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PUBLIC SAFETY EMPLOYEES )  
ASSOCIATION, )  
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Petitioner, )  
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vs. )  
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STATE OF ALASKA, )  
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Respondent, )  
 )  
and )  
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ALASKA STATE EMPLOYEES )  
ASSOCIATION, )  
AFSCME LOCAL 52, AFL-CIO )  
 )  
Intervenor. )  
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Case No. 03-1229-RC/RD

**DECISION AND ORDER NO. 270**

The board heard this petition for decertification and certification of a new bargaining representative on June 25-27, 2003. This decision was based on the evidence submitted, the testimony of witnesses at hearing, and the arguments of the parties, including post-hearing arguments filed on August 18 and 25, 2003. The record closed on August 9, 2004, after a delay in deliberations and appointment of new Board members.<sup>1</sup> Hearing Examiner Mark Torgerson presided.

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<sup>1</sup> The original Board panel completed its deliberations in December 2003. Before a decision could issue, original labor member Raymond Smith and management member Dick Brickley were replaced on the Board. Gubernatorial appointee James Spaulding replaced Smith. A dispute arose regarding Mr. Spaulding's status on the Board. After wrangling in the courts, Spaulding withdrew his name from consideration as a labor member of the Board. The other labor Board member, Randall Frank, was then assigned to the panel for this case. Management Board member Colleen Scanlon replaced Brickley. After Board members Frank and Scanlon had an opportunity to review the record, the panel completed deliberations on August 9, 2004.

**Digest:** The petition of the Public Safety Employees Association to sever the Adult Probation and Parole Officers from the general government unit represented by the Alaska State Employees Association is denied. The Petitioner failed to demonstrate that the incumbent representative of the existing bargaining unit was not adequately representing the interests of the smaller group, and that the proposed group is an appropriate unit, among other factors.

**Appearances:** James Gasper, attorney for the Public Safety Employees Association; Art Chance, Director, State of Alaska, Labor Relations, Christine Yates, Labor Relations Analyst, State of Alaska; Douglas A. Carson, Business Agent, Alaska State Employees Association.

**Panel:** Aaron Isaacs, Jr., Randall Frank, and Colleen Scanlon.

## **DECISION**

### **Statement of the Case**

The Public Safety Employees Association (PSEA) filed a petition to decertify the Alaska State Employees Association (ASEA) as bargaining representative of the adult probation and parole officers that ASEA currently represents as part of the general government unit of the State of Alaska (State). PSEA wants to sever these officers from ASEA and create a new bargaining unit of public safety type personnel, consisting only of adult probation and parole officers. ASEA contends the petition is unwarranted and requests that we deny it. The State takes a neutral position on the petition.

### **Issues**

1. Is the unit proposed by PSEA -- to sever the adult probation and parole officers from ASEA -- appropriate under AS 23.40.090?
2. Has PSEA satisfied the requirements in 8 AAC 97.025(b)?

### **Findings of Fact**

The panel, by a preponderance of the evidence, finds the facts as follows:

1. ASEA is the exclusive bargaining representative for general government unit employees who work for the State. (State/ASEA Collective Bargaining Agreement; Exh. 2.).
2. ASEA and the State entered into a collective bargaining agreement for the period July 1, 2000, to June 30, 2003. (Exh. 2).

3. The State's adult probation and parole officers (adult probation officers) are part of the State's general government unit.

4. On March 28, 2003, PSEA filed a petition to carve out the adult probation officers from the general government unit. The adult probation officers are employed by the State of Alaska, Department of Corrections.<sup>2</sup> The proposed unit is described as follows:

Included: All nonsupervisory adult probationary officers currently represented by ASEA in the general government unit.

Excluded: All other employees.

5. The adult probation officers have a long history in the general government unit. The adult probation officer positions have been in the unit since its creation in 1973. Order & Decision No. 1, at 13 (Feb. 2, 1973). ASEA has represented this unit since 1989. Before then, the Alaska Public Employees Association represented the unit. There are currently between 110 and 126 adult probation officers statewide. (Petition; Hearing transcript at 366, 431).<sup>3</sup> There are approximately 7000 members in the general government unit.

6. Probation officers are officers of the court.<sup>4</sup> Adult probation officers must "use all suitable methods not inconsistent with the conditions imposed by the court to aid probationers and to bring about improvements in their conduct and conditions." (Hearing Transcript at 65; Exhibit Y).<sup>5</sup> Adult probation officers fulfill this duty by evaluating probationers and referring them to appropriate care or counseling. The officers monitor probationers and determine whether the probationers violate conditions of probation, and the officers report revocations to the courts. (Hearing Transcript at 65-66). Adult probation officers may refer probationers to a criminal justice technician who works with probationers to fulfill their community work service requirements. The officers also make education referrals when appropriate. (*Id.* at 66). Other referral resources may include the State Department of Labor and Workforce Development's Job Center, the Division of Vocational Rehabilitation, or one of the Native corporations in Alaska. After the officers assess the social and economic needs of the probationers, the officers may also refer probationers for public assistance, financial sources for financial difficulties, or other needed referrals. (*Id.* at 70).

7. Irl Stambaugh, Director of the Alaska Police Standards Council, oversees the certification of police officers (troopers), correctional officers, adult probation officers, and village safety officers. Each of these job classifications must receive certification in order to work for the State of Alaska.<sup>6</sup> (*Id.* at 92, 99). Troopers must undergo a minimum of 400

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<sup>2</sup>PSEA does not seek to represent the adult probation officers III that are supervisors and members of the supervisory unit represented by the Alaska Public Employees Association. PSEA also does not petition to sever the juvenile probation officers, whose positions are in the general government unit.

<sup>3</sup>The specific number is not important for our determination. The petition listed 110 officers, and testimony estimated between 120 and 126. At any rate, the officers comprise a small percentage of the general government unit.

<sup>4</sup>Title 33, Chapter V of the Alaska Statutes contains the Probation and Administration Act.

<sup>5</sup>This includes both adult and juvenile probation officers.

<sup>6</sup>Juvenile probation officers are not required to attend the academy.

hours of training, while minimums for correctional officers are 200 hours, and adult probation officers are 80 hours. (*Id.* at 103-04; Exh. 6, Depart of Corrections Policies and Procedures, Training and Development Chapter, Standards and Training for Correctional and Probation Officers). During the last two academies, adult probation officers trained for 166 hours and 204 hours (the most recent). (*Id.* at 95).

8. After initial certification by the Alaska Police Standards Academy, adult probation officers must amass 40 hours of ongoing training per year to keep their certification. Training ranges from case management to self-defense tactics. (*Id.* at 309; *Id.* at 489).

9. The officers work as field (community) officers and institutional officers. Institutional officers' duties differ in some respects from field officers. Institutional officers have more paperwork, conduct case management tasks such as classifications (determine inmate security risk), participate in administrative and disciplinary hearings, prepare parole board packets and make recommendations to the parole board, among other tasks. (*Id.* at 21-23). Field probation officers have similar duties, but instead of working with institutional probationers, they work with probationers who have been placed into the community. They receive training on how to conduct home visits, make probation or parole revocations, request warrants, and how to work the radio. They conduct presentence investigations, prepare reports for the court, and monitor community probationers' progress. (*Id.* at 212-23, 113).

10. Adult probation officers share a community of interest with many members of the general government unit because a substantial part of the job entails case management. Case file management is similar at both the institutional and field officer levels. Adult probation officer II Teena Calkin has worked as both an institutional and field probation officer. She testified: "[T]he biggest difference is probably the fact that the offenders are out in the community so you go to their homes, you conduct home visits, you do -- you make arrests, which we never did in the institution. (*Id.* at 31). Fieldwork is "much more hands on as far as making any kind of arrests, searching their homes, searching their cars." (*Id.*).

11. Institutional probation officers work closely with correctional officers, clerical staff and criminal justice technicians, while field probation officers work with criminal justice technicians, administrative clerks, correctional officers, and sometimes with police officers and troopers. The criminal justice technicians and administrative clerks are in the general government unit, and they are an integral part of what the adult probation officers do.<sup>7</sup> (*Id.* at 43, 88-89).

12. Adult probation officers are not required to wear uniforms. Like other Department of Corrections personnel, they are required to wear identification badges at all times. (Exh. 6).<sup>8</sup> Institutional probation officers are included in administrative or program

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<sup>7</sup> Calkin testified that the criminal justice technician and administrative clerks "are an integral part of what we do . . . . And Lord knows we could use more." (Hearing Transcript at 88-89).

<sup>8</sup> Department of Corrections Policies and Procedures, Personnel Chapter, Index # 202.10: Identification of Authority. The various colors of the stripes, background, and bordering of the Department of Corrections' badges denote the type and extent of security clearance.

staff with the highest clearance. Other than the badge requirement, they must wear "appropriate clothing." (*Id.* at 26).

13. Adult probation officers are not required to carry firearms but may request qualification to do so. The decision to carry firearms is at the discretion of each individual probation officer. If an officer decides to seek qualification, the officer must successfully pass both the physical standards and a psychological examination.

14. Field probation officers never do home visits alone. They either take another probation officer or a police officer to the home. Calkin always takes a uniformed officer with her to make an arrest in the field, when a probationer has violated conditions of parole. (*Id.* at 75; 143). Field officers wear protective gear such as bulletproof vests. If qualified, they may carry a gun. They could also carry pepper spray, or hand-held electronic device (stun gun). Institutional probation officers do not wear bulletproof vests unless they are outside the institution to, for example, transport prisoners. (*Id.* at 382).

15. Law enforcement is not a primary responsibility of adult probation officers. Their primary responsibility is managing their caseloads, including the classification process.<sup>9</sup>

16. The adult probation officers' law enforcement responsibilities and training provide a basis for sharing a limited community of interest with the members of the public safety unit represented in bargaining by the PSEA. However, adult probation officers share a greater community of interest with other State employees in the general government unit, who have contact with probation and parole individuals or their records.

17. Supervision of the probation of state employees is rare. Calkin has supervised the probation of two former state employees during the past seven years. She was unsure which union these employees belonged to. (*Id.* at 45). Institutional probation officers Kevin Holmes and Chris Lyou have not had state employee probationers on their caseloads. (*Id.* at 452-53). Field probation officer Dwayne Hanson did not have any state employee probationer on his caseload. *Id.* at 239).

18. Like other positions in the State of Alaska's classified service, the adult probation officers' wage rate is based on the range assigned to the position by the Division of Personnel, Department of Administration. Their wage rate is shared with other members of the general government unit through the collective bargaining agreement negotiated by ASEA.

19. The adult probation officers share a community of interest with other members of the general government unit regarding work hours and work schedule. Under ASEA's collective bargaining agreement, adult probation officers and other unit members

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<sup>9</sup> Hearing Transcript at 314-15. Classification is the process of analyzing a probationer's background, criminal history, and other factors to determine the type of facility (such as a prison or work farm) they require. Designation is the process of assigning the probationer to a facility on the basis of the classification determination. (Kevin Holmes testimony, hearing transcript 325-30). In performing these functions, adult probation officers counsel inmates.

generally work 37 1/2-hour weeks (7 1/2 hours per day, 5 days a week). (*Id.* at 55-56, 87-91). They do not work swing or graveyard shift. Field probation officers may work more overtime hours than institutional probation officers, but they get paid overtime compensation for hours worked in excess of their required weekly schedule. (See Exh. 3, Position Description Questionnaires). Some adult probation officers flex their work schedules. This flexible schedule, which was negotiated by ASEA, is a morale booster. The officers sometimes work weekends and get called out to duty. (Exh. 3, Position Control Number 20-6862, Point Mackenzie Rehabilitation Program.).

20. A probation officer III usually supervises the adult probation officers II and I. Probation officers III are members of the supervisory bargaining unit, represented by the Alaska Public Employees Association. Although probation officers III usually supervise adult probation officers II and I, corrections superintendents or probation officers IV or V may also provide the supervision, depending on the nature and location of the institution.

21. Adult probation officers, like police and fire fighters, may retire after 20 years of employment. (*Id.* at 63). Most employees in the general government unit may retire after working 30 years.

22. Adult probation officers are deemed class I employees under the Public Employment Relations Act. PSEA's police officers and correctional officers are Class I employees, too. Class I employees are prohibited from striking. There are approximately 1,500 Class I employees in the general government unit. (*Id.* at 504). Most of the other members of the general government unit are Class III employees, and they may strike.

23. Adult probation officers have received adequate representation from ASEA. Calkin has never had a problem with Alaska State Employees Association, her current union. (*Id.* at 86). The Association represented her well in a grievance she filed a few years ago. (*Id.*). Some of the issues that occurred at ASEA have left Holmes "fit to be tied" but he is involved in ASEA as a member of the judicial panel. He likes the idea that he can disagree with the union but still get involved in union matters. (*Id.* 368). Several other probation officers have been involved in ASEA matters, and one probation officer has been ASEA's president. (*Id.* at 369).

24. The working conditions of the adult probation officers resemble conditions of members of the public safety unit when the adult probation officers perform law enforcement duties. However, the great majority of the adult probation officers' work duties are not spent in law enforcement. In general, their working conditions more closely resemble the working conditions of other employees in the general government unit.

25. PSEA and ASEA each provided evidence of employee support for their bargaining units. The evidence in the record did not provide clear support for one organization over the other organization.

26. PSEA demonstrated that it could provide adequate representation for adult probation officers. PSEA's substantial history of representation of the public safety unit qualifies it to represent the adult probation officers that share, as part of their job, law enforcement duties with members of the public safety unit. PSEA's years of representation of the airport safety officers demonstrate that PSEA can represent employees whose duties

combine law enforcement with other responsibilities. (*Public Safety Employees Association (Park Rangers) vs. State of Alaska*, Decision and Order No. 209, Finding of Fact No. 13, at 7 (November 13, 1996).

27. The evidentiary record did not establish a clear-cut history of representation of adult probation officers in law enforcement or public safety bargaining units in Alaska or other states. The record contains exhibits providing information from some other states showing probation officer membership in bargaining units. The structure of these units varied. For example, Wisconsin's classified employees belong in six different units that include blue collar and non-building trades, security and public safety, technical, administrative support, and professional social services.<sup>10</sup> While correctional officers and "officers," fire and security personnel were part of the security and public safety unit, probation officer positions were part of the professional social services unit. (Exh. JJ). The classified employees of the Commonwealth of Pennsylvania were interspersed into 13 bargaining units. (Exh. KK). Although the record does not include the entire collective bargaining agreement for these units, the table of contents indicates that among the 13 units are an inspection, investigation, and safety unit (professional, non-supervisory), and also a law enforcement, fish and boat unit. Parole agents were part of the professional non-supervisory unit. Finally, Michigan's structure provided for 11 different bargaining units of classified employees. (Exh. MM). Although there is a security unit for corrections personnel, and a state troopers unit, parole officers are included in the state's human services unit.

28. ASEA has a lengthy history of representing members who have law enforcement duties as part of their job.

29. Under AS 23.40.090, bargaining units "shall be as large as is reasonable." The unit that PSEA seeks to carve out from the general government, adult probation officers, is not a unit that is as large as is reasonable.

### **ANALYSIS**

The issues in this case, as in all other cases to sever a group of employees from an existing unit, are 1) whether the proposed unit is appropriate under AS 23.40.090, and 2) whether the petitioner has satisfied the conditions of 8 AAC 97.025(b). PSEA proposes to sever the adult probation officers from the general government unit, represented in collective bargaining by ASEA, and establish a separate unit.

1. Whether the proposed unit is appropriate under AS 23.40.090.

PSEA must establish by a preponderance of the evidence that the adult probation officers would be an appropriate unit for purposes of collective bargaining based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees.

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<sup>10</sup> We counted only five units. If there is a sixth, the material was apparently not provided.

In addition, units must be as large as is reasonable and avoid unnecessary fragmenting. AS 23.40.090.

a. History of collective bargaining.

In *United Academics-AAUP/AFT, AFL-CIO vs. University of Alaska*, Decision and Order No. 202, we expressed reluctance to disrupt longstanding bargaining units: "We note that the National Labor Relations Board is reluctant to disturb longstanding bargaining units. 1 Patrick Hardin, *supra* 455; see e.g., *Buffalo Broadcasting Co. and National Ass'n of Broadcast Employees & Technicians*, 242 N.L.R.B. No. 152, 101 L.R.R.M. (BNA) 1306 (1979)."<sup>11</sup> This Agency gives great weight to relevant decisions of the National Labor Relations Board and federal courts. 8 AAC 97.450.

The general government unit, which is the current bargaining unit of the adult probation officers, was established and described in *Decision And Order Concerning Petitions Number 1-72, 2-72, 3-72,4-72, 5-72, And Relevant Interventions And Objections*, Order and Decision No. 1, at 10-11 (Feb. 2, 1973):

Employees covered by Petition No. 2-72 have a community of interest with all other state employees. They provide services to the people of Alaska at the direction of the elected representatives of the people. They all come under a common civil service merit system and their compensation is set by the legislature. There is a uniform grievance procedure and a uniform system of progressive discipline. Recruitment, examination, transfer, promotion, orientation and training are conducted on a uniform, system-wide basis. . . . Approximately 90 percent of the employees in question are professional, technical or clerical. The interests of these groups are intertwined and the distinctions between them are often blurred. This establishes the fact that there is a substantial community of interest among state employees in general.

The adult probation officer classifications have resided in the general government unit since 1973. Based on the adult probation officers' longstanding history in the general government unit and the successful bargaining history since then, we find the history of collective bargaining favors adult probation officers remaining in the general government unit. Although an adult probation officer's duties may require probation or parole dealings with fellow bargaining unit members, with potential for a conflict of interest, the evidence in the record shows these dealings have been rare through the years. Further, there is no evidence that conflicts of interest have occurred.

Inevitably, any state job that deals with the State's citizens could create a conflict of interest when the state employee in that job must deal with another state employee. It is possible, for example, that a police officer or correctional officer may have dealings with a fellow bargaining unit member. A park ranger, inspector, natural resource technician, weigh station operator, security guard, or museum security employee may have business contacts

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<sup>11</sup> "The Board is reluctant to disturb longstanding bargaining units, whether established by agreement or by certification, when bargaining in those units has been successful. Bargaining history is therefore an important factor in unit determinations." 1 Hardin and Higgins, *The Developing Labor Law* 507 (Fourth Ed. 2001).



with another state employee. These contacts could occur with many positions in the general government unit. Again, there is no evidence that these rare interactions have produced a troubling issue for adult probation officers in the general government unit.

b. Community of interest and working conditions.

The Alaska Police Standards Council statutes, found in AS 18.65.130 - AS 18.65.290, define parole officer as "a person appointed by the commissioner of corrections to perform the duties of supervising the parole of prisoners under AS 33.16." (Exh. X at 5). For some adult probation officers, part of this supervision includes a law enforcement component -- arresting probationers who violate their probation.

Some of the adult probation officers maintain, and PSEA argues, that an increase in adult probation officers' law enforcement responsibilities justifies moving them from the general government unit and creating a third unit of law enforcement type personnel, which in this case would consist only of adult probation officers. We have previously found that several job classes in the general government unit have at least some law enforcement duties. These include park rangers, inspectors, natural resource technicians, weigh station operators, security guards, and museum security employees. *Public Safety Employees Association vs. State of Alaska*, Decision and Order No. 209, at 10, 20 (November 13, 1996).

Nonetheless, we have previously concluded that each of these job classes more closely shared a community of interest similar to that of other job classes in the general government unit. We denied petitions to move these positions out of the general government unit. *Public Safety Employees Association (Park Rangers) vs. State of Alaska*, Decision and Order No. 209, (November 13, 1996); *Public Safety Employees Association (aircraft rescue and fire fighting specialists) vs. State of Alaska*, Decision and Order No. 187 (May 25, 1995); *Public Safety Employees Ass'n (F.W.E.O.) v. State of Alaska*, Decision & Order No. 186 (May 25, 1995), and *Public Safety Employees Ass'n v. Alaska State Employees Ass'n and State of Alaska*, SLRA Order & Decision No. 120 (Aug. 28, 1989).

In Decision and Order No. 209, we reiterated that the public safety unit should include all classifications that have "primary responsibility" to enforce the law. Decision and Order No. 209, at 11, citing *Pertaining to a unit authorization petition by Public Safety Employees Ass'n*, SLRA Order & Decision No. 28 (1977). We again stress that the core factor for determining a community of interest in the public safety unit lies in a primary responsibility for law enforcement.

Applying these considerations to the adult probation officers, we have found that adult probation officers do have law enforcement responsibilities. While some witnesses (including a trooper who worked with field probation officers) testified that the law enforcement portion of their job had increased in recent years, position description questionnaires in the record indicate that the percentage of the total workweek devoted to law enforcement is low.

At any rate, the preponderance of evidence supports a conclusion that law enforcement is not the adult probation officers' primary responsibility. Law enforcement

involvement varies by position and by caseload. Several of the position description questionnaires estimate that field probation officers II spend approximately 2 percent of their work time arresting probationers who violate the conditions of their parole. (Exh. 3). None of the witnesses at hearing testified that law enforcement was their primary responsibility. All of the position description questionnaires (PDQ) show that law enforcement comprises a low percentage of work time, usually about 2 percent of total work time. One probation officer testified law enforcement may comprise as much as 20 percent of the time, but that was the maximum.

Even assuming there has been an increase in law enforcement responsibilities, as some witnesses testified, the percentage -- at most -- still does not exceed 20 percent of a probation officer's work time. In Decision and Order No. 209, a petition by PSEA to sever park rangers from the general government unit, one park ranger estimated that law enforcement consumed 35 percent of his work time. After reviewing this and other evidence in that case record, we found that park rangers have "significant" law enforcement duties. Decision and Order No. 209, at 12. Yet, we denied PSEA's petition to carve out the park rangers. We found that the park rangers' primary responsibility was management of the resource. *Id.* at 13. The evidence supports a conclusion that adult probation officers have even less law enforcement activity than park rangers.

In the course of their duties, adult probation officers may interact with other employees, including local, state and federal employees as well as employees in the private industry. In addition to contact with law enforcement personnel, the adult probation officers interact with positions in the general government unit, such as child protection workers. They interact daily with Department of Corrections clerical staff whose positions are in the general government unit.

Strike class can be a consideration in determining community of interest. Public safety unit employees are class 1, AS 23.40.200(b), and are therefore prohibited from striking. ASEA is a mixed strike class unit. *Alaska Public Employees Ass'n v. State*, Decision & Order No. 143 (Sept. 16, 1992), *affirmed* case no. 1JU-92-1882 CI (Super. Ct., filed May 28, 1993). Like police and correctional officers, adult probation officers are Class I employees who are prohibited from striking. However, so are approximately 1,500 employees in the general government unit. Without more justification, this factor favors the adult probation officers remaining in the general government unit.

c. Wages.

The wages of the adult probation officers more closely resemble the wages of members of the general government unit. By statute, adult probation officers participate in the public employment retirement system with most State employees. See generally AS 39.35.300. However, they do participate in the 20-year retirement system of the Alaska State troopers and other members of the public safety unit.<sup>12</sup> The adult probation officers share the wage scale in the general government unit's collective bargaining agreement with other members of the GGU. The adult probation officers also share the same benefits with

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<sup>12</sup>"Peace officers" are entitled to 20-year retirement. AS 39.35.370(a)(2). AS 39.35.680(28) defines "peace officer" to include employees occupying positions as a peace officer, chief of police, correctional officer, or correctional superintendent.

fellow general government unit members. This factor weighs slightly in favor of their remaining in the general government unit.

d. Hours.

Adult probation officers are scheduled to work a 37 1/2-hour week, like other members of the general government unit. Although they work some overtime hours,<sup>13</sup> they generally work the 37 1/2-hour schedule, like other members of the general government unit. Correctional officers work a different schedule that includes 7 days on and then 7 days off. The work schedules of the adult probation officers are more similar to work schedules of positions in the GGU.

e. Desires of employees.

During the hearing, there were adult probation officers who expressed a desire to support ASEA and others who supported PSEA.<sup>14</sup> There is no clear favorite.

f. Unnecessary fragmentation.

The State does not oppose PSEA's petition. Nonetheless, the proposed unit would increase the number of bargaining units. The petition would create a new and separate unit. Carving out a group of employees from a large bargaining unit could lead to future chipping away of that unit by other groups of employees. We are concerned that we would set a precedent that starts similar future carve-out attempts. Such attempts could cause instability in labor relations. For these reasons, the requirement to avoid unnecessary fragmentation in AS 23.40.090 makes the proposed unit an inappropriate unit.

2. Whether PSEA has satisfied the conditions of 8 AAC 97.025(b) for severance of the adult probation officers from the general government unit, taking into account the analysis set forth in *Mallinckrodt Chemical Works*, 162 N.L.R.B. No. 48, 64 L.R.R.M. (BNA) 1011, 1016 (1966).

Because PSEA seeks to sever a group of employees from an existing unit, 8 AAC 97.025(b) provides that PSEA must also state in its petition the following:

- (1) why the employees in the proposed bargaining unit are not receiving adequate representation in the existing unit;
- (2) whether the employees in the proposed bargaining unit are employed in jobs that have traditionally been represented in the same unit;

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<sup>13</sup> Dwayne Hanson testified he does not always receive compensation for time worked.

<sup>14</sup> The submitted showing of interest cards are not part of this record. That showing of interest, however, is not in the record. The showing of interest is considered confidential and is not disclosed. 8 AAC 97.060(d) provides: "The employee petition or interest cards in support of a showing of interest are confidential records that may not be disclosed and are not part of the public record."

(3) why the employees in the proposed unit have a community of interest that is not identical with that of the employees in the existing unit;

(4) how long the employees in the proposed bargaining unit have been represented as part of the existing unit; and

(5) why the grant of the petition will not result in excessive fragmentation of the existing bargaining unit.

a. Adequacy of representation.

We must consider the adequacy of ASEA's representation of the adult probation and parole officers. The system favors stability and continuation of existing bargaining units, but evidence of a bargaining representative's inadequate representation would support disruption of the status quo. For example, the existing unit structure might interfere with the ability of the group seeking severance to be heard on issues of concern. Conflicts between the interests of the other members of the unit and this group could also interfere with a group's receiving adequate representation. *See Public Safety Employees Ass'n (Weigh station operators) v. State of Alaska*, Decision & Order No. 201, at 12; *In re Fraternal Order of Police*, 12 Ohio Pub. Employee Rep. 1546 (Ohio State Employment Relations Board 1995) (applying similar criteria to a severance petition).

PSEA challenges the adequacy of ASEA's representation on a number of grounds. However, we have reviewed PSEA's assertions, and we disagree for the following reasons. While ASEA's representation of the adult probation officers has not been perfect, it has been adequate. Contrary to some adult probation officers' concerns about ASEA's lack of advocacy for safety, the ASEA/State collective bargaining agreement does indeed include provisions for safety and safety equipment. The probation officer witnesses seemed unaware of these provisions.

Further, ASEA filed a grievance and then a petition before this Agency to overturn a Department of Corrections policy decision requiring adult probation officers to undergo a psychological examination prior to their being authorized to carry handguns. *Alaska State Employees Association, AFSCME Local 52, AFL-CIO, vs. State of Alaska*, Decision and Order No. 254 (April 1, 2001). ASEA has represented the adult probation officers adequately.

b. Tradition of representation.

The evidence did not establish a general tradition of representation for adult probation officers in law enforcement or other units. The evidence showed that adult probation officers in Alaska have been represented in the general government unit since its inception in 1972.

Finding of Fact number 27 outlines information submitted regarding probation officer membership in other states' bargaining mixed bargaining units. The structure of these units varied. Probation officers were included in mixed units. For example, Wisconsin's classified employees belong in six different units that include blue collar and

non-building trades, security and public safety, technical, administrative support, and professional social services.<sup>15</sup> While correctional officers and "officers", fire and security personnel were part of the security and public safety unit, probation officer positions were part of the professional social services unit. (Exh. JJ). The classified employees of the Commonwealth of Pennsylvania were interspersed into 13 bargaining units. (Exh. KK). Although the record does not include the entire collective bargaining agreement for these units, the table of contents indicates that among the 13 units are an inspection, investigation, and safety unit (professional, non-supervisory), and also a law enforcement, fish and boat unit. Parole agents were part of the former unit. We do not know positions included in the law enforcement unit. Finally, Michigan provided for 11 different bargaining units of classified employees. (Exh. MM). Although there is a security unit for corrections personnel, and a state troopers unit, parole officers are included in the human services unit.

These examples illustrate the variety of structures in various states. We do not give the structures of other states great weight in determining the outcome here. We do not know the other states' definition of probation officer. However, we do give this evidence some weight. We find it supports a wall-to-wall unit like ASEA as an appropriate unit. Generally, probation officers were included in professional or human services units, and not in safety or security units that included police and correctional officers.

c. Community of interest.

The record did not establish that the adult probation officers' community of interest is separate from the general government unit. (See analysis in section 1 b, at pages 9-11, above).

d. Time in existing unit.

As we noted in section 1.a., pages 8 to 9, above, the adult probation officers have been in the general government unit since it was first established in 1972. This longstanding period in the general government unit favors the adult probation officers remaining in the unit.

e. Unnecessary fragmenting.

For the same reasons addressed in subsection 1.f., at page 11, granting this petition would result in unnecessary fragmenting.

f. Mallinckrodt Chemical Works.

This Agency considers the factors that the NLRB applies in craft severance cases. See *Mallinckrodt Chemical Works*, 162 N.L.R.B. No. 48, 64 L.R.R.M.(BNA) at 1016; *International Board of Electrical Workers v. Fairbanks North Star Borough School District*, Decision & Order No. 153, at 3-4 (Mar. 24, 1993). The evidence in this case did not establish that adult probation officers were a distinct and homogenous craft unit. They

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<sup>15</sup> We counted only five units. If there is a sixth, the material was apparently not provided.

perform some of the duties, and occasionally use skills required of law enforcement officers, but the vast majority of their duties are unrelated to law enforcement. Their duties primarily require evaluation and management of the probationers on their caseload.

While not perfect, the existing unit structure has responded adequately to the needs of the adult probation officers, and the record does not establish any reason to disrupt the existing unit scheme. There was some evidence of adult probation officers' participation in their representation by ASEA. The evidentiary record contained some documents that support a pattern of representation of adult probation officers in mixed, non-law enforcement units in other states.

We believe PSEA is qualified to represent the adult probation officers. The addition of the airport safety officers to the public safety unit in 1987 has provided PSEA with experience in representing employees with mixed law enforcement and non-law enforcement duties. Nonetheless, consideration of all craft severance issues does not support moving the adult probation officers from the general government unit.

#### Conclusions of Law

1. The Public Safety Employees Association and Alaska State Employees Association are employee organizations under AS 23.40.250(5). The State of Alaska is a public employer under AS 23.40.250(7). This Agency has jurisdiction under AS 23.40.090 and AS 23.40.100 to consider this case.

2. As petitioner, PSEA has the burden to prove each element of its case by a preponderance of the evidence. 8 AAC 97.350(f).

3. Based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees, the general government unit is the appropriate bargaining unit for the adult probation officers.

4. Moving the adult probation officers from the general government and granting their request to establish a separate unit would result in unnecessary fragmenting. AS 23.40.090.

5. PSEA has not satisfied the requirements in 8 AAC 97.025(b) to sever the adult probation officers from the general government unit.

6. Public Safety Employees Association has failed to prove the factors set forth in *Mallinckrodt Chemical Works*, 162 N.L.R.B. No. 48, 64 L.R.R.M. (BNA) at 1016. PSEA failed to prove by a preponderance of the evidence that adult probation officers are a craft that would be more appropriately be placed into a separate law enforcement unit.

**ORDER**

1. The petition of the Public Safety Employees Association to sever the adult probation officers from the general government unit and create a separate bargaining unit of adult probation officers is dismissed.

2. The State of Alaska shall post a notice of this decision and order at all work sites where members of the bargaining unit affected by the decision and order are employed or, alternatively, serve each employee affected personally. 8 AAC 97.460.

**ALASKA LABOR RELATIONS AGENCY**

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Aaron Isaacs, Jr., Vice Chair

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Colleen Scanlon, Board Member

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Randall Frank, Board Member

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of filing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the order in the matter of *Public Safety Employees Association vs. State of Alaska* and *Alaska State Employees Association, AFSCME Local 52, AFL-CIO*, Case No. 03-1229-RC/RD, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 21st day of December, 2004.

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Sherry Ruiz  
Administrative Clerk III

This is to certify that on the 21st day of December, 2004,  
A true and correct copy of the foregoing was mailed,  
postage prepaid, to:

James Gasper, PSEA  
Art Chance, State of Alaska  
Douglas Carson, ASEA

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Signature