

sergeant supervisors and dispatch supervisors are technically “supervisory employees” under 8 AAC 97.990(a)(5), they maintain a stronger community of interest with other employees in the City’s public safety bargaining unit than the lieutenant’s position, and they are appropriately included in the bargaining unit. Further, creating two separate bargaining units in this particular case would result in unnecessary fragmentation.

Appearances: Stephen Sorensen, general counsel, Public Safety Employees Association; Nancy Shaw, general counsel, Teamsters Local 959; and Gregory S. Fisher, attorney for City of Wasilla.

Board Panel: Aaron T. Isaacs, Jr., Vice Chair; Colleen E. Scanlon and Matthew R. McSorley, Members.¹

DECISION

Statement of the Case

The Public Safety Employees Association (PSEA) filed a petition on November 1, 2007, to represent employees in a public safety unit at the City of Wasilla (City). PSEA’s petition was followed by a petition from the General Teamsters Local 959 (Teamsters), seeking to represent essentially the same group of employees. The City of Wasilla objected to the composition of the unit, contending among other things that the proposed unit should be split in two, with law enforcement officers in one unit and dispatchers and other employees in the second unit. The City also contended that some of the proposed unit’s employees were either “supervisory employees” or “confidential employees” under the regulation, and they should be excluded from the bargaining unit on that basis.

The City did not develop its objection based on “confidential employee” status under 8 AAC 97.990(a)(1) at hearing, and this objection is considered waived. At the hearing, the City did advance its objection that certain positions should be excluded because the employees in the positions were “supervisory employees” under 8 AAC 97.990(a)(5), and that dispatchers and other non-law enforcement personnel should not be included in a bargaining unit with law enforcement personnel. While the City did not object on a position-by-position basis to all non-law enforcement personnel being in the unit with law enforcement personnel, it did make a general objection to combining the two groups in one unit. The City specifically objected to including the following positions in the bargaining unit: Lieutenant Craig Robinson; Sergeant Jean Achee; Sergeant Kelly Swihart; Sergeant Ken Conn; Investigator Ruth Josten; Dispatch Supervisors Debi Langendorfer, Jody Towsley, and Mona Harness; and Technical Support

¹ Member Scanlon was unable to attend the hearing in person but reviewed the record and deliberated with the other board panel members.

Specialist Joel Butcher. During the hearing, the parties agreed that the Technical Support Specialist position and the Investigator (or Investigations Supervisor) position should be included in the bargaining unit. The parties also agreed that the Records and Communications Manager position should be excluded from the bargaining unit.

There was a flurry of prehearing activity. The City filed a motion to disqualify Board Member Matthew McSorley for bias. PSEA and the Teamsters opposed the motion. The remaining two panel members issued an order denying the City's motion. The City also requested that the Board issue a subpoena for financial and membership records of PSEA. Both unions objected. The Hearing Examiner denied the request for the subpoena. There were also numerous objections relating to witness lists and confidential information. However, these issues were resolved prior to and during the hearing.²

Issues

1. Should Board member Matthew McSorley be disqualified from hearing this case?
2. Should the City's subpoena for financial records of the unions be granted for the purpose of determining the desires of the employees?
3. What is the appropriate collective bargaining unit or units for employees at the Wasilla Police Department?

Findings of Fact

1. The City of Wasilla by resolution opted back into the jurisdiction of the Public Employment Relations Act (PERA).
2. On November 1, 2007, the Public Safety Employees Association filed a petition to represent employees at the City's Police Department. The proposed unit includes "all employees, non-exempt, with the City of Wasilla Police Department." Excluded from the unit are "all [City] Supervisory employees under 8 AAC 97.990(a)(5) and all other [City] employees who are not employees of the police department." (November 1, 2007, Representation Petition).
3. On November 9, 2007, the Teamsters filed a similar petition, proposing to represent "[a]ll employees of the Wasilla Police Department including police officers, investigators, code compliance officers, administrative staff, youth court staff, dispatchers, call-takers and NCIC."

² On February 7, 2008—the first day of the hearing, the parties agreed to admit all exhibits. On February 8, 2008, the second day of the hearing, the parties filed a written stipulation to withdraw several exhibits from the record, primarily out of concerns for confidentiality of personnel documents. On February 12, 2008, the City filed a "Summary of Withdrawn Exhibits."

Excluded from the unit are “supervisory employees” in the City’s Police Department. (November 9, 2007, Representation Petition.)

4. On November 14, 2007, the Alaska Labor Relations Agency (ALRA) notified the parties that it was consolidating the two petitions. That same day, ALRA also notified City Mayor Dianne Keller that the Agency’s review of the interest cards submitted in support of the unions’ petitions exceeded the required 30 percent showing of interest under AS 23.40.100. (November 14, 2007, letter to Mayor Keller from Hearing Officer Jean Ward).

5. On November 27, 2007, the City filed an objection to the appropriateness of the proposed bargaining unit. The City asserted that the proposed unit was inappropriate because it contained “supervisory personnel and/or confidential employees, and also because it includes other employees who should not be in the same collective bargaining unit as law enforcement officers.” The City specifically objected to including the following employees in the proposed unit: Lieutenant Craig Robinson; Sergeant Jean Achee; Sergeant Kelly Swihart; Sergeant Ken Conn; Investigator Ruth Josten; Dispatch Supervisors Debi Langendorfer, Jody Towsley, and Mona Harness; and Technical Support Specialist Joel Butcher.

6. On December 11, 2007, PSEA responded to the City’s November 27 objection. PSEA clarified that its exclusion of supervisory employees would include the Chief of Police and all lieutenants and captains. PSEA added that its proposed unit would include all sergeants and dispatchers. No evidence was presented that the City has a captain position.

7. The City of Wasilla’s Police Department contains approximately 45 employees. The Department consists of law enforcement officers, emergency dispatchers, and a sprinkling of other non-law enforcement positions.

8. The head of the City’s Police Department is Angella Long, the Chief of Police. She became a sworn member of the unit in 1993, Deputy Chief in July 2006, Acting Chief of Police in February 2007, and Chief of Police in March 2007. Chief Long oversees operations for the entire Police Department. The Chief of Police is the principal executive head of the Department. (City Exh. II(A), bate stamp p. 6).³ Long testified that the Department is a “work in progress.”

9. Teamsters Exhibit 1 is a chart that lays out the hierarchy of positions at the Police Department. Immediately below Chief Long in the organizational hierarchy are a Deputy Chief of Police and a Records & Communications Manager, two Youth Court employees and two Administrative Assistants.⁴ Immediately below the Deputy Chief are three Sergeants and an Investigator. Below each Sergeant are five or six positions, including a Code Compliance

³ For ease of reference, this decision refers to exhibits as either “City Exh.” or “Teamsters Exh.” The City organized its exhibits with bate stamping, a handy reference. We will refer to bate stamp pages on the City’s exhibits.

⁴ There was no specific discussion regarding the appropriate unit for youth court employees, administrative assistants, and some other non-law enforcement employees of the Wasilla Police Department.

Officer (day shift), a School Resource Officer (swing shift) and four or five Patrol Officers, whose number varies by work shift (day, swing, or graveyard).⁵ Each Shift Sergeant oversees the work of the Patrol Officers on his or her shift. Below the supervising Investigator are three Investigators. Below the Records & Communications Manager are a Technical Support Specialist and three Dispatch Supervisors. Each Dispatch Supervisor is responsible for one of the three dispatcher work shifts and oversees the work of a mix of Dispatchers and Call Takers. (Teamsters Exhibit 1).⁶

10. City Exhibit (Roman numeral) I, dated October 25, 2007, provides a more detailed chart of job positions. For example, it shows that the animal control officer reports directly to the Chief.⁷ It shows an administrative wing with employees who work in records, evidence, and youth court (a non-profit that Chief Long oversees). In addition, it shows there is a “reserves” section of police officers, headed by Sergeant Gray, who oversees the work of eight reserve officers. Chief Long testified that these reserves are unpaid volunteers.

11. The Deputy Chief of Police position is vacant. The parties did not agree at the hearing whether this position should be included in the unit.

12. The Lieutenant in the Department is Craig Robinson. The position’s job description lists it as classified, not managerial or confidential. The Lieutenant reports to Chief Long, who testified that the Lieutenant supervises the Sergeants and the Police Investigator, exercises independent discretion and judgment, participates in disciplinary decisions of the Sergeants he supervises, and guides and mentors the Sergeants. The job description states that the position “[p]lans, directs, supervises, and coordinates the staff and activities of all uniformed personnel. Assumes overall command of the Police Department in the absence of the Chief of Police.” (Teamsters Exh. 4b-1). The job description estimates that the position has supervisory responsibilities 60 percent of the time. (City Exh. III(A), bate stamp p. 59; Teamsters Exh. 4b-1). The Chief has concurred on Lieutenant Robinson’s recommendations for disciplinary action.

13. The Records and Communications Manager is Daniel Stearns. Stearns supervises the Dispatch Center and reports directly to the Chief. (Wasilla Police Department Policy Manual; City Exh. II(A), bate stamp p. 6). The position’s job description classifies the position as “confidential and/or managerial.” (Teamsters Exh. 4g-1). The parties agreed at hearing that this position would be excluded from the unit.

⁵ In addition to the sergeant on each shift, day shift has 3 patrol officers, and swing and graveyard shifts have 5 patrol officers each.

⁶ Each shift has four Dispatchers in addition to the Dispatch Supervisor. Chief Long testified that this exhibit appears to be accurate.

⁷ The City contracts out one of the animal control positions to the City of Houston.

14. The Police Investigator (or Investigations Supervisor) position is currently held by Ruth Josten, who reports directly to Chief Long.⁸ This position is listed as “classified” rather than “confidential and/or supervisory” on the September 2005 job description, revised September 25, 2007. (City Exh. III(C), bate stamp p. 65; Teamsters Exh. 4c-1). The organizational chart, identified as City Exhibit I (bate stamp p. 1), lists Josten as a supervisor who oversees the work of three investigators. The job description lists essential functions in terms of estimated time spent per function. It lists investigation of crimes as 50 percent, assisting of other department personnel on search warrant, case follow-up, and other assigned issues as 25 percent, and providing of advice and counsel to the Chief as 10%. None of the remaining 15 percent lists supervisory responsibilities. However, another section provides that the Police Investigator supervises other officers who are assigned to investigations. The Police Investigator is responsible to interview, recommend hires, train employees, plan, assign and direct work, appraise performance, and recommend disciplinary action. *Id.* The parties agreed at hearing that the police investigator, or investigations supervisor position, occupied by Josten would be included in the public safety collective bargaining unit.⁹

15. The Technical Support Specialist is Joel Butcher.¹⁰ There is no job description in the record for this position. The organizational chart indicates Butcher reports to Records and Communications Manager Dan Stearns. (City Exh. I, bate stamp p.1). The parties stipulated at the hearing that the Technical Support Specialist position is included in the bargaining unit.

16. The Wasilla Police Department Policy Manual defines “supervisor” as “a person who by rank, seniority, or delegation has the authority to direct the work of another.” (City Exh. II(A), bate stamp p. 4). When Chief Long thinks of supervisors in the Department, she includes the Police Lieutenant, Police Sergeants, and Dispatch Supervisors.¹¹ Long testified that, in her view, “supervisor” means someone who has supervisory authority over others within their chain of command.

17. The Policy Manual outlines supervisory responsibilities in the event that the Department receives complaints about employees, or when employees are suspended, dismissed, or demoted. (Exh. IIB, page 15. bate stamp pp. 33 – 36). The immediate supervisor is responsible to handle complaints about an employee. Chief Long testified that the supervisor’s duty is to the

⁸ Josten’s job description lists the job title as Police Investigator. The parties also used the titles “Investigator” and “Investigations Supervisor.”

⁹ The Wasilla Police Department Manual defines “investigator” as an “[o]fficer permanently assigned to a special unit or function.” (Exh. II(A) at 3, bate stamp page 4).

¹⁰ As noted, Butcher’s position is below the Records Communications Manager (Stearns) in the organizational hierarchy. (Exh. 1, Exh. Roman Num. I).

¹¹ We will assume Chief Long inadvertently left out the Records & Communications Manager, since the parties agreed the position is supervisory.

department, and the supervisor must remain impartial. She said that supervisors cannot be put in a position of siding with the employee. They must focus on the alleged violation and not the person.

18. Chief Long conducts approximately two supervisors' meetings each year. (City Exhibit CXIV (bate stamp p. 824) is an agenda for a two-session supervisor's staff meeting, held on January 19, 2007, and January 22, 2007. Lieutenant Robinson and Sergeant Chmielowski attended the first session; Sergeant Conn and Investigator Josten attended the second session. The agenda did not contain any supervisor-specific issues regarding employing, discipline, or grievance adjudication, but Long listed one issue regarding the relationship between the investigators and the patrol officers: "Investigators will do ride-along with patrol. Investigator will be uniformed and try to get out at least once a month. I'd like to see our relationship between investigations and patrol to improve and information sharing to increase." (City Exh. CXIV, bate stamp p. 824). The October 26, 2007, meeting was attended by Lieutenant Robinson; Sergeants Achee, Conn, and Swihart; and Investigator Josten. (City Exh. No. CXIII, bate stamp pp. 818 – 823). This agenda repeated almost verbatim the paragraph from the January 19 and 22 meeting regarding the investigators/patrol officers' relationship.

19. The Police Sergeants' positions are classified (not confidential or managerial), and they report to the Chief of Police. (City Exh. III(B), bate stamp p. 62). The previous job description for Police Sergeants, dated September 2005, indicated the Sergeants reported to the Lieutenant during the effective period of that job description. (Teamsters Exh. 4d-1).¹²

20. The Sergeants are responsible for the "day to day supervision of police officers and management of the police department under the direction of the ranking officer and/or chief of police." (City Exh. III(B), bate stamp p. 62; Teamsters Exh. 4f-1). They also "[perform] daily police activities, including patrol, investigations, traffic control and contact with the public[]" along with development and delivery of police officer training programs." Chief Long said Sergeants are responsible to manage their shift, making sure that it is manned and has support staff.

21. The Sergeants' job description shows supervisory functions as 1) "performs duties under the general direction of the Chief . . ." and 2) "responsible for management and supervision of assigned subordinate officers." (City Exh. III(B), bate stamp p. 62; Teamsters Exh. 4f-1).

22. Among the types of duties that may be performed (any duty could be greater than 10 percent of the time), Sergeants may conduct performance improvement sessions as needed, train, evaluate and motivate officers, allocate workloads, and perform emergency response and other patrol duties.

¹² During the effective period of this Job Description, their job title was "Sergeant."

23. Chief Long testified that although a Sergeant's primary duty is to oversee the people who work on his or her shift, the Sergeant must also take shift calls like the patrol officers because the City's Police Department is small. Long said that the Sergeants defer calls if reviewing reports and handling issues take "all their time."

24. Chief Long testified that the three Sergeants "are involved" in employment-related decisions, including participation on oral board teams, interviews, recommendations on who to hire, and unit assignments.

25. Chief Long indicated that Sergeants exercise independent judgment and discretion.

26. Chief Long expects Sergeants to review and handle disciplinary issues. The Sergeants often ask her for advice when they are unsure how to proceed with an action. Chief Long generally agrees with their recommendations on these issues.

27. Sergeant Ken Conn has been a Police Sergeant for seven years.¹³ He testified he performs the same duties as the patrol officers on his shift, but he also monitors their work. He and the patrol officers cruise around looking for crime, and they write related reports. Conn writes his own reports and reviews the patrol officers' reports. Supervisory work on his swing shift varies. This shift is the busiest shift. Thus, it generates more paper, and he spends the majority of his time at the office. He estimated that if he works the day shift, he works slightly more at patrol work than reviewing reports in the office. On swing shift, most of his time is spent in the office, and if he is on "midshift", most of his time is spent on patrol. He has spent most of his career on midshift.

28. Sergeant Conn has participated in the hiring process twice. He was one of a group of people who evaluated written applications. He and the others assigned numerical scores to applicants' responses. He has also been involved in the oral board process. Each board member assigns a numerical score to oral responses of the applicant. He has done this twice. The first board had five employees, and the second board had three, Sergeant Conn, Chief Long, and Lieutenant Robinson. Sergeant Conn assumes that Chief Long takes the numerical scores and other factors into account in making a hiring decision.¹⁴ In the most recent oral board, Chief Long asked him his opinion on the applicants.

29. Regarding layoff or recall, Sergeant Conn has not done this. He does not recall being involved in any suspensions. When asked hypothetically what his role would be in a suspension, he said it is hard to say since he does not remember being involved. If one of his patrol officers would be suspended, he believes that with Chief Long at the helm, he would be involved to some degree. Prior to Chief Long's tenure, he took whatever action a prior Chief told him to take, and he completed the necessary paperwork. Under Chief Long, he has "a little

¹³ Sergeant Conn described his job title as a "Patrol" Officer.

¹⁴ The oral boards were promotional processes involving Sergeants Achee and Swihart.

more independent decision-making power[]” pertaining to disciplinary actions. He has never had to suspend someone. He has not been involved in demotions or discharges. Sergeant Conn has given both oral and written warnings. He has given oral and written warnings for not showing up for court, and four or five oral warnings in other matters. Sergeant Conn evaluates personnel, once per year, and gives the evaluation to the Chief, who reviews and forwards the evaluation to Human Resources. Merit increase decisions are made at a level above Sergeant Conn.

30. Sergeant Conn has not been involved in any grievance matters. He is unsure what the grievance process is, but he would take his own grievance to his supervisor, the Lieutenant. He has not been involved in any budgetary matters.

31. Sergeant Jean Achee was promoted from Patrol Officer to Sergeant in September 2007, and he has worked the midshift¹⁵ since then.

32. In Achee’s experience, a department head or designee would ask people if they would like to sit on an oral board to assist with hiring matters. It is up to the individual to accept, or not. In the Police Department, he has been asked and has accepted a position. Sergeants, patrol officers, and citizens of Wasilla have sat on these oral boards. Police officers have also participated in dispatch and communications oral boards.

33. Achee has participated on oral boards where each individual board participant scores responses to each question, and also on boards in which the group compiles a composite score.

34. Regarding the hiring process, Sergeant Achee said the oral board scores are forwarded to the Chief, who makes a recommendation to the Mayor. The Mayor is the ultimate decision-maker. In addition to the oral board scores, there is a battery of information that is considered in the hiring process.

35. Sergeant Achee has not performed any disciplinary actions. As a first-line supervisor, he would take corrective actions. He would also apprise the Lieutenant of his action. After oral guidance or warnings, he would issue written warnings. Ultimately, the Mayor must make decisions on suspensions or termination. Regarding suspensions, his role would be to conduct an administrative investigation into the matter and to provide the information to the Chief.

36. Sergeant Achee is unaware of any grievances filed since he became a Sergeant in September 2007. In 1995 or 1996, he filed a grievance with the City. From 1993 to the present, he is unaware of any other grievances being filed.

¹⁵ We use the term “midshift” to mean a shift similar to “grave” or “graveyard” shift. Essentially, it is the night shift.

37. As a first-line supervisor, Sergeant Achee can send an officer home for the day, for example, if he determines that an officer is impaired from alcohol consumption. Sergeant Achee would provide a memorandum to the Chief regarding the reason for the action.

38. Sergeant Achee is also a firearms instructor for the City. He has performed this duty since he started with the City in 1993. If he determines, while training an officer, that the officer cannot safely handle a firearm, he has authority to send that officer home for the day without consulting a higher level supervisor. Sergeant Achee had this authority before he was promoted to his current position.

39. According to Sergeant Achee, he and the other Sergeants act as backups for the other patrol officers. He estimates he spends 35-to-40 percent of his time as a patrol officer. He is working on making the transition to supervision.

40. Chief Long asserted that Dispatch Supervisors have the same supervisory authority and responsibilities as that of Police Sergeants and the Records and Communications Manager. They are expected to exercise independent judgment and discretion, like the Sergeants. They have “much the same” responsibilities regarding employing and discipline: making sure shifts are manned and that employees have their tools to work with, and dealing with personnel issues as well as with performance and work-quality issues.

41. The current job description for Emergency Dispatch Supervisor lists it as a classified position, not confidential or managerial. The position reports to the Records and Communications Manager. (Teamsters Exh. 4h-1). The position coordinates “public safety (Police, Fire, EMS, and Animal Control) in response to protect life and property. Oversee dispatching performance and supervise subordinate dispatcher/call-takers.” *Id.* Among the essential functions (ten percent or greater of time), the Dispatch Supervisor must provide remedial training and conduct performance improvement sessions as needed, and provide advice and counsel to the Records and Communications Manager. The position allocates workloads and monitors progress and accomplishments. Like the positions they supervise, the Dispatch Supervisors also perform front-line work with other Dispatchers, gathering information, receiving complaints or requests for service, and dispatching appropriate resources. (*Id.* at 1.).

42. The 2005 job description allocated 20 percent of the Dispatch Supervisor’s time to “training and leadership to subordinate dispatchers and call-takers.”¹⁶ This included preparing performance reviews, providing training, and providing remedial training as needed.” (Teamsters Exh. 6e-1).

43. Debra Langendorfer has been a Dispatch Supervisor for the City for three and-one-half years.¹⁷ She oversees the work of four emergency dispatchers. She also performs work as a

¹⁶ Call Takers assist Dispatchers.

¹⁷ Langendorfer was a Dispatcher for ten years before her promotion to Dispatcher Supervisor.

front-line dispatcher. She said she normally spends 40 hours per week working at the dispatch desk. She estimates that she spends about 75 percent of her time performing emergency dispatch work. While performing this work, she monitors the work of the dispatchers.

44. Langendorfer has taken part in at least two oral panels for dispatcher applicants. She testified that generally, a Police Officer participates on the oral boards for dispatcher applicants. Police Officers have an interest in who gets hired for these positions. Langendorfer said the group of people sitting on the board may make a recommendation on who they believe would be the best hire based on the applicant's oral responses.

45. Langendorfer has participated on one oral board that scored police officer applicants.

46. Langendorfer testified that oral board scores are only one part of the application process for dispatchers. There are also, for example, scores from computer tests and background checks. Records and Communications Manager Stearns makes the final recommendation on hiring a Dispatcher after considering all of the required information. He forwards his recommendation to the Human Resources Manager.

47. Langendorfer has orally counseled employees and she has issued written warnings. She discussed these cases with Stearns before issuing the warnings.

48. Langendorfer could not think of a reason why the Dispatch Supervisors should be excluded from a unit that also contained Police Officers. She said, "We're all more or less in it together."

49. Dispatchers and Police Officers have participated in each other's application process. Each has an interest in who gets hired in their respective work areas because they must work closely with each other on a daily basis to accept, dispatch, and investigate calls and requests from the public.

50. Dispatchers are responsible for knowing where all officers are located, and they dispatch calls to the officers.

51. Dispatchers and administrative personnel in the department work in an office environment. Law enforcement officers, for the most part, work in the field. However, the Police Sergeants work in the office, depending upon the amount of paperwork produced on their shift. The swing shift Sergeant usually works in the office more than the other two shift Sergeants. Some investigators spend more time than the officers in an office environment.

52. All department employees are subject to the requirements and policies outlined in the Wasilla Police Department Manual and the department's Operating Procedures Manual. (City Exh. IIA, bate stamp p. 3; City Exh. II(B), bate stamp p. 20). Some sections of these manuals only apply to specific employees, such as the section on firearms training (for commissioned officers) and uniform requirements for dispatchers.

53. Employees at the Police Department formed the Wasilla Police Department Employees Association (WPDEA). On November 4, 2007, the WPDEA held an election and asked the department employees to vote on whether or not to affirm an earlier association decision asking the Teamsters to represent the department's employees in collective bargaining. In the election, 25 voted to affirm the prior decision, 14 voted against, and 6 did not cast votes. (City Exh. CXV). This document shows the number of eligible voters to be 45. This is the number of employees the Teamsters sought to represent in its petition. November 9, 2007, Representation Petition, item 5a. This is also the number PSEA sought to represent. November 1, 2007, Representation Petition, item 5a. The information provided about the WPDEA shows that sergeants, for example, and dispatchers and other non-law enforcement personnel, were included in the group that formed the WPDEA.

54. John Cyr is Executive Director of PSEA. He testified that some of the political subdivision bargaining units PSEA represents contain a mix of law enforcement officers, dispatchers, and other employees. He asserted that, in his experience, municipalities are more likely to desire bargaining with one unit, instead of multiple separate units. Cyr testified that he did not recall any conflicts that arose in the all-inclusive units PSEA represents.

55. Classified employees at the Police Department are paid on an hourly basis. Police officers and dispatchers, including these positions' supervisors, are eligible for overtime. As a classified employee, the Police Investigator is also overtime eligible. (City Exh. III(C), bate stamp p. 65).

56. Some employees in the Department work the day shift only, while other employees perform shift work.

57. Police Officers and Dispatchers work similar hours. They work day, swing, or graveyard (grave or midshift). Shift hours vary between eight and ten-hour shifts. Standard Operating Procedure 113.020 describes shift schedules. It states in part that "[a]ll units will have a shift schedule. All units of the Department will publish a written shift schedule listing all commissioned personnel and dispatchers."

58. Patrol officers' day shift runs from 7:00 a.m. to 5:00 p.m. Swing shift runs from 3:00 p.m. to 1:00 a.m., and graveyard shift runs from 11:00 p.m. to 9:00 a.m. Dispatchers operate on a variety of shifts. Shifts could start anytime from 6:00 a.m. to 10:00 a.m. (day); 12:00 p.m. to 7:00 p.m. (swing); and from 8:00 p.m. forward (graveyard).

59. The City has two rotations per year on shifts and officers bid on a shift basis. Dispatchers bid on a somewhat similar process. Both officers and dispatchers bid by seniority, with sergeants and dispatch supervisors bidding first.

60. Police department employees have varying training requirements, depending upon the particular job classification.

61. Dispatchers have different training and job qualifications than those of police. Regarding Dispatchers, the Department looks for prior experience or customer service skills. Newly-hired dispatchers use a communications training program. Police Officers have a testing and training process that they must complete successfully. The officers must complete training from the Alaska Police Standards Academy. The officers must either gain or hold certification from the Alaska Police Standard Council. For newly hired officers, the department uses a field training program recommended by APSC. For both dispatcher and officer programs, a senior dispatcher or officer monitors the training. Employees are evaluated on their performance.
62. Investigators must also obtain an Alaska Police Standards Council “Basic” certificate. (Teamsters Exh. 4c-2).
63. Police Officers and Investigators are trained in firearms but Dispatchers and other department employees are not.
64. Police Officers and Investigators must pass a Home Land Security orientation test as a condition of employment. Dispatchers do not have this requirement, but they must “obtain and hold a security clearance meeting the requirements of the Alaska Public Safety Information Network (APSIN).” (Teamsters Exh. 4h-2).
65. Police Officers, Dispatchers, and Investigators must wear uniforms. Dispatcher uniforms are less formal than those required of officers and investigators. Dispatchers’ duty uniform consists of a department-issued collared shirt and slacks or “Bermuda-style shorts.” (Exh. II(B), bate stamp pp. 22 - 28).
66. Police Officers, Dispatchers, and Investigators work in an environment that is at times highly stressful. (City Exhs. III(A), bate stamp p. 60; III(B), bate stamp p. 63; III(C), bate stamp p. 66; III(E), bate stamp p. 72).
67. Dispatchers and other employees of the City’s Police Department work with and assist police officers in the department’s mission of public safety. There is a considerable degree of functional integration in the Department.
68. Despite some differences in training, duties, and other factors, the employees in the proposed unit share many similarities in their working conditions. There is a strong community of interest among the various groups of employees at the City’s Police Department.
69. All hirings, firings, demotions, or suspensions must be reviewed by and approved by the Mayor of the City of Wasilla.

ANALYSIS

Preliminary Motions and Orders.

1. Should Board member Matthew McSorley be disqualified from hearing this case?

The City filed a motion to disqualify Board Member Matthew McSorley from sitting on the panel to hear and decide this dispute. In its motion, the City contended that Member McSorley's concurring opinion in another case warranted his disqualification from sitting on the three-member panel that would hear and determine this case. The concurring statement of Member McSorley was contained in "Order Affirming Dismissal," *International Union of Operating Engineers, Local 302 v. City of Wasilla*, Case no. 07-1494-RC (July 6, 2007). There the Operating Engineers petitioned to represent employees of the City's public works department. The Board dismissed the petition because, at that time, it did not have jurisdiction over the City of Wasilla. The Board panel unanimously concluded that the City had previously and properly opted out of the Public Employment Relations Act. Member McSorley agreed with the other two panel members but wrote the following concurrence:

Although I concur that the Agency's jurisdiction does not extend to the City of Wasilla, I am troubled by the disparate labor relations system in place in one of Alaska's largest and fastest-growing communities. The City's current system does not allow any collective bargaining. Rather, city employees must tackle the daunting task of pleading with the council for pay raises, convincing the City to opt back in to PERA, or, as a final alternative, convince state legislators to pass a law that would grant them collective bargaining rights. Any of these tasks would be daunting even for a labor relations expert, but they are in practicality next to impossible for front-line employees due to the cost and complexity of pushing any of the alternatives. The City's employees deserve better.

It appears from the record that this group of employees, recognizing their limitations, sought expert help to increase their chances of improving their wages and other terms and conditions of employment. I encourage the City of Wasilla to explore alternatives that would allow its employees the opportunity to obtain professional representation for the purpose of negotiating improved wages and conditions of employment.

Order Affirming Dismissal at 3-4.

In its motion to disqualify McSorley, the City filed an affidavit of Deputy City Administrator, Sandra Garley, that provides:

The City does not believe that Matthew McSorley can fairly and impartially consider or decide any labor relations issue in this case because of statements that

Mr. McSorley made in the Order Affirming Dismissal in Case No. 07-1494-RC. The City respectfully believes that those statements reflect a predisposition to rule on disputed issues such that Mr. McSorley cannot fairly and impartially consider and decide the issues. The City therefore requests that a different Union panel member be appointed, or that the hearing be decided by a quorum of two panel members.

(January 9, 2008, Affidavit of Sandra Garley at 2).

Both unions opposed the motion. PSEA contended, among other things, that McSorley's remarks showed no predisposition, and that the concerns expressed in the concurrence were general in nature and had nothing to do with the issues in PSEA's current representation petition and dispute between the unions and the City: the appropriate unit or units for specific employee positions in the City's public safety department. The Teamsters argued that McSorley's remarks were "consistent with the declaration of state policy . . . adopted by the Alaska Legislature," and all board members "are bound to uphold [this policy] in the performance of their duties. The Teamsters asserted that a board members endorsement of this policy was not grounds for disqualification. (Teamsters January 14, 2008, Opposition to Employer's Motion at 1-2).

The two remaining panel members denied the City's motion. Among other things, they stated:

We have reviewed the concurrence, and we find the subject of the concurrence --- the collective bargaining system in the City of Wasilla --- had nothing to do with the issue for decision in the underlying order: whether this Agency could take jurisdiction in the Operating Engineers' petition to represent City employees. We do not know what obliged Member McSorley to write the concurrence because the record of the Operating Engineers' petition is not before us. At any rate, we find the concurrence was unnecessary for the Order Affirming Dismissal. Member McSorley agreed with the other panel members that the Agency could not take jurisdiction because the City had properly opted out of the Public Employment Relations Act (PERA). For whatever reason, Member McSorley then commented on the collective bargaining process, as he saw it, in the City.

Without more facts to support the motion to disqualify, we do not find a problem with a board member commenting on the collective bargaining process at a political subdivision in Alaska. The Board at this Agency administers PERA. As the Teamsters pointed out, the Alaska Legislature has declared it the public policy of Alaska "to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring the effective and orderly operations of government." AS 23.40.070. One way the legislature found to effectuate these policies is to recognize "the right of public employees to organize for the purpose of collective bargaining." AS 23.40.070(1). We believe Member

McSorley was merely expressing concern that while many public employees in Alaska have the statutory right to bargain collectively under PERA, other employees do not. (footnote omitted from citation).

Regardless, the matter that “troubled” this board member no longer exists. The City is now under PERA’s jurisdiction and is working its way through the collective bargaining process with labor organizations who hope to represent the City’s employees. As often happens, new disputes have arisen since the time the City opted in to PERA, and now those disputes must be resolved. Member McSorley could not have known of any factual or legal disputes currently pending because they did not exist at the time he issued the concurrence.

Moreover, administrative adjudicators must have some leeway in making statements or stating views regarding underlying policies in their particular jurisdiction. Member McSorley appears to have been expressing his strong belief in collective bargaining under PERA. In *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189 (C.A.D.C. 1980), the Court of Appeals provided:

An administrative official is presumed to be objective and “capable of judging a particular controversy fairly on the basis of its own circumstances.” *United States v. Morgan*, 303 U.S. 409, 421, 61 S.Ct. 999, 1004, 85 L.Ed. 1429 (1941). Whether the official is engaged in adjudication or holds an underlying philosophy with respect to an issue in dispute cannot overcome that presumption. *Hortonville Joint School District No. 1 v. Hortonville Educ. Ass’n*, 426 U.S. 482, 493, 96 S.Ct. 2308, 49 L.Ed. 2d 1 (1976); *United States v. Morgan*, supra, 313 U.S. at 421, 61 S.Ct. at 1004. Nor is that presumption overcome when the official’s alleged predisposition derives from her participation in earlier proceedings on the same issue. *FTC v. Cement Institute*, 333 U.S. 683, 702-203, 68 S.Ct. 793, 804, 92 L.Ed. 1010 (1948). To disqualify administrators because of opinions they expressed or developed in earlier proceedings would mean that “experience acquired from their work . . . would be a handicap instead of an advantage. *Id.* at 702, 68 S.Ct. at 804.

Marshall, 647 F.2d at 1208 – 1209.

Absent specific facts showing an interest or bias in this case, we are reluctant to order disqualification. We disagree with the assertion that bias or prejudgment exists here. Member McSorley’s policy comments addressed an issue that no longer exists. We do not find that there is personal bias or ill-will stated against the City, and we find the concurrence did not, and could not have, discussed any factual or legal issues now before this Agency as they did not come into existence for a substantial time after the board member wrote the concurrence.

Order On Motion To Disqualify, at 5-7. The City's motion to disqualify Member McSorley from sitting on this panel remains denied.

2. Should the City's subpoena for financial records of the unions be granted for the purpose of determining the desires of the employees?

On January 17, 2008, the City requested that this Agency issue a subpoena requiring PSEA to provide membership and financial documents. The City asserted the information was relevant because employees in the proposed unit could not express informed opinions regarding their desires and preferences without disclosure of the information. Both unions opposed the subpoena request.

The Hearing Examiner denied the City's request for a subpoena. *Order on Subpoena and Motion in Limine*. Case Nos. 07-1517-RC and 07-1518-RC (January 29, 2008). The Hearing Examiner concluded, in part:

This is a unit dispute on the nature and contours of a proposed bargaining unit. This dispute is not about whether employees desire one union over the other, or neither union. The desires of employees in this scenario does not relate to their opinions on the financial status of one union or the other. The question, again, is whether the positions meet the definition of "supervisory employee" or "confidential employee," and whether dispatchers share a community of interest with others in the proposed unit, and therefore belong in the unit. The financial and membership data of a union has nothing to do with the supervisory or confidential status of the disputed positions, or whether it is appropriate at the political subdivision level to include supervisory and confidential employees in a unit with other employees, or whether it is appropriate to include non-law enforcement personnel in with a unit of law enforcement personnel. Ultimately, the desires of employees are expressed at the ballot box in an election.¹⁸

(*Id.* at 3). We find that the Hearing Examiner properly denied the City's subpoena for PSEA's financial records for the reasons stated in the *Order on Subpoena and Motion in Limine*.

3. What is the appropriate collective bargaining unit or units for employees at the Wasilla Police Department?

We must next determine the appropriate unit or units for employees at the Police Department. As petitioners, PSEA and the Teamsters (the unions) have the burden to prove "the

¹⁸ See *Globe Machine & Stamping Co.*, 3 NLRB 294, 1-A LRRM 122 (1937). "Where there are two or more equally appropriate units, the desires of the employees oftentimes become the critical factor. When such a situation arises, the Board's *Globe* doctrine comes into play, and an election is held to determine the employees' desires on the unit issue." J. Higgins, 1 *The Developing Labor Law*, 646-647 (Fifth ed. 2006).

truth of each element necessary to [their cause] by a preponderance of the evidence.” 8 AAC 97.350(f). To prevail, the unions must establish the appropriateness of the unit proposed for the city’s Police Department employees.

The Public Employment Relations Act describes the factors used to determine whether a proposed unit is appropriate. AS 23.40.090 provides:

The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 – 23.40.260, the unit appropriate for the 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. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

“The question is whether the employees in the proposed unit share enough of these [section 90] factors to be represented together without causing unnecessary fragmenting.” *UA Classified Employees Association v. University of Alaska*, Decision and Order No. 148, at 8 (Nov. 18, 1992).

We have previously concluded that in determining an appropriate unit under AS 23.40.090, “[t]his statute does not require we give more weight to any one factor over other factors. Our responsibility is to insure that employees are placed in a unit that results in a community of interest based on the case’s particular facts, and the factors outline in AS 23.40.090.” *Alaska Correctional Officers Association vs. State of Alaska*, Decision and Order No. 284, at 22 (February 28, 2008) (D&O 284).¹⁹ We also noted in D&O 284 that in listing the section 090 factors that we must consider, the Alaska Legislature did not require that we give more or less weight to any one factor over other factors. Further, we cited to analysis in a decision by the National Labor Relations Board in *Airco, Inc. and Chauffeurs & Sales Drivers, Local Union No. 402*, 273 NLRB No. 348, 118 L.R.R.M. (BNA) 1052 (1984):

There are no per se rules to include or exclude any classification of employees in any unit. Rather, we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the Employer’s organization and supervision, and bargaining history, if any, but no one factor has controlling weight. (citations omitted).

D&O 284 at 22, citing to *Airco, Inc.*, 273 NLRB at 348.

¹⁹ Although the issue in D&O 284 was whether to sever a group of employees from a wall-to-wall type of bargaining unit, we find the analysis on weighing section 090 factors should apply in representation petitions as well.

The federal courts²⁰ have endorsed the notion of determining community of interest on a case-by-case basis, with no single factor controlling the outcome: In designating an appropriate bargaining unit, the Board [NLRB] . . . has wide discretion in these matters and reviewing courts must generally defer to its judgment that a particular unit is appropriate. (citations omitted). The central test is whether the workers share a “community of interest,” that is, “substantial mutual interests in wages, hours, and other conditions of employment.” (citations omitted). The Board considers several factors, but “there are no per se rules” to resolve unit determinations: “we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the Employer’s organization and supervision, and bargaining history, if any, but no one factor has controlling weight.” *Airco, Inc.*, 273 N.L.R.B. 348 (1984). *Bentson Contracting Company v. National Labor Relations Board*, 941 F.2d 1262, 1265 (C.A.D.C., 1991).

In *N.L.R.B. v. Catalytic Industrial Maintenance Co.*, 964 F.2d 513, 518 (5th Cir. 1992), the U.S. Court of Appeals stated that, “[t]he community of interests test recognizes that ‘[t]he most reliable indicium of common interest among employees is similarity of their work, skills, qualifications, duties and working conditions.’ *DMR Corp.*, 699 F.2d at 792. . . ‘the crucial consideration is the weight or significance, not the number, of factors relevant to a particular case.’ *Purnell’s Pride*, 609 F.2d at 1156.”

a. Community of interest and working conditions.

Before analyzing the community of interest and working conditions of the city’s Police Department employees, we will first review some of the prior decisions issued by this Agency and its predecessors. We previously concluded that job classes in the following cases shared a greater community of interest with other job classes in the State of Alaska’s general government unit than with members of the State of Alaska’s public safety unit represented by PSEA. We denied petitions to move these positions out of the general government unit and into the public safety unit at the state level. *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 Association (F.W.E.O.) vs. State of Alaska*, Decision and Order No. 186 (May 25, 1995) (fish and wildlife enforcement officers), and *Public Safety Employees Association v. Alaska State Employees Association and State of Alaska*, SLRA Order and Decision No. 120 (Aug. 28, 1989) (fish and wildlife enforcement officers and fish and wildlife aides).

As indicated, we analyzed in these cases whether the affected employees shared a greater community of interest with members of the state’s general government unit or with members of the public safety unit. The absence of full law enforcement duties was a significant factor in

²⁰ “Relevant decisions of the National Labor Relations Board and federal courts will be given great weight” in the Agency’s decisions and orders. 8 AAC 97.450(b).

determining that each affected group of employees shared a greater community of interest with the members of the general government unit. D&O 284 at 23- 24.

However, in *Public Safety Employees Association (correctional officers) vs. State of Alaska*, Decision and Order No. 211 (January 16, 1997), we concluded that a strong community of interest and national tradition of separate representation, among other things, justified severing the non-supervisory correctional officers from the State's general government unit. We found that a unit of non-supervisory correctional officers was appropriate.

Each of the cases cited above differs in two respects from the case before us. First, those cases analyzed whether to sever or remove a group of employees from an existing bargaining unit, whereas in this case, we must determine the initial appropriate unit for collective bargaining. Second, and more significantly, all of the above cases represent disputes between the State of Alaska and unions representing state employees. Regulation 8 AAC 97.090(a) (1) requires at the State level that supervisory employees be in a different bargaining unit than nonsupervisory personnel. Here, the dispute involves police department employees who work at the City of Wasilla, a political subdivision. There is no statutory or regulatory prohibition against having supervisory employees in the same bargaining unit as nonsupervisory employees. Also, we have previously concluded that mixed units of law enforcement personnel are appropriate at the political subdivision level.

For example, in D & O No. 181, we found that a mixed unit of law enforcement and non-law enforcement public safety personnel was appropriate. We concluded "that the appropriate bargaining unit consists of all employees of the Bristol Bay Borough police department except the police chief. Specifically, the unit includes the police officers, dispatch/correctional officer, dispatch supervisor, and the animal control officer." *Public Employees Local 71 vs. Bristol Bay Borough*, Decision and Order No. 181, at 7 (Dec. 16, 1994).

In looking at the City of Wasilla's Police Department, we find a strong community of interest and high degree of functional integration among the employees in the proposed unit. The employees work under the same organizational hierarchy and answer to the executive head of the Department, the Chief of Police. They all work toward the same mission: public safety. They are all subject to the same Policy Manual and Procedural Manual. Moreover, all employees in the department work under stressful conditions due to the nature of law enforcement and public safety work.

Department employees, particularly the Police Officers, Investigators, and Dispatchers, interact frequently. The Dispatchers and Police Officers have an interest in each other's applicants for hire. Consequently, each occasionally sits on and scores applicants for the other's job application process. Dispatchers and Police Officers also work together throughout the entire day on one of three work shifts. They must communicate well to provide timely and appropriate response to calls into the dispatch center. Dispatchers must keep track of the location of Police Officers in order to contact an officer appropriate for a particular dispatch.

Although training requirements differ among the various employees in the proposed unit, this difference does not diminish the fact that all employees in the proposed unit provide direct or supporting roles in law enforcement and public safety at the City. Moreover, at the political subdivision level, differences in job qualifications and duties of public safety employees should not require splitting them into two units. These differences do not significantly affect the strong community of interest based on other factors. Because of a strong community of interest and shared working conditions, we conclude that a single unit of employees is an appropriate unit at the Police Department.

b. Wages and hours.

The evidence supports a finding that department employees in the proposed unit are paid by the hour and are eligible for overtime pay. Most, if not all, of the employees work a 40-hour work week. Work shifts vary. Some employees work day shift only while other employees may work day, swing, or midshift on a rotating basis. As there are no significant differences in methods of paying wages or in working hours, we conclude that wages and hours support a conclusion that a single unit is appropriate in the City's Police Department.

c. Desires of employees.

Other than at least a 30 percent showing of interest filed in support of each of the representation petitions, there was little evidence submitted regarding the desires of employees. The evidence submitted regarding this factor is inconclusive. The employee's desires can be determined best through a secret ballot election.

d. Unnecessary fragmentation.

Generally, it is our experience that employers desire fewer collective bargaining units than more units. Employers often argue against fragmenting groups of employees because the result requires employers to bargain with more units of employees. Here, the City contends that unnecessary fragmenting is not a problem. We disagree. We find that fragmenting the police department employees is unnecessary. There is no reason to fragment the proposed unit of employees. The employees exhibit a strong community of interest, with significant functional integration. Fragmenting this integrated group would require the City to bargain collectively with two separate units, an inefficiency that is unnecessary. The proposed unit avoids unnecessary fragmentation and is as large as is reasonable, in accord with the requirements of AS 23.40.090. Any supervisory authority some of the employees, such as sergeants and dispatch supervisors, may have under 8 AAC 97.990(a)(5) does not outweigh the community of interest they share with other employees in the proposed unit. This issue will be discussed in greater detail below.

e. History of collective bargaining.

There is a limited history of collective bargaining for the employees at the city's Police Department. Prior to obtaining coverage under the Public Employment Relations Act, the Wasilla Police Department employees formed an organization, the Wasilla Police Department Employees Association (WPDEA), to deal with the City regarding their conditions of employment. City exhibit CXV shows that the association has been in existence since at least November 27, 2006. Based on the number of Police Department employees who were eligible to vote (45), and the number of employees both the Teamsters and PSEA each seek to represent (45), we conclude that the police sergeants, dispatch supervisors, technical support specialist, and other non-law enforcement personnel at the City's Police Department were included in the group of employees the WPDEA sought to assist with negotiating their terms of employment. Since there was an existing employee organization that includes most, if not all, of the employees the unions seek to represent, we find that the history of collective bargaining factor supports a unit consisting of the police department's law enforcement and non-law enforcement employees.

The next question we must address is whether the Police Sergeants and Dispatch Supervisors fit the definition of "supervisory employee" outlined in our regulations, and, if so, should any Police department positions occupied by "supervisory employees" be excluded from the bargaining unit based on their supervisory authority in 8 AAC 97.990(a)(5). This regulation defines "supervisory employee" as,

an individual, regardless of job description or title, who has authority to act or to effectively recommend action in the interest of the public employer in any one of the following supervisory functions, if the exercise of that authority is not merely routine but requires the exercise of independent judgment:

- (A) employing, including hiring, transferring, laying off, or recalling;
- (B) discipline, including suspending, discharging, demoting, or issuing written warnings; or
- (C) grievance adjudication, including responding to a first level grievance under a collective bargaining agreement[.]

8 AAC 97.990(a)(5).

Based upon the testimony of Chief Long, Sergeants Conn and Achee, and Dispatch Supervisor Langendorfer, we conclude that the Police Sergeants and Dispatch Supervisors are technically supervisory employees under the above regulation. We base this conclusion in part on Chief Long's testimony that these employees exercise independent judgment, and they make effective recommendations in the discipline function. This conclusion is also based on the testimony of Police Sergeants Conn and Achee and Dispatcher Supervisor Langendorfer, who each testified that they have issued written warnings. The primary supervisory function these employees have performed is contained in 8 AAC 97.990(a)(5)(B), issuing written warnings. Other than this function, none of the three has exercised much authority in the way of functions

listed in the regulation. Although they manage the work of the employees on their respective shifts, this is not a factor to be considered under 8 AAC 97.990(a)(5). Even though some of the employees have participated on hiring boards for hiring law enforcement officers or dispatchers, at most they make a recommendation to the Chief, who makes a recommendation to the Mayor, who has the ultimate authority to determine whether an applicant should be hired.²¹

Nevertheless, our regulation only requires the possession of authority to act or effectively recommend action in one of the three general supervisory functions (employing, disciplining, or grievance adjudication), in a manner requiring the exercise of independent judgment. Each of the three employees' testimony supports a conclusion that Police Sergeants and Dispatch Supervisors meet the "supervisory employee" definition based on their possession of authority to act or effectively recommend action in the discipline function.

The final question we must address is whether the Police Sergeants and Dispatch Supervisors should be included or excluded from the unit of officers, dispatchers, and other department employees, based on our conclusion that Police Sergeants and Dispatch Supervisors are "supervisory employees" under the regulation. Another regulation, 8 AAC 97.090(a)(1), addresses unit composition at the state level only, and it mandates that a proposed bargaining unit is not appropriate at the State level if it combines "(1) supervisory personnel with nonsupervisory personnel; or (2) confidential employees with other employees."

The City argues that its Police Department employees, if determined to be "supervisory employees," should be excluded from the unit, like "supervisory employees" at the state level. The City asserts these six employees (three each of Sergeants and Dispatcher Supervisors) would be appropriately placed in a supervisory unit yet to be formed at the City.

However, this Agency and Department of Labor Labor Relations Agency (DOLLRA)²² have each concluded that unit determinations at the local level differ in some important respects from those at the state level. In *Case No. RC-A83-2, Order Directing Election* (April 24, 1984), the DOLLRA) discussed those distinctions:

This Agency has not embraced the state's regulatory policy with respect to combining supervisory personnel with nonsupervisory personnel in a single bargaining unit. Units considered by the Department of Labor, Labor Relations Agency, are historically smaller in size and complement than those considered at the state level. Strict [adherence] to the supervisory/nonsupervisory rule of separation would result in unnecessary fragmentation. Further, the potential conflict of interest

²¹ We certainly do not want to sound as though we are minimizing the importance of these employees' positions. There are few more challenging jobs than those that require an employee to not only perform front line work but also supervise those with whom they work.

²² The predecessor of this Agency for jurisdiction over political subdivisions was the Department of Labor Labor Relations Agency (DOLLRA).

between supervisory personnel and nonsupervisory personnel in the employ of a political subdivision within the ambit of the Department of Labor, Labor Relations Agency, is found to be of little significance due to the organizational structure of most political subdivisions. Most often, the true powers of management and supervision rest with the uppermost levels of city government. Those authorities that trickle down to the middle management level are minimal and subject to review at one or more higher levels.

(*Case No. RC-A83-2* at 1).

The above DOLLRA case concerned a representation petition filed by the International Longshoremen's and Warehousemen's Union (ILWU) to represent a unit of employees at the public safety department at the City of Unalaska. On April 20, 1984, Hearing Officer James R. Carr issued an order recommending that the City of Unalaska's watch commanders, communications/corrections officer, fire fighter, and public safety officers should all be included in the same unit. The watch commanders enforced the law, supervised and evaluated public safety officers, assisted the officers when necessary, and recommended training or disciplinary actions. Carr recommended that these officers be considered "lead men." He noted that while the watch commanders could recommend hiring, firing, and discipline, the department head was responsible for all hiring, firing, and disciplinary action. *Case No. RC-A83-2, Hearing Officer's Recommended Order*, at 3. Carr also concluded that the Communications/Corrections Officer, who dispatched calls among other duties, "performs those dispatching duties which establish an inherent community of interest between police dispatchers and the sworn law enforcement personnel they dispatch." *Id.* at 5.

In *Alaska Public Employees Association vs. City of Cordova*, Decision and Order No. 137 (December 11, 1991), this Agency noted that DOLLRA and the other primary predecessor of this Agency, the State Labor Relations Agency, "have held that units combining supervisory and non supervisory personnel are appropriate." *Id.* at 7. The Agency added: "A requirement that supervisors be separated from nonsupervisors in political subdivisions could result in unnecessary fragmentation." *Id.*

The City contends that excluding the supervisory employees has support in agency decisions. (See "Notice of Filing Principal Authorities Relied Upon by the City" (February 4, 2008)). Some of these cases illustrate the point we made earlier that each case must be decided on its specific facts. Many of these cases addressed disputes concerning supervisory status of state employees. Regarding these latter cases, agency regulation 8 AAC 97.090(a) prohibits combining supervisory and nonsupervisory personnel in the same bargaining unit at the state level only. Since this type of combination is not appropriate under any circumstances at the state level, it is a foregone conclusion that, if the Agency determines that an employee meets the definition of "supervisory employee," the employee must be included in the state's supervisory bargaining unit. This is not so at the political subdivision level. In these cases, it may be entirely appropriate to include supervisory employees in a unit containing nonsupervisory employees. There is no statutory or regulatory prohibition. Whether it is appropriate to include supervisory

employees with nonsupervisory personnel requires a factual determination on a case-by-case basis.

In this case, we find that the Sergeant Supervisors and Dispatch Supervisors have a strong community of interest with other employees in the police department, despite their supervisory status. Primary factors supporting our conclusion are that these employees have limited supervisory authority under the regulation, and they work with and are part of the front-line staff. They share many of the same duties as the employees they supervise. Although they supervise employees, their supervisory duties and responsibilities under 8 AAC 97.990(a)(5) are relatively limited. The record supports finding a strong community of interest shared by all personnel in the proposed unit, with the exception of the Police Lieutenant.

We find the vast majority of the Lieutenant's responsibilities, while supervisory in nature, are more closely aligned with management. For example, the Lieutenant fills in for the Police Chief during her absence. The position answers directly to the Chief, and spends at least 60 percent of its time supervising the work of employees whose jobs are both supervisory and front line in nature. Moreover, PSEA agreed in a December 11, 2007, that the Lieutenant position should be excluded from the unit.²³ We conclude this position should be excluded.

We note that a position of Deputy Police Chief also exists, although it was vacant at the time of the hearing. Little or no evidence was presented about this position. Based on the Teamsters' and the PSEA's petitions, and the fact that the City did not object specifically to including this position in the bargaining unit, this position could be included in the bargaining unit as an employee of the Police Department. However, since we have determined that the Lieutenant position is excluded from the bargaining unit, and the Lieutenant would report to the Deputy Police Chief if the position were filled, we believe an appropriate result is to exclude the Deputy Police Chief position from the bargaining unit. Thus, we find that the Deputy Police Chief position is excluded, along with the Lieutenant position, the Police Chief, and the Records and Communications Manager. We will include all other City Police Department positions in the public safety bargaining unit at the City.

CONCLUSIONS OF LAW

1. The Public Safety Employees Association and Teamsters Local 959 are organizations under AS 23.40.250(5). The City of Wasilla is a public employer under AS 23.40.250(7).

2. This Agency has jurisdiction to determine the appropriate unit under AS 23.40.090.

²³ We do not find evidence of any agreement by the Teamsters to exclude the Lieutenant position from the unit.

3. As petitioners, the Public Safety Employees Association and the Teamsters have the burden to prove each element of their claim by a preponderance of the evidence. 8 AAC 97.350(f).

4. The Public Safety Employees Association proved each of the elements of its petition by a preponderance of the evidence.

5. The Teamsters proved each of the elements of its petition by a preponderance of the evidence.

6. 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 prohibition against unnecessary fragmentation, a single unit of public safety employees, including both law enforcement and non law enforcement employees, as well as some supervisory employees, is an appropriate unit at the City of Wasilla's Police Department.

7. Despite having some supervisory authority under 8 AAC 97.990(a)(5) to effectively recommend discipline, the Police Sergeants and Dispatch Supervisors share a significant community of interest with other Police Department employees in the proposed unit. Based on this factor and on similarity in wages, hours, and other terms and conditions of employment, the history of collective bargaining, and the prohibition against unnecessary fragmentation, the Police Sergeants and Dispatch Supervisors shall be included in the public safety unit with other Police Department employees.

8. The desires of employees factor does not support either excluding or including the police sergeant and dispatch supervisor positions in the bargaining unit.

9. Under 8 AAC 97.090(a), supervisory and confidential employees must be in separate bargaining units from nonsupervisory and nonconfidential employees at the state level only. This regulation has no applicability at the political subdivision level.

10. Based on the exercise of independent judgment in the disciplinary function, the Lieutenant position is excluded from the bargaining unit.

11. Based on the parties' agreement, the Records and Communications Manager position shall be excluded from the unit, as is the Chief of Police position.

12. Based on the parties' stipulation at hearing, the Technical Support Specialist position is included in the bargaining unit.

13. The Deputy Police Chief position is excluded from the unit.

ORDER

1. The petition of the Public Safety Employees Association in Case NO. 07-1517-RC to is granted as modified by this decision.
2. The petition of the General Teamsters Local 959 Case NO. 07-1518-RC is granted as modified by this decision.
3. The unit is described as follows. Included: All employees of the City of Wasilla Police Department. Excluded: the Chief of Police, the Deputy Police Chief, the Lieutenant, and the Records and Communications Manager.
4. The parties shall proceed to election under AS 23.40.100, 8 AAC 97.025, and 8 AAC 97.030. Agency staff shall initiate this process by contacting the parties for the purpose of scheduling a preelection conference.
5. The ballot choices shall be Public Safety Employees Association, AFSCME Local 803; Teamsters Local 959; and no bargaining representative.
6. The City of Wasilla is ordered to 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

Aaron Isaacs, Jr., Vice Chair

Matthew R. McSorley, Board Member

Colleen E. Scanlon, 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 mailing 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, AFSCME Local 803, AFL-CIO vs. City of Wasilla*, Case No. 07-1517-RC, and *Teamsters Local 959 vs. City of Wasilla*, Case No. 07-1518-RC (Consolidated), dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 3rd day of June, 2008.

Cynthia J. Teter
Administrative Clerk III

This is to certify that on the 3rd day of June, 2008,
a true and correct copy of the foregoing was faxed and
mailed, postage prepaid, to:

Stephen Sorensen, PSEA
Nancy Shaw, Teamsters
Gregory S. Fisher, City of Wasilla

Signature