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ALASKA STATE EMPLOYEES ASSOCIATION,)
AFSCME LOCAL 52, AFL-CIO,)
)
Petitioner,)
)
vs.)
)
STATE OF ALASKA,)
)
Respondent.)
)

CASE NO. 10-1572-SP

DECISION AND ORDER NO. 295

The Board heard this petition to determine the strike classification of State of Alaska wildland fire and resource technicians I, II, III, IV, and V and wildland fire dispatchers I, II, and III on January 25-26, 2011, in Anchorage. Hearing Examiner Mark Torgerson presided. This decision was based on the evidence submitted, and the testimony of witnesses at the hearing. The parties' arguments were considered, including those presented in post-hearing briefs filed on February 10, 2011. The record closed on March 15, 2011, after the Board deliberated following the filing of post-hearing briefs.

Digest: The strike petition of the Alaska State Employees Association to classify the wildland fire and resource technicians I, II, III, IV, and V positions and the wildland fire dispatchers I, II, and III positions in the general government unit as strike ineligible, Class I employees, is granted. The duties of the State's wildland fire and resource technicians I, II, III, IV, and V and the wildland fire dispatchers I, II, and III fit within the factors required for Class I status under AS 23.40.200(a)(1) and (b).

Appearances: Kelly Brown, Business Agent, for the Alaska State Employees Association, and Bill Johnson; Benthe Mertl-Posthumus, Labor Relations Analyst II, and Chris Maisch, Director of the Division of Forestry, for the State of Alaska.

Board Panel: Aaron T. Isaacs, Jr., Vice Chair; Will Askren and Daniel Repasky, Members.

DECISION

Statement of the Case

The Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA) filed a petition on June 14, 2010, to determine the strike classification for the State's general government bargaining unit classifications of wildland fire and resource technicians I, II, III, IV, and V, and wildland fire dispatchers I, II, and III.[1] ASEA requests that these positions be classified as Class I, strike ineligible. The State argues that the duties of these positions do not meet the requirements necessary to be classified as strike ineligible; therefore, they should be classified as strike eligible, either Class II or Class III.

Issues

1. Should the State's classifications of wildland fire and resource technicians I, II, III, IV, and V, and wildland fire dispatchers I, II, and III in the Department of Natural Resources in the general government unit be classified as Class I, Class II, or Class III for strike classification purposes under AS 23.40.200?

2. Does the seasonal nature of employment in a job classification prevent an employee from being Class I, strike ineligible, under AS 23.40.200(a)(1) and (b)?

The Alaska State Employees Association presented the testimony of Paul Maki, retired State of Alaska fire management employee; Robert Schmoll, fire management officer, Fairbanks Area; Avi Shalom, operations foreman, Fairbanks Area; Steve McCombs, wildland fire dispatcher, Delta Junction; David Gibbs, director of emergency operations, Fairbanks North Star Borough; and Mark Drygas, battalion chief and president of the Alaska Association of Professional Fire Fighters. Chris Maisch, director of Division of Forestry; Dean Brown, deputy state forester; Marsha Henderson, forester IV; Lynn Wilcock, former chief of fire and aviation and the forest management program; Katherine Sheehan, deputy director of Division of Personnel and Labor Relations; and Nicki Neal, director of Division of Personnel and Labor Relations testified for the State of Alaska.

Findings of Fact

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

[1] In its prehearing statement, the ASEA noted that it had failed to include the job classification of state logistics center coordinator (SLCC) in its petition, and it asked to have the SLCC position added to its petition. Evidence was not presented about this job classification, and the Agency has not decided the strike classification for the SLCC as part of this hearing.

1. On June 14, 2010, ASEA filed a petition to determine the strike classification of the wildland fire and resource technicians I, II, III, IV, and V and the wildland fire dispatchers I, II, and III in the general government bargaining unit.[2]

2. The State of Alaska (State), an employer under AS 23.40.250(7), recognizes the Alaska State Employees Association, AFSCME Local 52, AFL-CIO (ASEA) as the bargaining representative for the members of the general government unit (GGU). The State admitted in its response to the strike class petition that ASEA is an employee organization under the Public Employment Relations Act (AS 23.40.250(5)), and that the parties were subject to a collective bargaining agreement that expired on June 30, 2010.

3. The wildland fire and resource technicians I, II, III, IV, and V and the wildland fire dispatchers I, II, and III currently are classified by the State as Class III, strike eligible, employees under AS 23.40.200(a)(3) and (d). The parties stipulated that the State has always considered the employees in these job classifications to be Class III employees.

4. Paul Maki, who began state employment in December 1971 as a forester I in the Division of Lands, Department of Natural Resources, provided historical background about the State's developing role in wildland fire suppression and the work of the forestry section, which later became the Division of Forestry (DOF). In the 1970's, the Division of Lands contained a forestry section, which was much smaller than today's DOF. Its primary responsibilities were timber sales and forest management. Maki believes the DOF became its own division in the early 1980's. The State did not have fire suppression responsibility for wildland fires in the early 1970's. It contracted fire suppression activities to the Bureau of Land Management (BLM). Maki and Ray Suttles, chief of fire management, audited bills BLM submitted to insure they seemed reasonable in relationship to the fire reports, looking for such things as types of equipment used, helicopters, and personnel utilized. (Testimony of Maki).

5. In 1972, the State started assuming fire prevention management responsibilities. Seven forest wardens managed the new fire laws concerning burning. They wrote burning permits, visited proposed burning sites, provided advice about safe burning practices, and performed other fire prevention activities. (Testimony of Maki).

6. In approximately 1974, the State assumed fire suppression responsibility for state land in the Haines-Skagway area from the BLM or U. S. Forest Service. Due to the amount of rainfall received in this area, fire suppression activity was not difficult. (Testimony of Maki).

7. As years passed, the State assumed additional fire suppression responsibilities from the BLM, beginning in 1976 in the Anchorage and Matanuska-Susitna Valley areas. Later, the State added Tok, Delta Junction, and the McGrath areas to its fire-suppression activities. Employees in the forestry section statewide grew from about 20 to over 200, including seasonal employees. (Testimony of Maki).

[2] Some of the same job classifications may exist in the supervisory bargaining unit. However, ASEA's petition does not include these positions because ASEA does not represent these employees.

8. The State's *Wildland Fire and Aviation Basics* manual shows the following protection areas: Fairbanks Area, Valdez-Copper River Area, Northern Southeast Area, Delta Area, Tok Area, Kenai-Kodiak Area, Southwest Area, and the Mat-Su Area. (Ex. I, at 5-6). The State has responsibility for fire suppression costs on all state, private, and municipal lands. (*Id*. at 4).

9. Maki worked almost 35 years, retiring in 2006. Although he was a fire fighter at times from 1974 to 1979, fire management was his primary responsibility. In the past 10 to 15 years, there have been more fires and larger fires. Fire suppression has been a major summer activity. In recent years, many fires in Alaska's Interior, and some in the Alaska Range, have been caused by lightning, whereas more fires in South-Central Alaska have been caused by humans. (Testimony of Maki). There can be up to 21,000 lightning strikes a day, and one-half of one percent start a fire, thereby creating a busy fire season. In May, humans cause fires to start while they are burning and cleaning up after winter. (Testimony of Maisch). DOF has an investigative process to try to determine why fires start. (Testimony of Maki).

10. For the last ten years, Robert Schmoll has been the DOF fire management officer for prevention in the Fairbanks Area. His duties include the aviation part of the operation, dispatch, prevention, training, and fuels. He began working for the state in 1990. He was a forest technician II in flight operations for one season, a forest technician III for seven years, and a forest technician IV for four years, running the training and fuels part. He also worked for the Alaska Fire Service in the Hot Shot Program for five years. Schmoll has a good background in both large and small fire operations, and he has engaged in initial and extended attacks in Alaska and the Lower 48 states (Lower 48).

11. Although Schmoll worked as a forest technician, he has not worked under the new wildland fire and resource technician classifications. However, he is familiar with both the forest technician job classifications and the new wildland fire and resource technician job classifications. He and Gary Mullen helped write the position descriptions for the new classifications. The State's final determination on the job classifications was somewhat different from the information submitted. (Testimony of Schmoll). DOF started the classification study process in 2006 for the forester series and the wildland fire and resource technician job series. It took almost two full years, and the outcome was that the series was renamed to wildland fire and resource technicians and the dispatchers were split into separate wildland fire dispatcher classifications. Most of the technicians moved up one class on the pay scale, and 15-20 percent moved up two pay classes. The dispatchers moved up one pay class, and some of the foresters also moved up one pay class. (Testimony of Maisch).

12. The Fairbanks and the Matanuska-Susitna Areas each have two wildland fire and resource technician IV positions. One position is responsible for operations, suppression, the engines, and coordinating the daily activities, while the other one handles the aviation function. The technicians IV provide oversight, organization, coordination, and assistance for all preparedness and fire suppression activities. Wildland fire and resource technicians II and III staff the engines and the helicopter on a rotating basis. No wildland fire and resource technician I positions are filled in these areas currently. (Testimony of Schmoll).

13. In Alaska, fire suppression works by interagency cooperation. Federal agencies, the State, fire departments, boroughs, and tribal governments all work together cooperatively to manage and suppress wildland fires. On its own, no one entity can handle all aspects of wildland fires. (Testimony of Schmoll and Maisch).

14. Alaska follows the national fire policy, which was written based primarily on land ownership practices in the Lower 48. Alaska is split into geographical areas that differ from those in the Lower 48. Each agency, or entity, has a different set of resource types. For example, the State primarily has engines and helicopters, water bucket drops by helicopter, and aviation support for retardants. The Alaska Fire Service has Hot Shot crews and smokejumpers. Local and volunteer fire departments have structure-oriented engines that are large from a wildland fire perspective, but with their 2,000 to 3,000 gallon water capacity, they can be used for wildland fires. Normally, the State does not have water tenders. Each fire situation is different, and by combining resources, agencies work together more effectively to fight fires. (Testimony of Schmoll).

15. DOF's manual titled *Wildland Fire and Aviation Basics* (manual), updated April 2008, states that "[t]he goal of the Division of Forestry Fire and Aviation Program is to provide safe, cost-effective, and efficient fire protection services and related fire and aviation management activities to protect natural resources and human life on State, private, and municipal lands, commensurate with the values at risk." (Ex. I, at 3). The first two objectives listed are to "[p]rotect human life" and "[e]mphasize aggressive and effective initial attack suppression operations on Critical and Full protection level fires that threaten life and property." *Id.*

16. Four protection levels are designated: critical, full, modified, and limited. Little response occurs in limited areas, and any response provided occurs around population areas. In modified response areas, full protection is provided from the beginning to the middle of the fire season. Afterwards, DOF manages the fires like a limited protection area to conserve funding and resources, and to allow fire to play its natural role. In critical and full protection areas, there is a rapid initial attack, to try to keep the fire as small as possible. Most urban areas are in critical zones. (Testimony of Maisch).

17. The Alaska Interagency Coordination Center in Fairbanks coordinates the interagency response to Alaska's wildland fires. It is staffed and managed jointly by state and federal employees, who coordinate and mobilize interagency personnel and resources to fires statewide, resulting in faster and more efficient wildland fire responses. (Ex. I, at 4).

18. Formal agreements between the state and federal government have divided Alaska into three protection areas. The BLM, the USDA Forest Service, and the DOF fight fires within their protection areas on all land ownership types. *Id*. DOF provides fire protection services on 150 million acres of land. (*Id.* at 11). The majority of the land in Alaska is federal land, followed by state-owned land, and then native and private lands. DOF protects Fairbanks and

South-Central, essentially the road area, and it is responsible for fire escape and a united attack. Land managers work together to achieve the best result. (Testimony of Maisch).

19. The manual explains why suppressing fires quickly is important. It states that, "A successful initial attack can save the state millions of dollars in suppression costs. A trained, experienced, and well-equipped workforce is essential to locate and initial attack wildland fires while they are small. The cost of a successful initial attack averages $4 thousand dollars per fire compared to costly "project" fires that can cost from $3 million to $30 million to suppress. One of DOF's top priorities is the aggressive and effective initial attack of wildland fires in the Full and Critical protection areas of the state." (Ex. I, at 10). The manual also stresses the need for appropriate and effective fire management, which allows firefighters to "get to a fire with the tools they need to fight it within a minimal period of time." (*Id.* at 13). Food, tents, equipment, vehicles, and medical supplies have to be transported to the fire location, and restocking and refurbishing equipment occurs after a fire ends so everything will be ready for the next fire. Rapid, efficient deployment of the fire workforce results in a more effective initial attack, which suppresses wildland fires more quickly and saves the State money. *(Id*.).

20. Multiple factors, such as fuel conditions, weather, vegetative mat depth, and moisture content in vegetation, affect fire intensity and the rate at which a fire spreads. Fire can spread up to eight miles an hour, and firebrands can be transported a mile in advance of the main fire, causing new ignitions. (*Id.* at 15).

21. Overall, the average acreage burned in Alaska annually is one-half million acres. However, in the last 10 years, the average acreage burned annually is over 2 million acres. The most acreage, 6 million acres, was burned in 2004, and 2005 had the third largest amount of acreage burned, with just under 5 million acres burned. The 2004 fires were all burning near communities, such as Fairbanks, Tok, Bettles, and Delta. (Testimony of Maisch**).**

22. The wildland/urban interface occurs when more of Alaska's increasing population moves into forested areas where wildland fires occur. As additional homes are built in the interface area, the risk to human life and threat to improved property increases. "The protection of life and property in the wildland/urban interface is the most important job DOF and its local government cooperators have." (Ex. I, at 16). Homes were destroyed in the Miller's Reach Fire in 1996, the 2001 Red Fox Fire near Tok, the Parks Highway Fire in 2006, and the 2007 Caribou Hills Fire. Wildland fires that approach homes can involve hazardous substances, structure protection, and evacuating residents. Skills needed to protect structures differ from those used strictly for wildland fire suppression, and cooperation between DOF and local government and structure fire departments is necessary. (*Id.)*.

23. The Fairbanks Area Forestry section issued a 2010 *Fire Preparedness Staffing & Action Guide* (guide), which ranks fire intensities in five levels, with Low of 1 coded as Green, and Extreme of 5 coded as Red. For the Low, Green code, a 60 minute response time is planned, with a daily minimum staffing cost of $5,425. For the Moderate, Blue code, ranked number 2, a 30 minute response time is acceptable, with a daily minimum staffing cost of $5,425. The level 3, or Yellow code, requires optimal response times, with a daily minimum staffing cost of

$17,166. Level 4, the Orange code, requires optimal response time, with a daily minimum staffing cost of $25,226. The highest level, Red, with a code of 5, requires 2 loads of smokejumpers, 2 loads of retardant, and organizing crew activation, at a daily minimum staffing cost of $34,836. (Ex. K, at 3-7). The guide also addresses flight crew standby times and alert status for the flight crew. Daily tanker alerts are issued by 5:00 p.m. For Red alerts, personnel must be on base between the standby period times specified, ready for immediate departure with wheels rolling within 10 minutes. Yellow means that personnel must be available to depart from their base within 30 minutes, and Blue within 1.1 hours. A Green day, when the air tanker group is released from standby obligations, must be scheduled 12 hours in advance and the crew advised. "Only the SOA-DOF Operations Forester can approve a Green day." (*Id*. at 11).

24. The guide shows that level 5, Red fire "[c]ontrol is extremely difficult and all efforts at direct control are likely to fail unless aggressive initial attack immediately contains fire. **Direct attack should only be attempted with the utmost caution.** Suppression action may limit fire growth if directed to the flanks and tail of the fire." (*Id*. at 7). (Emphasis in original).

25. Alaska is the only state that has implemented one interagency fire plan covering all types of land ownership. Managers are aided by this advance planning for all wildland fire-prone lands, since he plan designates the areas to be protected, and which of the four protection levels applies. If a fire cannot be contained in the initial attack, a wildland fire situation analysis is prepared by fire managers and land managers and owners. Its goal is to manage large fires in a safe, cost-effective way that meets resource objectives without risking public safety. (Ex. I, at 7). Fires that pose an immediate threat to life are the most critical fires to stop with an aggressive and successful initial attack, and they must be fought first. The State has to reallocate its resources and deploy the workforce to the most critical areas to save money and prevent larger fires. *Id.* As urban areas expand into the wildland, the wildland fire workload increases. There are approximately 500 fires a year, and DOF manages the majority of the workload for them. (*Id*. at 13).

26. Agencies have mutual aid agreements, which address operating procedures, authorities' responsibilities, communications, different response/assistance limitations, training qualifications, and cost reimbursements. For example, three types of agreements exist with local fire departments in Alaska's Interior. There is joint responsibility for wildland fires that start in a fire department service area, and the State has primary responsibility. Employees go to the fire under a unified command. If the fire becomes larger and aviation resources are needed, the State acts as the sole incident commander, separating out the fire departments as a structure protection group. Another response type is discretionary action by a local fire department if there is a wildland fire just outside the fire department's service area, and water support is needed due to lack of readily available water. The State asks the local fire department to respond in its discretion, based on the staffing level available locally and the amount of activity it is experiencing. The local fire department is reimbursed for services rendered. In a large fire, a third response type uses fire departments as a task force, and the fire coordinator may order a strike force of engines from different departments with available engines. Resources are hired, engines are geared with equipment for fighting wildland fires, and employees take the engines to

the fires. The State reimburses the fire departments for the services used. (Testimony of Schmoll).

27. These agreements with local fire departments would not work very well if the State did not have wildland fire and resource technicians available to work because the local fire departments have very limited resources and training differs for wildland and structure fire-fighting. (Testimony of Schmoll).

28. The wildland fire and resource technicians work under the National Interagency Incident Management System Incident Command System concept for fire suppression. The State adopted this system in 1984, and its departments adopted the Incident Command System (ICS) system in 1996 through the governor's administrative order. Employees are trained in specific ICS positions that meet national standards, allowing Alaska to utilize fire professionals from across the nation when needed, and Alaskan firefighters and dispatchers to be sent to the Lower 48. Everyone benefits by having trained staff available, without each state having to train and staff for a "'worst case'" fire situation. (Ex. I, at 9).

29. Alaska used between 50 and 60 crews from the Lower 48 in 2009. Alaska has sent as many as 75 crews on at least one rotation in a season to fight Lower 48 fires. Alaska also has an agreement with Canada for mutual assistance. While there are some differences, the governments of the United States and Canada work together effectively to provide wildland fire suppression responses. (Testimony of Schmoll).

30. Nine geographical areas exist for interagency dispatch in the United States, and one is located in Fairbanks. If a lot of wildland fire activity in an area causes a resource shortage, the area in need requests different types of equipment and personnel, which is dispatched based on a closest forces available concept. (Testimony of Schmoll).

31. Under AS 41.15.050, the wildfire season starts April 1 and ends August 31 annually. Schmoll believes these dates probably understate the actual fire season, as significant fire activity can occur in September. Alaska's Interior experiences the greatest fire danger and activity earlier in the fire season due to the number of dry, hot, windy days, and these early fires can be more dangerous. Later in the fire season, the weather tends to be wetter, and the fire risk decreases. Wildland fires can begin any time there is not snow cover. (Testimony of Schmoll). Fire seasons have become longer and are more intense. (Testimony of Maisch).

32. It is common to have 50 to 80 lightning-caused fires burning simultaneously in different areas of Alaska. (Ex. I, at 13).

33. The *Wildland Fire and Aviation Basics* manual (manual) states that, "Seasonal employees are the backbone of the fire suppression program. They are an experienced and qualified work force, many of whom have worked for DOF 10-15 years. Their expertise provides the basis for DOF's ability to expand from a few dozen employees to over a thousand within a day or two and be fighting fires immediately." (*Id*. at 10).

34. The wildland fire and resource technicians I, II, III, IV, and V and the wildland fire dispatchers I, II, and III work on a seasonal basis, generally during the fire season. Some employees in these classifications return to work before the statutory fire season begins, and some work after it ends. (Testimony of Shalom and McCombs).

35. DOF had 180 seasonal fire positions funded when the manual was updated in April 2008. (Ex. I, at 2 & 10). More recently, in the fire management program, there are 181 seasonal positions and 33 full-time positions. This number does not include emergency fire fighters (EFFs). When a large number of employees work on fires, most are EFFs. A large fire can have 2,200 employees on it. There are 28 vacancies in the fire program. Forty-five full-time, year-round employees are employed on the forest resources side, along with 12 temporary employees, and 5 part-time employees. (Testimony of Maisch).

36. The State employs EFFs to help fight fires. For the most part, they do not have the higher skill and qualification levels that the wildland fire and resource technicians have. There are some exceptions, such as EFFs who are retirees. Individuals may choose to be EFFs because they prefer working on smaller assignments or working on only one or two jobs a year. EFFs who have higher qualifications must maintain them. EFFs could not replace the wildland fire and resource technicians because there are not enough highly qualified EFFs statewide to meet even the Fairbanks Area's needs. (Testimony of Schmoll). EFFs are used on initial fire attacks, but there is always a state employee with them. (Testimony of Shalom).

37. The State's *Wildland Fire and Aviation Basics* manual shows that there are 73, 16-person Type II, EFF crews that can be hired to supplement the State's permanent seasonal wildland fire workforce. They can work as initial attack firefighters, aviation ramp workers, and warehouse workers, for example. They are trained to national firefighter standards, and fight both Lower 48 and Alaskan wildland fires. DOF manages 29 EFF crews, providing Incident Command System and wildland fire training, fitness testing, and issuing Red Cards. The EFF crews' performance is respected and valued in Alaska and other states where the EFFs have fought fires. (Ex. I, at 12).

38. Urban firefighters have on-going certification requirements, and wildland fire fighters also need different levels of training and certification to increase their skills. The two training types differ due to the fire fighting skills needed for structure fires versus wildland fires. The wildland fire fighters do not have a self-contained, breathing apparatus to enter buildings to fight structure fires. If a fire occurs in a city, wildland fire fighters protect the surrounding area and wildlands. (Testimony of Schmoll).

39. DOF adopted the National Wildfire Coordination Group, Wildland Fire and Prescribed Fire Qualifications System Guide, as the basis for its wildland fire qualifications system. The employees must have appropriate training, experience, fitness, and qualifications (Red Card) for all fire and aviation tasks assigned. (Ex. I, at 9).

40. The state's class specifications for the wildland fire and resource technician II, III, IV, and V positions require the applicant to be Red Card certified under the National Incident

Qualification System for the specific training requirements listed in the recruitment bulletin. The class specification for the entry level wildland fire and resource technician I does not require the applicant to already have the Red Card. (Ex. A; Ex. 2).

41. The state's class specification for the wildland fire dispatchers I, II, and III require that the "Wildland Fire Dispatcher must receive Red Card training and certification under the National Incident Qualification System." (Ex. 3, at 2, 5, & 7).

42. The class specification for the wildland fire and resource technician I establishes that the employee performs entry or trainee level technical work supporting professional staff in developing, protecting, implementing, or maintaining fire management or forest resource management programs. Practical knowledge and specialized training is needed to perform the duties. The majority of duties may be in one program, but duty assignments can include work in both.

43. Work in the fire management program directly supports fire suppression, preparedness, prevention, and enforcement functions. Fire suppression includes controlling and extinguishing wildfires. Associated suppression tasks include developing a working knowledge of fire suppression and fuel management techniques, practices, and terminology; assisting in maintaining fire readiness in personal gear, helicopter, and assigned engines; learning fire management program requirements, such as suppression tactics and maintaining and using fire suppression tools; attending courses in basic fire orientation and firefighting; learning how to operate emergency equipment in traffic; learning safety procedures for field work and fire-fighting tactics, fire prevention and detection, and preserving evidence; and performing elementary tasks as a fire engine or suppression crew member. (Ex. A, Class Specification: Wildland Fire and Resource Technician I, at 1-2, created 10/28/1997; Ex. 2, at 1-3).

44. Fire preparedness includes supporting, maintaining, and enhancing fire management capabilities, and reducing the number of fire incidents. Prevention and enforcement duties include minimizing human-caused wildfires primarily through educating the public and enforcing burning regulations.

45. Forest resource program work includes assignments related directly to resource management, such as forest management, practices, stewardship, and health, and community forestry. (Ex. A, at 1; Ex. 2). Forestry field experience helps qualify technicians to advance through the wildland fire and resource technician job class series.

46. Common job requirements for all five wildland fire and resource technician levels positions are availability for in and out-of-state travel for fire suppression assignments for 14-21 days; handling hazardous materials; being in standby or recall status during the fire season; flying in small, fixed wing aircraft or helicopters; having an Alaskan driver's license before reporting for duty; and being able to complete a 3-mile hike in 45 minutes or less, carrying a 45-pound pack over level terrain. (Ex. A; Ex. 2).

47. Schmoll avoids hiring at the wildland fire and resource technician I level if he can obtain qualified applicants at the II and III levels. There are no level I technicians employed in the Fairbanks area presently. It takes at least 1 season to go from the level I to II; 6 to 7 seasons to go from level II to III, and 10 to 15 seasons to go from level III to level IV. (Testimony of Schmoll).

48. The class specification for the wildland fire and resource technician II (technician II) shows that the position handles routine, technical work of limited complexity supporting professional staff in either the fire management or forest resource management program. The majority of duties can be in one program, but may include work in both programs. (Ex. A, Class Specification: Wildland Fire and Resource Technician II, at 1, created 10/28/1997; Ex. 2, at 4).

49. The technician II works as a crew member, receiving assignments and supervision from higher level staff, and providing technical assistance in fire and resource management activities. Two options exist at level II, intermediate training level. The first option develops the technician II's skills by increasing responsibility for a variety of technical assignments, and serving as incident commander on the least complex wildland fires. Exercising judgment and decision-making skills requires practical knowledge of basic fire management or resources concepts, methods, practices, and techniques. The technician II strictly follows established guidelines, referring the more unusual, difficult, or complex situations to the lead technician or supervisor. Additional training, experience, and responsibility are required, and the employee receives more complex assignments to develop the knowledge, skills, and abilities needed to work at the journey level. The wildland fire and resource technician II can advance to level III after the employee (1) successfully completes a specified training plan, (2) meets all terms of the flexible staffing agreement, and (3) is certified by the supervisor as prepared to perform at the next level. (Ex. A, Class Specification: Wildland Fire and Resource Technician II, at 1-4, created 10/28/1997; Ex. 2, at 4-7).

50. In the second option, the technician II works as a skilled crew member performing fire or resource-related assignments, consisting of limited duties requiring general knowledge of fire fighting or resource field work; having enough knowledge and experience to understand fundamental tasks and evaluate procedures, methods, guides and references; and performing tasks that are usually repetitive. The technician II exercises limited substantive judgment and responses, makes occasional choices or minor modifications to methods, and sometimes works independently. However, the scope and procedures are defined, and most work is reviewed after completion. Lead responsibilities are not class controlling. *Id*.

51. The technician II is distinguished from the wildland fire and resource technician III by the III's full proficiency and independence in performing the full range of duties associated with wildland firefighting or forestry field work, and greater judgment, authority, independence, and discretion exercised. (Ex. A, Class Specification: Wildland Fire and Resource Technician III, at 1, created 10/28/1997; Ex. 2, at 5).

52. The technician II must have six months of trainee or entry level wildland fire fighting or forestry field experience, which can be met by working as a wildland fire and

resource technician I with the state, or having equivalent experience with another employer. There are different specialty areas under the National Incident Qualification System, including fire operations, wildland fire prevention, and aviation support. Certain college or vocational technical coursework may be substituted for the six months of field experience, but qualifications for the Red Card under the National Incident Qualification System cannot be substituted. (Ex. 2, at 6).

53. The classification specification for the wildland fire and resource technician III (technician III) shows the position performs the full range of duties supporting professional staff in the fire management or forest resource management programs. (Ex. A, Wildland Fire and Resource Technician III Class Specification, created 10/28/1997, at 1; Ex. 2, at 8). Like a technician I and II, the employee working in a level III position may have a majority of duties assigned in one program, but duty assignments may include work in both programs. Level III is the journey level, and employees may serve as the senior crew member or work independently with general direction given by higher level staff. Level III is distinguished from the level IV on the basis of the IV's greater responsibility for daily planning organizing, managing, and directing the work assigned to crews or subordinates. (Ex. A, Wildland Fire and Resource Technician III Class Specification, created 10/28/1997, at 2; Ex. 2, at 9).

54. The technician III's Fire Management Program duties include working as a crew leader, foreman, or member of an engine, helitack, or hand crew; maintaining engine or helitack loads in a state of readiness; calculating helicopter weight load and overseeing cargo and personnel loading; overseeing contract aircraft and monitoring compliance by contract pilots; directing and performing wildland fire suppression efforts on initial attack and extended attack fires; determining appropriate tactics and strategies; leading lower level technicians or EFFs in suppression efforts; requesting additional forces; serving as incident commander where multiple agencies and aviation resources are involved; establishing unified command with cooperators and ordering evacuations; completing accurate fire reports; providing daily briefings and training crew members; investigating and documenting fire origins and causes; assisting in preparing criminal and civil cases; and tracking inventory, hazardous materials, and information concerning aircraft departures, arrivals, loading, unloading, and fueling operations. (Ex. A; Ex. 2, at 9).

55. Minimum qualifications for the technician III include twelve months of wildland fire fighting or forestry field experience, with at least six months at the developmental level, and Red Card qualification. Although completed coursework in certain subjects can be substituted for six months of general field experience, no substitution is allowed for the six months of developmental experience and the National Incident Qualification (Red Card) qualifications. (Ex. A, Ex. 2, at 10-11).

56. The class specification for the wildland fire and resource technician IV (technician IV) shows that the position leads technical staff who support professional staff in developing, protecting, implementing, or maintaining fire management or forest resource management programs. (Ex. A, Class Specification Wildland Fire and Resource Technician IV, created 10/28/1997, at 1; Ex. 2 at 12). Level IV differs from level III because the III does not

have on-going responsibility to lead crews. Instead, the III's lead level responsibility and authority is temporary and limited to short-term or specific duty assignments. The level IV technician is distinguished from the level V technician by the level V's work as an assistant area fire management officer or a technical specialist who coordinates functions or operations in a complex geographical area. (Ex. A; Ex. 2, at 13).

57. The technician IV manages fire suppression crews to insure initial attack readiness; supervises technical staff; plans crews' work and adjusts priorities; oversees helibase, air tanker base, or fixed-wing ramp operations; acts as incident commander on complex wildland or urban-interface initial and extended attack fires and directs and coordinates the suppression response; ensures crew levels and resources are at appropriate levels and adjusts as necessary for crew safety and appropriate response; coordinates suppression efforts with local fire departments and federal agencies for efficient and effective fire responses; manages supplies and equipment to be ready for all circumstances; prepares and holds daily briefings for weather, fire situations, preparedness, and safety awareness; plans and coordinates staff training and maintains training records; coordinates training for cooperators, local fire departments, EFFs, and federal agencies; reviews fire incident reports; assists with area management program direction and implementation; develops an area fire prevention plan; handles press releases and public service announcements; prepares for criminal and civil cases by gathering evidence, taking photographs, interviewing witnesses, maintaining security at the site, interpreting burn indicators, and drawing conclusions about the cause of the fire; testifies on the State's behalf; and prepares fire cost recovery documentation. (Ex. A; Ex. 2, at 12-13).

58. If the technician IV, while acting prudently, makes an error, the risks are very high, and can lead to heavy smoke inhalation, serious injury, or death to fire personnel and/or members of the public. Failure to consider and assess changing conditions such as weather and fire behavior can lead to intense media scrutiny, unnecessary expenditure of funds, liability to the State, and widespread damage to homes, businesses, infrastructure, and resources. (Ex. 9, State of Alaska Position Description for PCN 109196, at 6; Testimony of Shalom).

59. The minimum qualifications for the technician IV position include 12 months of wildland fire fighting or forestry field experience at the journey level and Red Card qualification under the National Incident Qualification System. Specialty areas exist in fire operations, wildland fire prevention, and aviation support. (Ex. 2, at 18).

60. The wildland fire and resource technician V (technician V) is the highest level of the series, and all V positions are in the fire management program. The technician V performs advanced level work planning, coordinating, and implementing multiple fire operations or providing specialized technical support for the fire management program. (Ex. A, Wildland Fire and Resource Technician V Class Specification, created 02/13/2007, at 1; Ex. 2, at 16). At level V, the employee works either as an assistant area fire management officer or as a technical expert in specialized work related to or supporting the fire program. (Ex. 2, at 16). The level V technician exercises programmatic, decision-making authority in planning, developing, and implementing processes and procedures, or may be a specialist in a specific program function. *Id.*

61. Assistant area fire management officer duties include tasks related to a complex area fire management program, and supervising at least one level IV technician. Complexity is based on such factors as the likelihood of wildland/urban fires that are a greater threat to life and property, the need for multi-agency cooperation for fire responses, greater decision-making and commitment authority, and overseeing a large staff that coordinates and implements multiple fire support operations. (Ex. A, Wildland Fire and Resource Technician V Class Specification, created 02/13/2007, at 1; Ex. 2, at 16).

62. A level V technical specialist may coordinate air attacks, or work as a fire behavior or intelligence coordinator. The level V technician has broader responsibilities than a level IV technician. *Id*.

63. Forest resource-related duties are primarily performed by wildland fire and resource technicians when extra money is available, and they are used to extend an employee's normal work season. (Testimony of Shalom and Maisch).

64. The primary purpose for flexibly-staffed wildland fire and resource technician I, II, III positions is to assist and engage in wildland fire suppression activities protecting lives, property, and natural resources. (Ex. 7). Position descriptions for levels I through IV show that no more than five to ten percent of the employee's time is spent performing duties unrelated to the primary firefighting mission. (Ex. 7, 8, & 9).

65. Avi Shalom is an operations foreman in Fairbanks, and he has worked as a wildland fire and resource technician IV for two years. Additionally, he has seven years on a BLM Hot Shot crew, two years as an EFF, one season as a technician II with the State, and six years as technician III. His position, PCN 109505, is described in exhibit 9. (Testimony of Shalom).

66. Pre-season fire-fighting duties include hiring staff; preparing to fight fires; gearing up engines and helicopters; readying personal, initial attack, and extended attack gear; having simulations for technicians; conducting prescribed burns; and holding a Red Card class. By the time the ground is snow-free, his unit is fire-ready. In May, a fire-readiness inspection is conducted by an operations person, currently Marsha Henderson. During the season, they fight wildland fires. Debriefings are held after a fire, while events are fresh, to determine what could have been done better. Fighting fires takes precedence over resource work. After the season ends, fire-related cleanup is accomplished, including cleaning the engines and writing employee evaluations. (Testimony of Shalom). All tools and equipment used on a fire must be refurbished and put back in place to be ready for the next fire. (Testimony of Maisch).

67. In late September and October, prescribed burns and fuel mitigation projects are handled. Near Fairbanks, the technicians consider where large fires could occur, the direction in which they could move, and they cut fuel breaks with chainsaws or machinery to decrease fire danger. After there is some snow on the ground and some moisture, the piles of fuel acquired in the fuel mitigation work are burned. Black spruce is a problem fuel in the Fairbanks area.

Shalom has not performed any resource work. He views putting in needed fuel breaks as preventative fire suppression work instead of resource work. (Testimony of Shalom). Maisch confirmed that fire prevention work is done largely outside of the fire season, and consists of enforcement, property clearing to reduce fire hazards, fuel mitigation work, and education. DOF also conducts prescribed burns for Fish and Game to improve moose or other wildlife habitat. If the technicians were on strike, DOF would probably not conduct a prescribed burn. (Testimony of Maisch).

68. The key to fighting a wildland fire is to knock it down quickly while it is small, and keep it knocked down. Staff members make the best decisions possible under available time frames. (Testimony of Shalom).

69. A strike vote took place in Shalom's bargaining unit in 2004. (Testimony of Shalom). As long as the wildland fire and resource technician positions I-V and the wildland fire dispatcher positions I-III are classified as strike eligible, Class III, positions, there is a possibility that the employees in these positions could be called upon to strike if the general government bargaining unit members voted to authorize a strike.

70. Shalom discussed potential impacts of a strike by the wildland fire and resource technicians. ASEA's collective bargaining agreement with the state expires in June, which is a prime month for fire activity. If a strike occurred, Shalom does not believe the work the technicians handle could be done by the Fairbanks Fire Department, the nearby volunteer fire departments, and the EFFs. Red Card qualifications are required to perform certain functions. EFFs could not handle an initial attack in the Fairbanks Area. To drive fire engines, employees must be certified as an emergency vehicle operator. DOF has a six-day engine academy. When the alarm rings, the engines in Shalom's area should be rolling in three to five minutes. If a work stoppage occurred, Shalom does not believe fire personnel from the Lower 48 could accomplish the work of the technicians and wildland fire dispatchers, as the whole system would be compromised. Personnel from the Lower 48 come in to assist in fighting fires, not to take over a job that isn't being done. They can refuse the assignment after arrival if they believe it is too dangerous. Additionally, Lower 48 fire fighters do not have local knowledge, which is important in fighting a fire. Fires burn differently in Alaska than in the Lower 48 due to differences in fuel types. Alaska's wildland fires generally are not as flashy or fast-burning as those in the Lower 48. (Testimony of Shalom).

71. In the Fairbanks Area, 400 people are trained in various classes and 100 Red Cards are issued annually. Each year, a wildland fire-fighting refresher class is held over a four-day period for members of the Fairbanks Fire Department. (Testimony of Shalom).

72. Shalom has worked with the Fairbanks Fire Department on 2 or 3 fires in 11 years. He has worked more extensively with the Steese, North Pole, Ester, and other outlying fire departments, where more wildlands are nearby. He does not believe structure fire fighters are very comfortable with wildland fires, or that the structure fire departments could do the job that DOF does if the state employees who fight fires were on strike. (Testimony of Shalom).

73. Shalom hires employees, and it is difficult to find experienced applicants. Training inexperienced individuals requires a lot of work. If possible, his office fills positions as employees move up. For the technician I position, Shalom only interviews applicants who have been on at least one fire. The positions are flexibly staffed at the I, II, or III level, and Shalom tries to hire at a level greater than level I to get applicants with some experience. (Testimony of Shalom).

74. Shalom would rather leave a position vacant than spend the time necessary to train an employee to the point where the employee could be sent to a fire. In the Fairbanks area, there are 15 positions for initial attack technicians. Last season there were six openings and he filled two of them. There are four vacancies for the upcoming fire season. He is unsure why the state is getting fewer applicants, but a factor could be a better pay and retirement system at BLM. (Testimony of Shalom).

75. Leave is addressed in the collective bargaining agreement between the Alaska State Employees Association and the State. If Shalom takes leave during the fire season, he must give two days' notice. The supervisor has discretion whether to approve leave. It is mandatory to have one day off in a 21-day period. The State's records show Shalom took leave from July 9 to July 25 in 2010. Shalom doesn't recall taking this time off, but testified if the State had the time sheets showing the leave, he may have taken it. He recalls being on a fire assignment in July 2010, but acknowledges fire assignment work would not have been listed on his time sheet as personal leave. He was on leave for a week in September 2010. If he is away on a fire assignment, or on leave, someone acts in his place, and someone packs gear for him. In 2010, he began seasonal leave on November 2nd, and he was still on seasonal leave at the time of the hearing. During some years, he converts overtime and remains in pay status through the end of December. (Testimony of Shalom). Maisch indicated granting leave is always at the supervisor's discretion. If there is a greater fire potential, Maisch hopes the supervisor would restrict leave, or allow only short periods of leave. (Testimony of Maisch).

76. In a 2004 fire near Fairbanks, many homes would have been lost if the state's wildland fire and resource technicians had been unavailable. More than a half-million acres burned. The wildland fire and resource technicians I-V fight fires, even though the State does not call them fire fighters. (Testimony of Shalom).

77. David Gibbs is employed at the Fairbanks North Star Borough as director of emergency operations. He provides some administrative support to the borough's five fire service areas. The borough has a land area approximately the size of Massachusetts. The volunteer fire departments are non-profit. The borough provides equipment and stations. The majority of the land in the borough is outside of fire service areas and is unprotected. However, a majority of the land with a substantial population is within a fire service area, although there are some areas with a substantial population that are not included in a fire service area. The only protection those outside the fire service areas have is provided by the Department of Natural Resources' DOF. The borough prohibits volunteer fire fighters from working or using equipment outside of their fire service areas, unless a mutual aid or cooperative agreement is in effect. If qualified DOF fire fighters were unavailable, Gibbs would be concerned because the

local fire service areas need to keep their equipment available to protect their designated areas, and the type of training and experience the volunteer fire fighters have is different from that of DOF's fire fighters. The local fire service areas specialize in fighting structure fires and providing emergency medical services, and they cannot replicate DOF's fire-fighting services. (Testimony of Gibbs).

78. Wildland fire dispatchers provide critical support to the wildland fire and resource technicians I-V, and the State's fire suppression program. Dispatchers use radios, telephones, and computers to receive, transmit, and document information, and provide resources that support wildland fire preparedness and suppression activities.

79. The State determined that a separate job class was needed for those positions that perform duties related to and primarily in support of fire preparedness and suppression. It conducted a forest technician classification study, and issued the results on February 16, 2007. It considered whether the dispatchers who work in the area offices perform at the same level as the dispatchers in the State Logistics Center, and whether they should remain within the forest technician series. The State Logistics Center requires dispatchers with more specialized experience, with one person responsible for a specific desk, yet having knowledge of all functional desks. The area office dispatchers must have generalized knowledge and are responsible for all functional areas. Even though the organizational structure is different, both the State Logistics Center and area office dispatchers must have the same knowledge to perform at the journey level. If there are expanded or project fires, area office dispatchers may be temporarily assigned to the State Logistics Center, and must be ready to "hit the ground running." The State concluded that a new job class series for the wildland fire dispatchers was appropriate. (Ex. 1, at 4).

80. It established three levels for wildland fire dispatcher positions. (Ex. 1, at 4 and 15-18). Level I is the training level, level II performs journey level work, and level III requires the incumbents to "plan, schedule, coordinate, and oversee the daily operations of a dispatch or logistics office. (Ex. A. Class Specification Wildland Fire Dispatcher III, at 1, created 02/14/2007; Ex. 3). Dispatchers take incident reports and initiate the initial response of appropriate fire resources. (Ex. A. Class Specification Wildland Fire Dispatcher II, at 1, created 02/14/2007). They "submit and process requests to locate, allocate, and mobilize essential personnel, equipment, aircraft, and supplies to an incident, and demobilize resources" after an incident ends. *Id.* Among other duties, they maintain radio contact with fire suppression personnel; issue weather updates to field locations; interact with the technicians and overhead personnel, such as pilots and aerial observers, and local fire departments and personnel; fill resource orders for aircraft, crews, supplies, and equipment; notify appropriate staff of critical shortages; and track the flight status of dispatched aircraft. *Id.* All three dispatcher levels must receive Red Card training and certification under the National Incident Qualification System, and they all need certain skills and abilities, such as being able to multi-task with frequent interruptions, organize priorities, and communicate clearly and concisely. *Id.*

81. The position descriptions for wildland fire dispatcher I/II positions show that no more than five percent of the employee's time is spent performing duties unrelated to the primary mission of supporting fire-fighting. (Ex. 6).

82. Wildland fire dispatcher positions are often filled with former wildland fire and resource technicians. The work is related, but different. The dispatchers must be able to coordinate dispatching resources for multiple fires occurring simultaneously and be aware constantly of resource availability, including tracking it to meet area or statewide needs. The dispatchers must also have some technical knowledge of fire suppression responses and techniques, and the factors that influence fire behavior. (Ex. 1, at 17).

83. The position description for wildland fire dispatcher I, PCN 109465, Northern/Delta Area, shows if critical errors are made in dispatch, there is potential for loss of life and/or property. Failure to provide the proper equipment and resources can endanger lives and property, and affect the efficiency of suppression efforts. Maintaining communications is essential for safety of ground personnel, aircraft in the air, and resources en route to the fire. Correct record-keeping is essential if the fire becomes reimbursable, or if litigation is needed to recover costs. (Ex. 6, at 14, Wildland Fire Dispatcher I). The level I position is eligible to flex to a level II, and it is subject to the same need for attention to details in dispatching. (Ex. A, Wildland Fire Dispatcher II).

84. Starting in 1994, Steve McCombs worked seasonally as a volunteer fire fighter before becoming a wildland fire dispatcher/radio operator in 1999. He worked in Tok three seasons, for BLM in the Yukon-Tanana area for one season, and he is now working as a wildland fire dispatcher in Delta Junction. (Testimony of McCombs).

85. McCombs explained from a dispatcher's perspective the annual preparation work completed before the fire season starts on April 1st. It includes insuring computer programs are working; passwords are operable; vendors are obtained; contacts have been made with local hotels and food providers; agreements are in place for heavy equipment, such as dozers and excavators; training is completed; the previous fire season is reviewed; workshops are held to coordinate a unified fire approach for the upcoming fire season; weather is monitored; snow loads are measured; and the moisture content of snow is determined. There are two fire seasons within the fire season. The first one consists primarily of grass fires, prior to green-up. The second one occurs in the woods and forests, after everything has turned green. (Testimony of McCombs).

86. Dispatchers perform a variety of duties supporting those who fight wildland fires. When a fire occurs, the dispatcher is the first point of contact, and is the incident commander until the responsibility is passed on to someone else. The dispatcher initiates a response under the management plan in effect. (Testimony of McCombs and Wilcock). The property owner must be determined, and population areas get critical responses for immediate fire suppression efforts. Another important task is to see if additional resources will be needed from within Alaska or the Lower 48, which involves resource ordering and staffing. Crew members have to be fed and sheltered, and they have to be rotated out timely. Documentation and cost estimates

are needed for budget work. Daily updates must be provided on each fire so people can decide wisely where to allocate resources. Equipment must be obtained, and arrangements must be made to get it to and from the fire. (Testimony of McCombs).

87. The dispatcher participates in the morning briefing, including the weather briefing. Knowing the predicted weather helps determine fire patterns and responses. For safety and cost purposes, dispatchers must account nightly for all personnel on each incident. All incidents require daily costing out for equipment and personnel. At the end of McCombs' duty day, he transfers the fire line to 911 operators from city dispatch in Fairbanks. He monitors the 911 channel on the radio after he leaves work to keep abreast of any wildland fire activity, and reports back to work if a fire occurs. (Testimony of McCombs).

88. Local dispatch offices work with the State Logistics Center, which interfaces with the Alaska Interagency Coordination Center. The National Interagency Center coordinates resource ordering on a national level. (Testimony of Maisch).

89. McCombs' hours change during the season. When preparations begin for the fire season, he works seven and one-half hours a day. When a fire is in progress, he may work 14-16 hours daily, and a night dispatcher handles the time he is off. Delta Junction has one dispatcher and one logistics coordinator. Some dispatchers were obtained from the Lower 48 to help during big fires in 2010. (Testimony of McCombs).

90. If McCombs is on leave, someone else would be brought in to cover his position. It could be covered by a qualified EFF dispatcher, or someone from BLM or the Lower 48, for example. McCombs is certified as both an initial attack and support dispatcher, and he is an aircraft dispatcher trainee. He works in a seasonal position and is on leave without pay during the remaining months. (Testimony of McCombs).

91. The City of Fairbanks employs fire fighters. Mark Drygas is a battalion chief, and president of the Alaska Association of Professional Fire Fighters (AAPFF). Drygas has worked as a public employee for 21 years. The AAPFF represents paid fire fighters from various cities in the state. In Alaska, the wildland fire fighters are in a bargaining unit that is represented by another labor organization. In California, the wildland fire fighters belong to the International Association of Fire Fighters, which is the same overall organization in which the City's fire fighters participate.

92. The City of Fairbanks' Fire Department works with DOF, but not in place of the wildland fire fighters. The department handles a lot of brush fires, but primarily the forestry personnel fight the wildland fires. The City has called on the wildland fire fighters' assistance at times. The relationship is one of mutual assistance, not one of replacing what the other one does. The City's fire fighters do have some training in fighting brush and wildland fires. However, the wildland fire fighters are not trained, certified, or equipped to fight structure fires. Their duties are similar in that "they both put the wet stuff on the red stuff." (Testimony of Drygas). A fire occurred outside of Fairbanks approximately 18 years ago and DOF employees knocked it down. The City and DOF worked together on a fire near the University of Alaska, and DOF helped

knock that fire down with helicopter support. DOF protects property and people outside of municipal areas. In many small, outlying communities, there are no fire departments. Wildland fire protection is the only line of defense they have. There are no wildland fires in winter, so wildland fire fighting services are not needed then. (Testimony of Drygas).

93. The City staffs fire fighters 365 days a year, around-the-clock. Their response time is three to five minutes. Call-outs average 12 per day, and approximately 4 to 4 and 1/2 are fire related. The Fairbanks fire fighters respond to multiple situations, such as vehicle accidents, medical issues, and fires. The daily minimum staffing level is nine. The actual time spent putting out fires is not that great, but preparation time is required to be ready to fight fires, and it is necessary to have staff available around-the-clock. The City has 39 line personnel, and 4 others. The City's fire fighters work 56 hours a week, 1 day on and 2 days off. Many of the City's fire fighters have worked previously for DOF. The City's fire fighter recruits spend four weeks in training, before they can be put on the line to fight fires. The wildland fire fighters have a lot more staff available during the fire season than the City employs on a year-round basis. There are hundreds of forest fires each year. DOF's crews have vital experience in fighting forest fires. (Testimony of Drygas).

94. Chris Maisch is DOF's director. He was the regional forester from 1999 to 2005. DOF has two parts: forest resources management and fire management. Timber management occurs in state forests and other lands with timber on them. The forest resources program has five elements. The fire management program has four: fire preparedness, fire suppression, state fire assistance, and volunteer fire assistance. The state is divided into two regions, north and south, and there are nine areas. A statewide fire staff supervises both the regional and area fire staff. (Testimony of Maisch).

95. Maisch described a fire operation after a report is received. At DOF, workforce safety is paramount, along with cost-effective, initial attacks for wildland fires. After a fire starts, detection aircraft may be dispatched, or the fire may be able to be spotted from a high vantage point on a road. Equipment is sent based on whether the fire is road accessible or requires smoke jumpers and helicopters. Employees dispatched may include EFFs, DOF technicians, and some foresters I and II. Each area office has engines, ranging from light engines to medium ones. They have different capabilities, usually in the amount of water they can carry. The technicians I, II, and III are the main operators of the fire engines, and they are trained to drive them. (Testimony of Maisch).

96. A helitack response consists of bucket work with a helicopter and pilot. Water is obtained from a source, such as a lake or river, by dropping a bucket into the water source and then transporting the water quickly to the fire. The bucket is hooked up in advance. Knowledge of weather conditions, fire patterns, and other factors must be considered in directing the pilot to get the water load to the place it will be most effective. Helicopters also transport sling loads, requiring a technician to be under the helicopter to hook up the load. DOF contracts the helicopters and pilots. Pilots are trained in bucket work, and refresh these skills before the season starts.

97. The helicopter pilot is accompanied by technicians I-III, and occasionally a technician IV. A technician flies in the front left with the pilot, and is known as the helicopter manager. This technician, usually a II or III, has a higher level of training in helicopter operations; insures the safety of personnel around the aircraft; makes load calculations; prepares the load manifest; knows elevation and air density, which impact how much the helicopter can lift at certain elevations; and receives communication from ground personnel about where to dump the water loads. However, the pilot commands the aircraft and makes the ultimate decision about where to drop water loads based on communications from the ground, relayed by the technician in the front left seat. The front left technician insures they are going to the right place, and stays aware of the situation. The helicopter manager position is one in which there is typically a shortage in Alaska, and frequently helicopter managers are brought in from the Lower 48. The technicians in the back of the helicopter will be left at the fire to initially attack the fire from the ground. (Testimony of Maisch).

98. A technician also serves as a helibase manager, performing many of the same duties as the helicopter manager. Employees in these positions are qualified to operate the avionics and they communicate directly with dispatchers. (Testimony of Maisch).

99. When a plane is in the air, it is followed for safety purposes. Personnel in the plane have to check in, provide specific information, and report their flight progress. (Testimony of Maisch).

100. Alaska Fire Service furnishes smoke jumpers for initial attacks. Smoke jumpers are an elite group of experienced fire fighters, approximately one step above Hot Shots and the equivalent of a technician III or higher. Before they jump, the situation is evaluated so they land far enough from the fire to avoid immediate danger. Jumpers are usually the most remote initial attack personnel fighting a fire, with helicopters providing the second most remote response. If a fire escapes initial attack and turns into an extended attack or project fire, DOF wants its technicians back as quickly as possible, because their main function is initial attacks and stopping new fire starts. An incident management team is brought in to manage a project fire. It is a continuing balancing act trying to have employees positioned where they are most needed. (Testimony of Maisch).

101. Several types of aircraft are used in fire-fighting. The State owns two aircraft and has its own pilots for planes that provide aerial control. These aircraft track fixed wing and rotor aircraft that are over the fire, and they are the lead planes that pop smoke to mark an area so tanker pilots know where to make drops. The crew for these two-person planes consists of a pilot and a technician V, who is the back seat person. DOF has difficulty recruiting applicants for this highly skilled technician position. Last year, a smoke jumper interested in learning the job came from the Alaska Fire Service to fill the position. DOF has two tankers under contract. Tankers make repeated runs into the fire area to drop retardants. Retardant is loaded into the planes primarily by employees in the Labor, Trades, and Crafts' bargaining unit. Additionally, two water- scooping aircraft are contracted by the Alaska Fire Service. (Testimony of Maisch).

102. Maisch discussed projected impacts of a strike. The fire side of the operations potentially would be impacted more than the resource side. The technicians stagger schedules for beginning and ending work, with some seasonal employees already working when others return to work in April and May. The timing of a strike could affect DOF's ability to fight and control wildland fires. Fire danger level is a key component. During wet times, the fire danger is less. A strike during a red flag warning period could have a substantial impact. Generally, the first part of July is the conversion season when the fire danger allows movement into the modified or limited response range. If the State thought a strike could occur, DOF could begin prepositioning resources, and it might requisition some Hot Shot crews or Type II crews that would require partnering with others to have crew leaders for the Type II crews. Otherwise, a resource order would be placed and it would have to work its way through the system. Efforts are made first to fill the order locally, then in-state, and finally nationally. As the fire season gets busier, everyone competes for the same resources. At some point, resources are not available, which happened in 2004 on the Delta fire, and the State's existing resources were inadequate. Numerous factors, such as weather and how busy the fire season is in Alaska and the Lower 48, could affect the ability to obtain personnel and equipment in a strike situation. The Alaska Fire Service might be able to assist DOF, depending on its activity level in the state at the time, and its available resources. Technicians function as a team. Replacing the technicians and dispatchers with employees from the Lower 48 would be less than ideal. Flight time of at least a day would be required to bring resources from the Lower 48, and those resources could be limited or unavailable depending on the fire conditions other areas were experiencing. There have been times in Maisch's career when DOF could not get Hot Shot crews and jumpers from the Lower 48. Maisch likes to think DOF could protect the public safety if a strike occurred; however, there are no guarantees in the fire-fighting business. DOF would do its best to preposition available resources to be ready to fight fires, and it would call in a Type II Management Team if a strike were going to take place, having on hand initial attack resources and dispatchers. Maisch does not know if teams have come in from other states to fight fires in a strike situation, but there have been times when teams have gone in and taken over functions when there are national disasters, and the local jurisdictions potentially cannot provide the services. A team's arrival should occur within 24 to 48 hours, and Maisch would hope to have it in place before strike occurred. If there were fire difficulties, it would be harder to reach the 97 percent extinguish rate the technicians have on initial attacks. (Testimony of Maisch).

103. If the technicians were on strike, DOF could try to replace them with EFFs or other personnel, but it would not be easy. Helicopter crew members could probably be resource ordered, but how rapidly they could arrive from another area is uncertain. DOF would look for EFFs with helicopter training, as EFFs are hired for emergency purposes, and are not general government bargaining unit members. There are some EFFs who have training as dispatchers. EFFs likely would work if the technicians and dispatchers were on strike, as they are hired when fires occur and this is the time of the year when they earn money. (Testimony of Maisch).

104. The higher level technicians have very specialized training and local knowledge, which is valuable and difficult to replace. Technicians are better in an initial fire attack. If EFFs had to take over, fires probably would be fought much less aggressively due to lower experience

levels. Managers could change fire-fighting tactics, depending on the qualifications of the people available. Fires can be fought directly, or indirectly. (Testimony of Maisch).

105. In a direct attack, technicians and EFFs work on the fire front, beating the fire out, using water, or employing other direct tactics to put out the flames. They anchor with a safety spot. Heavy equipment can be used to build a safety spot if a natural one cannot be identified. Hot Shot crews or agency crews may assist. An agency crew is one that DOF sponsors, such as a Hot Shot crew, which is around from year-to-year. EFF crews are usually Type II crews.

106. The personnel fighting fires wear flame retardant clothes and have line packs containing safety equipment, such as fire shelters. The line packs must be worn constantly. Structure fire fighters are equipped differently than wildland fire fighters, but if structure fire fighters fight a wildland fire, DOF provides them with essential wildland fire-fighting gear. (Testimony of Maisch).

107. An indirect fire attack consists of a control line some distance from the fire's active edge. Back fires must be lit and controlled. Crews use a river or road when possible and burn out the fuel between the fire front and the back fire. An advancing fire pulls oxygen toward it, and this helps signal when to light the back fire. It takes skill to fight fires in this manner, and indirect fire fighting is usually done by the more highly skilled technicians, jumpers, and Hot Shot crews. It is as much art as science, and it requires a lot of experience. (Testimony of Maisch).

108. Aerial firing is another technique used to fight fires when the goal is to steer an advancing fire away from a structure, such as a lodge. It can be an effective technique when deployed with expertise. Technicians perform this duty. (Testimony of Maisch).

109. On an initial attack, the key is to catch a fire while it is small. Helitack resources, engines, smoke jumpers and fire retardant planes are all important resources. There is a 24-hour time frame to bring the fire under control. The most experienced employees are sent on initial attacks. About 97 percent of fires in critical or full protection areas are extinguished on the initial attack. DOF's technicians' primary function is to handle the initial attack phase. The impact on the public safety, health and welfare is greater if the initial attack fails, and costs increase for Type I fires if they are not suppressed on the initial attack. In 2010, DOF spent 68 million dollars. (Testimony of Maisch).

110. An extended attack occurs in the 24 to 48 hour time frame, Type II or I crews are deployed to fight the fire, and overhead support is used. There is logistics support to obtain food, water, equipment, and other supplies. (Testimony of Maisch).

111. After the 48-hour time, a large fire response exists. There are three fire response types: I, II, and III. Type I is the largest, most complex response. DOF usually orders incident management teams, with an incident commander, to manage Type I fire responses. DOF turns the fire over to this team, and integrates its forces with the incident management team's

resources. For a large fire, a wildfire situation analysis is required after 48 hours. (Testimony of Maisch).

112. The incident management team could be Type I or II, depending on the fire's complexity. Alaska has one of the 17 Type I teams in the United States. It has two Type II teams, but due to a personnel shortage, but both teams cannot be staffed at the same time. In an active fire season, Alaska typically has to obtain incident management teams from the Lower 48. DOF's employees primarily work in the operations side of such teams, but DOF tries to keep its employees available for initial attacks instead of putting them on a team. It may place one technician as a liaison with the team to help it understand how fuels burn differently in Alaska. The national fire system is designed to send resources where they are needed. However, many factors, such as the amount of fire activity, affect the plan's success. (Testimony of Maisch).

113. The incident management team may order Type II hand crews or Type I Hot Shot crews to work on the fire or groups of fires for which it is responsible. DOF advises the incident management team which resources to try to protect, and where to try to hold the line on the fires. (Testimony of Maisch).

114. On a large fire, a small city springs up overnight. For example, there were 1,800 people on the Boundary Fire, requiring multiple support operations to quickly be in place. Most crew members were EFFs, interspersed with a few technicians. As a fire is extinguished, mop-up is done typically by Type II, rural EFF crews, and it is dirty and arduous. Cold mop-up is performed by sticking ones hand in the ash to make sure the fire is completely out, and dry mop-up consists of using hand tools and dirt to put out any remaining fire. Technicians may lead a crew or be in charge of several mop-up crews. However, their main function is to be back at base from large or project fires to be ready for the next initial attack. (Testimony of Maisch).

115. In 2009, 61, 16-person, EFF Type II crews were active, and they had 111 assignments, representing 862 days of actual field work. There are approximately 73 crews on the rotation list. All crews are not active annually for a variety of reasons. The payroll typically is seven to eight million dollars for work performed by EFFs from rural communities. The difference between an agency crew and an EFF crew is that agency crews are funded up front, so they work whether or not there are fires. These are the Type I Hot Shot crews that have the highest level of training and experience, and they can fight some of the most complex fires. (Testimony of Maisch).

116. Statewide overhead consists of single resource orders, typically for one person. DOF filled 3,833 overhead orders in 2009, with 2,600 of these orders filled by Alaskans and 1100 filled by people from the Lower 48. One hundred and seventy-five overhead orders could not be filled. In 2009, the Lower 48 did not have much fire activity. In higher fire activity years, the size and danger of fires determines who gets available resources. Alaska used aviation resources from Canada in 2009, and a heli-rappel crew, which is a cross between a smoke jumper and a heli-tack program. The fire fighters rappel out of the helicopter, avoiding the need for a helicopter landing zone. The fire fighters can cut a landing zone after rappelling into an area. (Testimony of Maisch).

117. Warehouses are staffed by members of the Labor, Trades, and Crafts bargaining unit. (Testimony of Maisch).

118. The same personnel who fight fires for DOF also do restorative work after a fire. This work starts almost as soon as the fire is extinguished. It is more cost-effective to do the rehabilitation work right away while the crews and equipment are available in the impacted area. Rehabilitation work is done for environmental reasons, especially for water quality issues, such as preventing salmon streams from being filled with silt after hillsides are burned. Rehabilitation work also could be done later in the fall if an important water resource is not at risk. (Testimony of Maisch).

119. DOF trains or refreshes approximately 2500 students annually, in about 150 courses. Technicians instruct many of the courses, but the work is resourced out if the technicians cannot teach the classes. Students increase skills by taking fire qualification classes. Training, conducted according to national standards, is important in obtaining new fire fighters and keeping existing fire fighters current in their skills. The three work capacity levels, arduous, moderate, and light, are tested also. If the technicians were on strike, DOF's management employees could provide some training, but they must be certified to be a trainer in the subject being taught. Most of the training would have to be conducted by the Alaska Fire Service or private sector individuals instead of being done in-house, as is currently done for fiscal purposes. (Testimony of Maisch).

120. DOF works closely with rural, volunteer fire departments, training, equipping, organizing, building partnerships, and helping them increase their capacity. (Testimony of Maisch).

121. DOF investigates fire origins, especially those suspected to be human-started. DOF has trained fire investigators, and it sometimes places orders for fire investigators. Technicians take photos as they come in on helicopters, flag the point of fire origin, and preserve evidence. If negligent behavior caused the fire, the State pursues cost collection through the Attorney General's Office. Citations and warnings are issued annually for unsafe burning practices. (Testimony of Maisch).

122. DOF does fire prevention work, including conducting school education programs. Through the Fire Wise Program, individual homeowners learn how to make their personal property more likely to survive a wildland fire by clearing a space around structures. This program is on-going, but most of the work occurs outside the fire season. The main staff members in the program are partially federally-funded, and they are education specialists. However, technicians can inspect areas around homes. (Testimony of Maisch).

123. Dean Brown has been employed by DOF as a deputy director since 1979. She started work for the State in 1978 when forestry was in the Division of Lands. She supervises the managers in the wildland fire program and resources program, as well as two regional foresters. Among other duties, she oversees operations, and has budget and policy development

responsibility. In 1978, BLM and the Alaska Fire Service had responsibility for all fires and the initial attack on them. The federal government's land transfer to the state prompted changes, and DOF's responsibility for land coverage increased over the years to comply with constitutional and statutory requirements. DOF was formed as division in 1982. Private land ownership has increased along road areas. (Testimony of Brown).

124. Municipalities have fire protection responsibility for both structure and wildland fires within their municipality. Due to varying levels of tax support, they have different fire-fighting capabilities. Anchorage has significant fire danger and a large population. The Anchorage Fire Department (AFD) has put out a lot of wildland fires. Between 2001 and 2010, AFD handled an average of 109 wildland fires annually. Brown confirmed that technicians are not qualified or authorized to fight structure fires. (Testimony of Brown).

125. The Alaska Interagency Coordination Center decides who gets resources based on the fires burning, available resources, and the weather. When Alaska needs fire-fighting resources, it can order them from the Lower 48. A response could occur in 24 to 48 hours, depending on where resources are located and what they are, but it could take much longer depending on the amount of competition for the resources. (Testimony of Brown).

126. Last year, 1.2 million acres burned within the State's area of responsibility. DOF's technicians and dispatchers are seasonal employees, and sometimes fires burn when there is no one from DOF to fight them. For example, there has been a grass fire in February, or there have been fires that extend two months after the fire season ends. Sometimes, a large fire can burn over the winter. After the fire season ends, depending on the nature and location of fires, DOF may extend the technicians' work season to fight the fires. Forestry fire managers may monitor and get reports on some fires that burn after the fire season ends. (Testimony of Brown).

127. Lynn Wilcock worked for DOF, retiring in August 2009. He was the chief of fire and chief aviation forester. Previously, he was the fire operations forester for same division, and he has other fire-related experience, including working as a member of a Hot Shot crew and engine crew. He first worked for DOF in 1978 as a suppression foreman in the Mat-Su Area. Weather, fuels, and topography contribute to fire danger, and are the three elements over which DOF has the least control. As it gets drier and hotter, the fire danger increases, and the probability of a catastrophe is greater. (Testimony of Wilcock).

128. Statewide preparedness means pre-positioning resources where the fire danger is highest. Decisions are made in conjunction with BLM on where to position smoke jumpers. For an initial attack, usually ground crews are dispatched first. Tankers may be dispatched after an assessment is made from the ground. However, based on the fire's nature, both could be dispatched. The initial attack goal is to put the fire out as quickly and cheaply as possible in areas where the fire management plan calls for putting out the fires. Although good weather forecasting is possible one or two days in advance, accuracy drops significantly when looking at longer time frames.

129. A decision is made to release employees for fighting Lower 48 fires based on Alaska's projected fire danger. Weather conditions can change after employees are dispatched to the Lower 48, and then Alaska may need to obtain employees from other places. A small pool of wildland fire and resource technicians III and IV exists, and part of their job is to assess the fire danger. (Testimony of Wilcock).

130. Under AS 41.15.010, DOF is tasked with protecting, commensurate with the value of resources at risk, the natural resources and watersheds on land that is owned privately, by a municipality, or by the state.

131. Wilcock discussed potential impacts of a strike by the wildland fire and resource technicians. Additional people could be ordered to help, but it could take three to four days to get them. If there is a high fire danger here and in other states, there is a risk a fire could become more catastrophic as states compete for assets. It could be difficult to obtain smoke jumpers if they are already fighting fires. EFFs can fill entry level jobs, but they are not trained typically to command engines or make decisions on initial attack for fighting potentially catastrophic fires. A negative consequence of replacing local, experienced, wildland fire personnel with employees from the Lower 48 is that the Lower 48 employees lack local knowledge. Additionally, since BLM does not have fire engines, most likely these assets would have to come from outside of Alaska. (Testimony of Wilcock).

132. In the Miller's Reach Fire, there were two phases. During the initial 60- acre fire, the fire danger was high. Unforecasted high winds came off the Alaska Range 36 hours later, which led to the fire's escape. The fire danger then became extreme. There can be significant fire consequences for a strike by the technicians when the fire danger is high. During the Miller's Reach Fire, a forest technician III made decisions after the fire escaped, and without the technician III's decision-making skills, the fire would have been worse than it was. Approximately thirty-eight thousand acres burned, along with 400 structures, some of which were primary residences. During such a fire, employees try to stop the fire before it gets to a structure. It is critical that someone with the ability to manage a fire of Miller's Reach complexity be available, and Wilcock would be concerned in similar situations if the technicians were on strike. The delay in getting qualified fire personnel from the Lower 48 in a Miller's Reach situation could have a negative impact. DOF did not get all of the assets it requested for Miller's Reach due to other fires. (Testimony of Wilcock).

133. If extreme fire conditions existed on the Anchorage hillside and the technicians were on strike, the consequences could be significant, especially the loss of decision-making capabilities of the technicians III and IV. Under DOF's current agreement with AFD, AFD has the responsibility for the initial attack. DOF does not provide an initial attack in Anchorage like it would in a lot of other areas in the state. If aerial assets are required, the technicians' knowledge and management skills would be important. Anchorage and the urbanized areas in Fairbanks are in the State's critical management areas. There would be consequences in replacing an entire striking workforce with employees from the Lower 48, most notably the lack of local knowledge, Alaska tactics, how fuels burn in Alaska, and contacts with other responders.

Also, employees from the Lower 48 generally are not ordered to come to Alaska. They volunteer when resource orders are placed. (Testimony of Wilcock).

134. Marsha Henderson has been an operations forester with DOF for 12 months. Previously she was the northern region fire management officer for four years, and the aviation manager for one year. She started work in 1987 in the wildland fire field. Each morning she speaks with the fire management officers and they determine the fire danger for their area. They determine an appropriate minimum staffing level based on the fire level danger, which includes a weather assessment. (Exs. J & K).

135. Henderson discussed difficulties in trying to pre-position employees and equipment, including aircraft. She must exercise caution in relocating resources, especially since weather forecasting is not very accurate more than one or two days in advance. She doesn't want to tie up resources by moving them unnecessarily, as time can be wasted driving from one location to another. Air tankers are moved more easily because they can be repositioned fairly quickly. Henderson meets with her counterparts in the federal agencies to review the fire danger statewide, and determine whether it is appropriate to move staff. Typically smoke jumpers are moved because they can be moved quickly. During the day, she coordinates with the fire managers to discuss newly started fires, and whether any staff needs to be repositioned. (Testimony of Henderson).

136. In deciding how many EFFs to hire, the baseline operation comes from the staffing and action guide, and DOF can hire enough EFFs to meet minimum staffing levels. These guides are for pre-positioning resources for projected fires. However, in an actual fire situation, DOF can hire the needed personnel in excess of the minimum staffing levels. (Testimony of Henderson).

137. For the last three and one-half years, Katherine Sheehan has been the director of labor relations for the State's Department of Administration, Division of Personnel and Labor Relations. Her responsibilities include supervising seven staff members, negotiating contracts, handling grievances, and presenting the State's case at the Agency's hearings. Prior to that, she was an assistant attorney general for 10 months and a labor relations analyst in the Division of Personnel and Labor Relations for 2 years. (Testimony of Sheehan).

138. Sheehan is familiar with strike class designations. Class I employees are public protection personnel, correctional officers, and airport police and fire officers. The positions are generally year-round positions, and staffing usually occurs 7 days a week, 24 hours a day. All of the employees in the Department of Public Safety are Class I employees based on an Alaska Labor Relations Agency decision, but she is uncertain if the DPS workforce consists entirely of full-time employees. There could be a few part-time or seasonal employees. The State had a person review the Agency's decisions to insure its strike class designations were consistent with the Agency's decisions. (Testimony of Sheehan).

139. State employees provide services that include protecting the public safety, health and welfare, but the State does not classify them as Class I employees. Examples include

Pioneer Home employees, spill response employees at the Department of Environmental Conservation, epidemiology employees at Health and Social Services, public health laboratory employees, and snow removal employees. However, snow removal employees could be Class II employees under the statute that delineates whether employees are Class I, II, or III. (Testimony of Sheehan).

140. Nicki Neal is the director of the Division of Personnel and Labor Relations. Previously, she was the deputy director for the personnel section. Neal has worked in the human resource field for 26 of her 28 years with the State. Neal believes the Pioneer Home employees and Alaska Psychiatric Institute employees are Class I employees. Park rangers are either Class II or III employees. When the wildland fire and resource technicians and wildland fire dispatchers are on seasonal layoff, they remain state employees. They would be able to vote if a strike vote occurred. (Testimony of Neal).

ANALYSIS

The issues for decision are whether the strike classification of the State's wildland fire and resource technicians I, II, III, IV, and V (technicians) and the wildland fire dispatchers I, II, and III (dispatchers) in the general government bargaining unit should be Class I, Class II, or Class III, and whether the seasonal nature of employment in a job classification precludes employees in these seasonal positions from being Class I employees. Historically, the State has considered the employees in the affected positions to be Class III employees.

The State contends that because the employees in the affected positions are placed on seasonal layoff, their services obviously can be given up for a period of time without affecting the public health, safety, and welfare; therefore, they cannot be Class I employees under AS 23.40.200(a)(1). The employees in the positions work approximately five months annually, and their services are not used approximately seven months each year. (State of Alaska's Closing Brief, at 8-9 (Feb. 10, 2011). The State points out that AS 23.40.200(a)(1) says class I employees perform "those services which may not be given up for even the shortest period of time."

AS 23.40.200(a) divides public employees into three classes according to their services:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

AS 23.40.200(b) states,

> The class in (a)(1) of this section is composed of police and **fire protection employees**, jail, prison, and other correctional institutional employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order that may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030 or 09.43.480 to the extent permitted by AS 09.43.010 and 09.43.300. (Emphasis added.)

To determine strike classification under AS 23.40.200, the Agency first determines "whether the employees' duties are those of a position named and classified by the legislature in AS 23.40.200(b), (c), or (d)." *Alaska Public Employees Association v. State of Alaska*, Decision and Order No. 143, at 19 (Sept. 9, 1992), *aff'd* No. 1JU-92-1882CI (May 27, 1993).

The evidence established that the technicians are hired to protect human life and natural resources by fighting wildland fires on state, municipal, and private lands, according to the values at risk. The technicians perform numerous activities before the statutory fire season begins annually on April 1st; they fight wildland fires according to the management plan in effect for the area in which the fires occur; and they prepare for the next fire season after the current statutory fire season ends on August 31st, as fire activity allows, by readying the equipment for the next wildland fire season and performing fuel mitigation work to enhance their ability to fight fires in certain areas.

The technicians' primary responsibility is to initially attack fires in critical and full protection areas and put them out as quickly as possible. They extinguish 97 percent of wildland fires in critical and full protection areas during the 24-hour, initial attack phase. They are trained to national standards and are part of a wildland fire-fighting contingent of employees who can be dispatched nationwide to help fight fires, according to the needs in various parts of the country. Technicians II-V must have the appropriate Red Card certification before they can be employed. Some technicians have additional certifications that enable them to calculate airplane loads, complete manifests, hook up loads under helicopters, drive fire engines, and work as helicopter or helibase managers, for example.

DOF expects the technicians to return to their base as quickly as possible after the initial attack, as they need to be ready to fight new fires that start, although some technicians may stay at existing fires to supervise EFF crews or serve as liaisons on large, project fires after an incident management team has been obtained. Technicians make decisions about effective wildland fire fighting techniques, and they determine which types of aviation or other resources are needed to fight fires. Technicians on the ground communicate with technicians in the air to coordinate water and retardant drops.

Some technicians are certified to conduct training classes, enabling others to upgrade their skills. They issue Red Cards, administer physical fitness tests, and train municipal and volunteer fire department fire fighters in wildland fire-fighting skills. They work in conjunction with municipal and volunteer fire departments to keep wildland fires from burning structures, although the technicians do not enter structures to put out fires. Technicians must use the best judgment possible to mitigate the costs of fires, especially in the urban/wildland interface areas, which continue increasing in Alaska as more people move to forested areas.

Other fire-related protection duties technicians perform include fire prevention activities, such as advising property owners how to clear appropriate spaces around their structures, and enforcing burning regulations. Technicians also investigate and document information about human-caused fires, and assist in criminal and civil cases filed to recover costs.

The dispatchers provide critical support to the technicians who fight the wildland fires by using phones, radios, and computers to send and receive information about fire suppression and preparedness activities. Among other duties, the dispatchers take calls about fires that have started; act as initial incident commanders and dispatch initial resources to begin fighting the fires until the responsibility can be turned over to another employee; obtain, track, and account for personnel and resources used to fight the wildland fires; issue weather updates to field locations; place resource orders for equipment and personnel; track the orders to see if needs are being met; insure the employees fighting the fires are housed, fed, and rotated out timely; insure that equipment is returned from fires after the fires are extinguished; cost out each fire incident's costs; and maintain accurate records to be used for litigation or reimbursable costs.

We find that the duties performed by the wildland fire and resource technicians I-V (technicians) and the wildland fire dispatchers I-III (dispatchers) make these employees "fire protection employees" under AS 23.40.200(b). Significantly, this statute does not restrict fire protection employees to only those employees who fight structure fires. The evidence shows that the urban/wildland interface areas are increasing in size and volume as more members of the public move to forested areas, and that Alaska has been experiencing larger and more dangerous wildland fires in recent years. To protect the health, safety, and welfare of the public, it is essential to have a trained, available, wildland fire-fighting workforce that can respond quickly to fires, especially in the critical and full protection areas. The financial impact of stopping a fire in the 24-hour initial attack period, instead of having it become a large or project fire, represents a tremendous savings in fire-fighting costs alone. The State's Exhibit I establishes that the cost of a successful initial attack averages $4 thousand dollars, compared to project fires that can cost between $3 and $30 million dollars to suppress. The impact of having a larger fire is not confined solely to fire-fighting costs, but impacts, among other things, the natural resources destroyed and structures burned, air pollution from the smoke, and the danger to human life if the fire is difficult to control. Having the expertise readily available to timely put out fires during the initial attack phase, and to continue attacking them if they become larger, is vital to the public's health, safety, and welfare.

The State made various arguments about why the affected technician and dispatcher positions should not be classified as Class I, strike ineligible. They are summarized below.

First, the State's contention that the seasonal nature of the technicians' and dispatchers' employment precludes them from being Class I employees will be examined in greater detail. The State asserts that because the technicians and dispatchers' services are given up for long periods of time each year, without adversely affecting the public health, safety, and welfare, they cannot be Class I employees under AS 23.40.200(a)(1). The State notes that when these employees are on seasonal leave without pay, their services cease to exist and are not performed by other employees. (State's hearing brief, at 3.) Additionally, the State contends that it still considers them to be employees while they are on layoff, even though they are not drawing a paycheck. Since they are still employed, even though they are not working, the State argues that this means their services can be given up for long periods of time without impacting the public safety, health, or welfare.

The State contends the technicians' and dispatchers' positions are more like those of some positions listed in AS 23.40.200(c) as Class II employees, such as snow removal positions, which may be needed to protect the public's health, safety, and welfare at specific times.

However, the legislature has provided different strike eligibility classes for fire protection employees and snow removal employees. Alaska Statute 23.40.200(b) designates fire protection employees as Class I, strike ineligible. Alaska Statute 23.40.200(c) provides a limited right to strike to snow removal employees, who are Class II.

We find that snow removal duties differ substantially from the technicians' fire-fighting duties, and the dispatchers' duties, which provide critical support to DOF's wildland fire-fighting operations. While a significant amount of snow could fall in a two or three day period, which could affect traffic and the ability of citizens to get to work, medical providers, or to access other important services, removing accumulated snowfall is substantially different than an out-of-control wildland fire that could be near human population centers. The Miller's Reach Fire is but one example of how quickly fire danger can change if the fire is not stopped in the initial attack, and how much the risk to human life and property increases in short periods of time as factors beyond human control, such as high winds, spread the fire. This fire expanded from 60 to thirty-eight thousand acres, with 400 structures burned, including some primary residences, before the fire was extinguished. Technicians try to anticipate how predicted weather will impact their fire-fighting efforts, but they must be ready to cope with changing weather and other conditions beyond their control.

It is important to consider the time frame when wildland fires occur, which is typically when the State returns the technicians and dispatchers to work seasonally. There is little need for Alaska to have a full-time, year-round, wildland fire-fighting force during the months of the year when the ground is usually snow-covered. We believe the time period that must be considered is when the State has the employees in the affected positions working, not during the time it has placed them on seasonal layoff due to no or very limited wildland fire activity in an area the State has chosen not to protect.

Although EFFs can generally perform some of the less complex fire fighting duties, the loss of the technicians' and dispatchers' skills would negatively impact the State's ability to fight wildland fires, and it could seriously endanger the public health, safety and welfare. EFF's may not be able to drive engines, work with the aircraft to coordinate water and retardant drops, light back fires, handle complex dispatching and resource ordering functions, and perform other more complicated duties that technicians and dispatchers now perform. If a work stoppage occurred due to a strike, relying on ordering and obtaining crews and equipment from the Lower 48 or Canada to fight a wildland fire in a full or critical protection area, near a population center, could be inadequate to protect the public safety, heath, and welfare. Even though DOF's Maisch said he would try to cover essential positions if notice was available that a strike may occur, there was some evidence that other in-state resources at the Alaska Fire Service and BLM could be unavailable due to fires in areas they primarily protect, depending on the nature of the fire season.

Maisch acknowledged that fire-fighting results cannot be guaranteed in advance, as there are numerous factors that cannot be predicted. The location and timing of the start of either lightening or human-caused fires is unknown. Weather can change suddenly, and it is difficult to predict accurately more than two days in advance. The severity of the fire season in different parts of the state can vary considerably, as can fire conditions in the Lower 48.

The evidence shows that a prepared, locally available, well-trained and equipped wildland fire-fighting workforce with local knowledge increases the State's ability to put out wildland fires when they first begin. The technicians' 97 percent success rate in extinguishing fires during the 24-hour initial attack in critical and full protection areas shows that they provide essential fire protection services that cannot be given up for even the shortest time during the period when they work annually. The dispatchers are an integral part of DOF's wildland fire-fighting system. They provide essential support services for the technicians.

The State has experienced an inability to obtain all of the resources it has needed from other locations during large fires, such as the one at Delta. Relying on the availability of fire fighters and equipment from the Lower 48, when it can take 24 to 36 hours to obtain them, if they are available, depending on the amount of fire activity in the Lower 48, may not adequately protect the public safety, health, and welfare if the technicians and dispatchers remain Class III employees who have the right to strike.

The evidence shows that, for the most part, the volunteer and city or borough fire departments cannot handle the duties performed by DOF's wildland fire and resource technicians and the wildland fire dispatchers, even though they may work with DOF's technicians and dispatchers to suppress wildland fires. Municipal structure fire departments are supported by local taxes, and they have varying resources. Even a relatively well-funded fire department, such as the Municipality of Anchorage's Fire Department, may need the resources DOF has to fight wildland or brush fires, depending on the fire's nature. For example, AFD has used the state's aerial resources and technicians to assist with wildland fires in the Municipality of Anchorage. Multiple witnesses testified that no one entity can do it all, or staff for a catastrophic fire. Instead, entities have cooperative and interagency agreements to help each other in various

fire situations, based on the number and severity of on-going fires they have in their own jurisdictions at the time.

We find that the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III provide essential services that cannot be given up even for the shortest period of time during the period of their seasonal employment, and they are Class I employees under AS 23.40.200(a)(1).

Second, the State contends that the work the technicians and dispatchers perform is not similar enough to that performed by fire department officers to make the technicians and dispatchers "fire protection employees" under AS 23.40.200(b), as intended by the legislature, because they do not work year-round, seven days a week, 24 hours a day. The State cites Order and Decision No. 17, claiming "[t]he work of the employees in D&O 17 is covered by AS 18.70.010[.] The Department of Public Safety shall foster, promote, regulate and develop ways and means of protecting life and property against fire, explosion, and panic. (emphasize added)." *Order and Decision Pertaining To The Strike Ballot Election Conducted By The Tri-Trades Public Service Council During March, 1975,* Order and Decision No. 17, at 4 (May 2, 1975).

The State contends that "[t]he business these firefighters are in is to extinguish fires as soon as possible," and that the interruption of these firefighters' services on the public health, safety, and welfare is not necessarily the same as it would be on the services provided by the wildland technicians and dispatchers. (State of Alaska's Hearing Brief, at 4 (Jan. 18, 2011)). Moreover, the State claims that the wildland fire and resource technicians and wildland fire "dispatchers do not share enough duties of Fire Department Officers to be 'fire protection employees' as intended by the Legislature." *Id.*

We disagree. Alaska Statute 23.40.200(a)(1) does not require staffing 24 hours per day, 365 days per year. In the case of the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III, their employment and schedules are determined primarily by the statutory wildland fire season, and the particular fire danger that exists from year-to-year. The technicians' and dispatchers' employment also fluctuates based on preparedness levels the State has determined are adequate to meet its responsibilities to protect human life and property commensurate with the values at risk in the four different types of protection areas.

The amount and type of duties the technicians and dispatchers perform depend on the severity and number of the fires burning, and the types of areas in which they are burning. Some fire seasons are not as bad as other ones, and the number of fires burning in a fire season or location in the state can vary considerably. Fires in remote areas of Alaska in limited or modified protection areas may continue burning during the winter. However, to protect the public health, safety, or welfare, the State must fight fires vigorously in critical or full protection areas, which are near population centers.

Just as wildland fire fighters do not know the locations of fires, or how many or how severe they will be during a fire season, airport fire fighters or structure fire fighters do not know when or where a fire will occur within their jurisdictions, or how large it will be. A similarity is

that the fire risk covered by DOF and state, municipal, and volunteer fire departments is to have trained people available and ready to fight fires when they occur. In a wildland fire situation, fire spreads rapidly, up to eight miles an hour, and firebrands can occur a mile in advance of the main fire, igniting new fires. Wildland fires can be very dangerous, especially near population centers and areas with valuable resources, such as along the pipeline. If these fires are not fought aggressively and competently, and controlled quickly, costs and damages can increase greatly.

Employers employing different types of fire fighters determine the minimum staffing levels required to cover the fire-related risks for which each is responsible. A difference between the risks volunteer and municipal fire departments cover for structure fires versus the risks DOF covers for wildland fires is that structure fires are likely to occur 24 hours a day, 7 days a week, on a year-round basis. In contrast, wildland fires in Alaska occur primarily during the fire season, which is April 1st to August 31st, although some fires could occur earlier or later, in the shoulder season outside the statutory fire season dates. Another difference is that the State has not assigned the same level of protection for all wildland fires that occur within its jurisdiction. However, this does not mean that the "fire protection" services performed by the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III are less valuable than "fire protection" services provided by structure firefighters. Both types of fire fighters provide "fire protection" under AS 23.40.200(b). As Drygas noted, both wildland and structure fire fighters "put the wet stuff on the red stuff."

Order and Decision No. 17 addressed whether employees who were ineligible to strike would have their votes counted for determining whether a majority of employees in the unit had voted to authorize a strike. In part, Order & Decision No. 17 held that "State employees in the Division of Fire Prevention and Fire Protection and State employees of the Department of Public Safety in jails, prisons, or other correctional institutions, and State hospital and pioneer home employees will not be eligible to vote in a strike vote election, and the numbers of those employees shall not be counted in determining the majority requirements." *Order and Decision Pertaining To The Strike Ballot Election Conducted By The Tri-Trades Public Service Council During March, 1975*, Order and Decision No. 17, at 5 (May 2, 1975).

When this decision was issued on May 2, 1975, the State recently had assumed fire suppression responsibility for land in the Haines-Skagway area. We note that DOF's responsibility for wildland fires has grown immensely since Order and Decision No. 17 was issued by the State Labor Relations Agency (SLRA) in 1975. The SLRA did not consider in Order & Decision No. 17 whether wildland fire and resource technicians and wildland fire dispatchers should be Class I employees. These job classes were not established prior to the class study the State began in 2006. Nothing in Order and Decision No. 17 precludes our determination that the duties the general government unit wildland fire and resource technicians I-V and wildland fire dispatchers I-III perform make them "fire protection employees" under AS 23.40.200(b), and Class I, strike ineligible, employees.

Third, the State contends in its briefing that some of the employees in the fire and resource technician series work in the Forest Resource Management Programs, and the impact of a work stoppage for those employees is not the same as a potential work stoppage by the

employees who work in the Fire Management Program. We note that the State chose the job titles and duties assigned to the wildland fire and resource technicians I-V positions, and it determines how much time the employees work in each program. Work in the forest resource programs can be used to advance in the different levels of the wildland fire and resource technician series. Sufficient evidence was not submitted to justify separating out some position control numbers in the wildland fire and resource technician I-IV job classes from others, as the job classification documents say the technicians I-IV may work in one or both programs. All technicians V work in the fire program.

In Decision and Order No. 205, the Agency determined that employees in certain job classifications performing technical support services in the Department of Administration, Division of Information Services, for the Departments of Corrections and Public Safety, should be Class II for strike classification purposes. The Agency did not separate out position control numbers to determine which positions to make Class II employees. Instead, it said, "The solution is classifying a larger group as class 2 to treat similarly situated employees alike. If a work stoppage occurs and the interruption of these employee's services is long enough to threaten the health, safety, or welfare of the public, the State can proceed to superior court and identify at that time the employees it needs to provide essential computer services." S*tate of Alaska v. Alaska State Employees Association/AFSCME Local 52, AFL*-CIO, Decision and Order No. 205, at 8, (Aug. 27, 1996).

Similarly, we find that it is more appropriate to classify the entire group of wildland fire and resource technicians I-V as Class I, instead of attempting to separate out those employees who may perform more resource work. The State could have chosen a different job classification for the resource program employees if it did not believe the work was comparable to that performed by the fire program employees, or it could insure that duties are assigned in only one program. The evidence presented is insufficient to justify making some wildland fire and resource technicians I-V in the general government unit a different strike classification than the others.

Fourth, the State argues that while the Agency may consider employment groups or classifications in making strike class determinations, the union must prove each individual employee in the group is substantially equally situated. If the union cannot prove this, the State contends the Agency cannot conclude that the group as a whole should be designated as Class I employees for strike eligibility purposes.

The State argues that because the fire danger and levels of protection are not the same within the designated protection areas in Alaska within a given fire season, and the staffing levels are not the same, that the employees in the affected positions are not all similarly situated and their services cannot be viewed as equally impacting the public health, safety, and welfare. It also contends that because DOF's technicians and dispatchers routinely go on assignments to the Lower 48, their services cannot be determined to be essential to the public welfare, health, and safety in Alaska.

We find that the wildland fire-fighting workforce is designed on mobility. Because it is not known when and where wildland fires will begin, how severe they will be, or what factors beyond human control will impact them, the work force is designed to be moved to areas where it is most needed. Cooperative interagency agreements are entered into and management plans are drawn up in advance to provide mutual assistance and determine which areas to protect at what levels.

The technicians and dispatchers can be moved within the state based on the fire needs as fires occur. DOF Operations Forester Henderson confers daily with DOF's fire managers, the Alaska Fire Service, and BLM to determine if fire-fighting employees need to be moved or reinforcements requested and pre-positioned for anticipated fire danger. If the number, location, and severity of fires in Alaska prevents filling resource orders requesting Alaskan fire personnel for fires in the Lower 48, the technicians and dispatchers remain on the job in Alaska to protect human life and resources. If the fire season in Alaska is less severe, then it may have technicians and dispatchers who can accept assignments elsewhere. As Wilcock indicated, Alaska decides whether to release employees to fight Lower 48 fires based on Alaska's projected fire danger. If weather conditions change after the employees are dispatched, then Alaska may need to obtain employees from other locations.

The technicians and dispatchers are trained to national standards so they can provide assistance elsewhere, just as Alaska can request assistance from the Lower 48 or Canada if it needs assistance, and the national dispatch system allows for filling resource orders on a closest forces basis. This system works to everyone's advantage because each state does not have to staff annually for a worst case wildland fire situation. It also allows the governments of the United States and Canada to assist each other. We do not find that such a cooperative system precludes the DOF technicians and dispatchers who work within it from being Class I employees.

The State also claims the work performed by the technicians I and II can be given up because it can be performed by EFFs, and because the technician I and dispatcher I positions are training level positions that do not require having a Red Card at the time of hire, the services the employees provide in these positions are learning in nature and can be missed without a significant impact on DOF's ability to provide services. It points to the reluctance of some hiring managers, such as Shalom, to hire employees at the technician I level as evidence that the work performed by the technicians I can be given up without affecting the public safety, health, and welfare.

We find that the various technician and dispatcher levels help the system work as an integrated whole, enabling DOF to protect human life and property from wildland fires in the areas of its responsibility. As employees go out to fight wildland fires, they increase their knowledge, skills, and abilities, and they attend training classes to upgrade their skills and qualifications. Higher level technicians with greater skills oversee the lower level technicians' work. Having entry, or training, level positions enables the State to maintain a workforce with current skills and qualifications, despite whether some individual hiring managers employ employees in them in a specific fire season. The State has flexibly-staffed positions to aid in

recruitment. Although some hiring managers prefer not to hire at the entry level, having a trainee level provides a mechanism for replacing employees who take other jobs or retire. The evidence shows that while EFFs can perform some of the duties the technicians perform, they cannot perform all of them. Many EFFs do not have the more specialized qualifications that wildland fire and resource technicians and wildland fire dispatchers obtain as they move through the various levels of the two series. The evidence also shows that depending on the severity of the fire season, there may not be enough EFFs to meet the needs of DOF's scope of responsibility. We do not find that the absence of having a Red Card at the time of hire at Level I changes the strike classification for the lower levels of the technician or dispatcher series, or that the reluctance of some hiring managers to hire at the lower level of the series prevents the trainee levels of the technician and dispatcher job class series from being Class I employees.

Fifth, the State argues because it has always classified the employees who perform the technicians' duties and the dispatchers' duties as Class III employees, and their duties have not changed significantly over the years, there is no reason to place them in a different strike classification now. It also contends the Agency must err on the side of caution when taking away the right to strike from a group of general government unit employees.

We disagree with the State's reasoning that the Agency should not change the strike classification for employees who perform the duties of the technicians and dispatchers from the State's designation of Class III. ASEA filed a petition under 8 AAC 97.260 asserting that the employees in the wildland fire and resource technicians I-V positions and in the wildland fire dispatchers I-III positions have been classified improperly by the State as Class III employees. It is the Agency's duty to decide the matter based on the evidence presented, notwithstanding how the State has classified the employees previously. The evidence submitted shows the duties of the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III make the employees in these positions Class I employees under AS 23.40.200(a)(1) and (b).

Sixth, the State contends that because employees in the wildland fire and resource technician I-V and wildland fire dispatchers I-III job classifications can take leave, it is evident that their services can be given up for a period of time. Leave provisions are negotiated in the collective bargaining agreement between the State and ASEA. Leave approval is at the discretion of the employee's supervisor. DOF's Director Maisch expressed hope that supervisors would not approve leave in situations where the fire danger was high, or that if they approved leave, it would only be for a day or two.

Having leave available under a collective bargaining agreement does not prevent an employee from being classified as a Class I or II employee. If the availability of leave was a determining factor in strike classification matters, it could mean that no employees who are eligible to take leave, regardless of whether they perform duties for the types of positions listed in AS 23.40.200(b), could be classified as Class I, strike ineligible.

Seventh, the State argues that 911 dispatchers could replace the wildland fire dispatchers I-III. Evidence presented shows the wildland fire dispatcher is the incident commander until other personnel arrive on scene. Among other things, the dispatcher's responsibilities include

whether to call for a retardant, the number of personnel needed, and initial decisions about types of equipment needed. In Delta, Dispatcher McCombs' line is forwarded to 911 in Fairbanks when he is off duty. McCombs monitors his radio, and returns to work if a wildland fire is reported. There is insufficient evidence to support a conclusion that 911 dispatchers have the training that wildland fire dispatchers have to support the work of the wildland fire and resource technicians I-V. Rather, the testimony supports a conclusion that DOF would try to find EFFs with appropriate dispatching qualifications, or resource order them, if wildland fire dispatchers were needed.

In *Alaska Public Employees Association v. State of Alaska*, Decision and Order No. 143 (September 9, 1992), this Agency stated that,

> [W]e conclude that, for those employees whose duties fall within a listed position, the legislature has conclusively presumed the effect on the public of a work stoppage and has determined their strike class. The legislature, for example, conclusively presumed that police and fire employees provide a service that may not be interrupted and classified these employees as class I. AS 23.40.200(b). For those employees whose duties are not those of a position named by the legislature in AS 23.40.200(a), this Agency will determine strike class by examining the anticipated effect of a work stoppage on the public. In making this determination the Agency will keep in mind that the legislature intended interest arbitration to be the exception to the general rule of access to strike as the tool to resolve impasse. Only those employees whose work may not be interrupted without an *immediate adverse effect* on the public health, safety, and welfare will be classified as class I.

Id. at 14 (emphasis added).

Applying this precedent to the specific facts of this case, we conclude that the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III are fire protection employees under AS 23.40.200(b), and they are Class I employees under AS 23.40.200(a)(1). The fire protection duties the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III perform may not be interrupted for even the shortest period of time during the period they are employed without affecting the public health, safety, or welfare.

ASEA proved its case by a preponderance of the evidence. Accordingly, we find that the strike class petition filed by the Alaska State Employees Association on June 14, 2010, to classify the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III in the general government unit as Class I employees, should be granted.

CONCLUSIONS OF LAW

1. The Alaska State Employees Association, AFSCME Local 52, AFL-CIO is an organization under AS 23.40.250(5). The State of Alaska is a public employer under AS 23.40.250(7).

2. This Agency has jurisdiction to determine the strike classification of employees under AS 23.40.200.

3. As petitioner, the Alaska State Employees Association, AFSCME Local 52, AFL-CIO has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).

4. The Alaska State Employees Association, AFSCME Local 52, AFL-CIO has proven each of the elements of its petition by a preponderance of the evidence.

5. The general government positions of the wildland fire and resource technicians I, II, III, IV, and V, and the wildland fire dispatchers I, II, and III at the State of Alaska provide fire protection services which may not be given up for even the shortest period of time. They are Class I employees under AS 23.40.200(a)(1 and (b). The seasonal nature of these positions does not affect their classification as Class I employees. Although an occasional wildland fire may burn in a limited or modified protection area during the winter, the affected employees are employed to protect resources and values from wildland fires that occur primarily during the wildland fire season that is defined under AS 41.15.050 to run from April 1st to August 31st annually, and the fires that occur shortly before or after the statutory fire season begins or ends. Eligibility to strike could seriously impact the public's health, safety or welfare. Providing wildland fire-fighting and dispatching support services instead of structure fire fighting and dispatching services does not prevent the wildland fire and resource technicians I-V and the wildland fire dispatchers I-III from being classified as Class I fire protection employees under AS 23.40.200(a)(1) and (b).

ORDER

1. The petition of the Alaska State Employees Association, AFSCME Local 52, AFL-CIO to classify the State of Alaska's general government unit positions of wildland fire and resource technicians I, II, III, IV, and V, and wildland fire dispatchers I, II, and III as Class I, strike ineligible, is granted.

2. The State of Alaska 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 T. Isaacs, Jr., Vice Chair

_____
Will Askren, Board Member

_____
Daniel Repasky, 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 *Alaska State Employees Association, AFSCME Local 52, AFL-CIO vs. State of Alaska,* Case No. 10-1572-SP, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 12th day of September, 2011.

_____
Margie Yadlosky
Human Resource Specialist I

This is to certify that on the 12th day of September, 2011,
A true and correct copy of the foregoing was mailed,
postage prepaid, to:

Kelly Brown, ASEA
Benthe Mertl-Posthumus, State of Alaska

_____
Signature