioner's name is Public Safety Employees Association of Alaska, Inc. A copy of the Constitution and By-laws which are currently on file with the Director of Commerce has previously been filed with the State Labor Relations Agency. Petitioner is not affiliated with any other labor organization. Petitioner is affiliated with the Fraternal Order of Alaska State Troopers."

The Labor Relations Agency held a hearing on this matter in Anchorage, Alaska on September 12, 1977.

The petitioner's petition was presented. In opposition thereto, the Alaska Public Employees Association argued that this petition was not properly a matter for decision under those provisions of the regulations referring to amendment/clarification of a unit, but should only be brought before the Agency under the "window" period prior to the expiration of the collective bargaining agreement between the State and the Alaska Public Employees Association.

The opportunity was provided to both parties to submit post-hearing briefs, which they did. Some contentions were made that agreement had been reached between the Public Safety Employees Association and the Alaska Public Employees Association with respect to the movement of these classifications, and these contentions were denied.

The Public Safety Employees Association, petitioner, in their post-hearing brief, stated the facts of the case with sufficient detail, clarity and accuracy so that the matter can best be set forth by simply quoting from said brief, as follows:

"Statement of Case

This is a petition for clarification of the law enforcement bargaining unit. That unit was created pursuant to Order and Decision No. 28 of the State of Alaska Labor Relations Agency. Order No. 28 was issued on or about January 3, 1977 as a result of an extensive bargaining unit and representational hearing conducted by the Labor Relations Agency in October, 1976. As is apparent upon review of Order No. 28 (...),

"the bargaining unit which was created by the Labor Relations Agency consisted of Judicial Services Officer, State Trooper, State Trooper Recruit, Corporal, Sergeant, Staff Sergeant, Warrant Officer, Investigator I, Investigator II, Deputy Fire Marshal I, Deputy Fire Marshal II, Demolition Specialist, Fire Protection Engineer, Constable, Security Specialist I, and Security Specialist II. That bargaining unit has continued in existence to date and has negotiated with the State of Alaska, completing its first collective bargaining agreement which expires on December 31, 1977.

"As noted, the instant proceeding before the Board consists of a request by the certified representative, PSEA, Inc. to represent 14 additional positions formerly known as Weights and Measures Inspectors and presently denominated as Vehicle Enforcement Officers, to fall within the bargaining unit. This request arises out of some confusion and some concern expressed during the October 1976 hearing at which time PSEA became advised in the presence of the Board that the Department of Public Safety had assumed responsibility for those 14 positions and the Division Director of the Alaska State Troopers was of the position that those employees should appropriately be included within the bargaining unit.

"At that time, as noted during this hearing, the Chairman for the State Labor Relations Agency advised all parties that if it in fact transpired that said positions were transferred into the Department of Public Safety and if they assumed the role and responsibility for the bargaining unit as described in the Board's Order, then the parties should properly come before the Board for clarification of the bargaining unit.

"Statement of Facts

"On or about October 19, 1976, the Department of Commerce transferred to the Department of Public Safety 14 positions responsible for enforcement of the vehicle regulations on the highways. These positions were formerly known as Weights and Measures Inspectors I, II, III, and IV, and were actively involved prior to the departmental transfer in the whole process of weighing and measuring to ensure compliance with specified State standards.

"Subsequent to the transfer (as noted above, contemporaneous with the Board hearing on the PSEA bargaining unit), the Department of Public Safety substantially changed the job functions and duties of these individuals. In this respect, the Department required that each employee fulfilling the job function be denominated a Vehicle Enforcement Officer, wear the Alaska State Trooper uniform, be armed at all times (both on and off-duty), operate an Alaska State Trooper motor vehicle, meet entry level Trooper requirements, enforce the general penal laws of the State in all areas, be certificated as a peace officer within the meaning of the Alaska Police Standards Council, and be subjected to all disciplinary and operating procedures existing within the Department of Public Safety. These individuals were assigned to Alaska State Trooper detachments around the State and are directly responsible to detachment commanders of the Alaska State Troopers. They are dispatched by Alaska State Trooper Dispatchers and are frequently called upon to enforce laws outside their area specialty to and including traffic accidents, traffic offenses, and the more severe criminal offenses specified in the Criminal Code for the State of Alaska.

"The uniform, weapon, and automobile which the Vehicle Enforcement Officer uses in the course of his duties is indistinguishable from that of the Alaska State Trooper with the minor exception that on the badge of the Vehicle Enforcement Officer is the notation in small letters "Vehicle Inspector". The job responsibilities which these individuals are asked to perform are subject to the same risks and same demands as was lengthily discussed in the Board hearing on the original PSEA petition during October of 1976.

"Of special significance in light of the belated objection presneted to the Board for the first time at the Board hearing regarding the procedural regularity of this petition is the context and sequence of events during the initial hearing conducted in October of 1976. As the Board will recall, the petition filed by petitioners for the initial bargaining unit determination and representation did not make reference to Weights and Measures Inspectors. As noted in the record at that time, it was the understanding of PSEA at the time of the original presentation of its petition to the Agency, that Weights & Measures Inspectors fell under the Department

of Commerce and were not responsible for enforcement of general penal laws in the same manner as PSEA-proposed bargaining unit positions. However, in the midst of the hearing and for the first time, PSEA was advised of the pendency of a decision to transfer into the Department of Public Safety the 14 positions described above. Even under those circumstances, neither PSEA nor the State Labor Relations Agency was in a position to state what the job function and requirements of these employees would be when transferred to the Department of Public Safety. The Agency will recall that Colonel Wellington, when questioned in this regard, indicated that he himself was unsure at that time how the employees would be treated but assumed that they would appropriately be included within the bargaining unit.

In the present proceeding, Mr. Hafling, Chairman of the Agency, noted (and his notation is in agreement with Petitioner's recollection) that PSEA and all parties participating in the original hearing -- to and including APEA -- were on notice that if it developed that Weights & Measures employees appropriately should be included in the bargaining unit, the parties should petition for clarification of the bargaining unit. As is apparent in this case, PSEA, Inc. has done just as invited by the State Labor Relations Agency and has in fact petitioned for clarification of the bargaining unit based upon the subsequent developments and events described briefly above.

PSEA filed its petition in this matter on or about August 2, 1977. In response to that petition, APEA filed a formal objection as allowed under the rules. In its objection, APEA noted simply that its concerns were directed toward whether the petitioned-for-employees met the requirements of the Board's Order No. 28. No indication was made at that time that any procedural objection existed. In fact, APEA stated for the record that if the employees met the criteria of the Board's Order, APEA would withdraw its objection. As noted in argument and by the attached affidavit (see Appendix II), PSEA's attorney spoke with both Mr. Ed Sharp of APEA and Mr. Pat Murphy, attorney for APEA, and was advised that the APEA objection would be simply directed toward whether the 14 positions in question appropriately meet the criteria of Order No. 28 and the State statute. As is apparent upon a reading of APEA's objections, that was the position which APEA took until time of hearing on September 12, 1977. Similarly, the Labor Relations Agency did not reject the request of PSEA out of hand but rather apparently concluded that a question of representation existed and directed a hearing and an investigation into the matter."

Quoting from petitioner's Supplemental Filing:

II. D. Vehicle Enforcement Officers occupy a community of interest with other positions within the law enforcement unit represented by Public Safety Employees Association, Inc. In this regard, they wear the same uniforms as Alaska State Troopers, operate the same motor vehicles as Alaska State Troopers, are armed, are certificated as peace officers in accordance with the Alaska Police Standards Council, are required to perform police work in varying respects and throughout the wide range of police investigation normally performed by Alaska State Troopers, entry level requirements are the same, discipline requirements between the PSEA bargaining unit and these employees are the same, and they are occupationally located within the same chain of command as other Alaska State Troopers and PSEA membership.

III. Paragraph V should be supplemented to reflect that there are 14 positions within the Department of Public Safety which are the subject of this petition. Those positions are located as follows:

Juneau, Alaska	1
Soldotna, Alaska	2
Anchorage, Alaska	4
Valdez, Alaska	2
Glenallen, Alaska	1
Fairbanks, Alaska	4

CONCLUSIONS:

1. While the APEA is perfectly correct in stating that the purpose of the provision in the regulations for amendment or clarification of a petition was not intended to provide open season year round for inter-union raiding, the provision was made in the regulations for the clear and evident purpose of (a) correcting mistakes, (b) providing for the proper placement of new classifications and (c) for providing for the movement of classifications whose duties have changed substantially enough so that there would be little or no question as to the appropriateness of being in a different bargaining unit.

As Mr. Huffman has pointed out, it is somewhat anomolous for APEA to argue against the propriety of this type of movement when there has been a whole series of hearings, leading to decisions and orders which move employees from the General Government Unit to the Supervisory unit or vice versa.

During the original hearing in October 1976, the question arose, even then, as to whether Weights & Measures Inspectors, as they were then known, should be in the Public Safety Employees Unit. The decision was made at that time that they did not properly belong in the Public Safety Unit for two reasons:

1. They fall under the jurisdiction of the Department of Commerce;
2. In addition to Motor Vehicle Inspectors, the classification also included other types of inspectors who did not have police powers.

Therefore, the matter was deferred with the prospect clear to everyone that if the Motor Vehicle Inspectors were in fact transferred to the Department of Public Safety and were in fact made peace officers as defined in Order and Decision No. 28, that it would quite likely be appropriate to entertain and act affirmatively upon a petition for amendment of the Law Enforcement bargaining unit to include those persons.

The Agency adopts as its own conclusions those postulated by Mr. Richard Huffman, attorney for the Public Safety Employees Association, with respect to community of interests, lines of promotion, transferability and so forth. In particular, the fact that they wear the same uniforms as the state troopers, operate the same motor vehicles, are armed, are certificated as peace

officers in accordance with the Alaska Police Standards Council, are required to perform police work normally performed by Alaska State Troopers, entry level requirements are the same, discipline requirements between the PSEA bargaining unit and these employees are the same, and they are occupationally located within the same chain of command as other Alaska State Troopers and PSEA membership. These facts are clear evidence of the community of interest and the appropriateness of placing petitioners in the Law Enforcement bargaining unit.

ORDER AND DECISION NO. 30

It is hereby ordered that the Motor Vehicle Inspectors positions petitioned for by the Public Safety Employees Association, Inc. shall be transferred to the Law Enforcement bargaining unit effective 12:01 AM, local time, on the 1st day of the 1st month following execution of this decision by the Labor Relations Agency.

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

DATED: Oct. 31, 1977

SIGNED: Ronald M. Henry
Ronald M. Henry, Member

DATED: 11-3-77

SIGNED: (S) Morgan REED
Morgan Reed, Member ⁽⁷⁰⁾

DATED: _____