ALASKA LABOR RELATIONS AGENCY
1016 WEST 6TH AVENUE, SUITE 403
ANCHORAGE, ALASKA 99501-1963
Phone (907) 269 4895 • Fax (907) 269-4898

ALASKA NURSES ASSOCIATION,	)
	)
Petitioner,	)
vs.	)
	)
WRANGELL MEDICAL CENTER,	)
	)
Respondent.	)
	)

Case No. 10-1591-RC

DECISION AND ORDER NO. 296

The Board heard this petition for certification of a bargaining unit on May 3, 2011, in Wrangell, Alaska. Hearing Examiner Mark Torgerson presided. This decision was based on the pleadings, evidence submitted, witness testimony, and arguments of the parties, including post-hearing briefs filed on June 30, 2011. The record closed on July 6, 2011, after the Board deliberated following the filing of post-hearing briefs.

Digest: The petition for certification of the Alaska Nurses Association as the exclusive bargaining representative for all non-supervisory nurses at the Wrangell Medical Center, excluding all other employees, is denied under AS 23.40.090 because it would result in unnecessary fragmentation. The unit appropriate for collective bargaining is a wall-to-wall unit of all non-supervisory employees. The petition for certification is remanded to Agency staff to determine whether the Alaska Nurses Association has a sufficient showing of interest for the wall-to-wall unit. If appropriate, the election shall proceed under AS 23.40.100 and relevant regulations in the wall-to-wall unit of non-supervisory Wrangell Medical Center employees.

Appearances: Charles A. Dunnagan of Jermain, Dunnagan & Owens, P.C, on behalf of Petitioner, Alaska Nurses Association; Brian A. Morrison and Rachel Sage of Garvey Schubert Barer, on behalf of Respondent, Wrangell Medical Center.

Board Panel: Aaron T. Isaacs, Jr., Vice Chair; Matthew R. McSorley and Tyler Andrews, Members.

DECISION

Statement of the Case

The Alaska Nurses Association (the Association) filed a Petition for Certification of Representative on December 14, 2010, seeking representation of a unit of registered nurses at the Wrangell Medical Center. The Association's petition states that seven employees comprise the proposed unit at the Wrangell Medical Center (the Medical Center). The Association's petition describes the unit as follows:

INCLUDED:	Non Supervisory, under 8 AAC 97.990(a)(5), nurses at Wrangell Medical Center.
EXCLUDED:	All other employees.

The Medical Center objects to the appropriateness of the proposed bargaining unit, arguing that a unit consisting exclusively of non-supervisory nurses would result in unnecessary fragmentation in conflict with AS 23.40.090. Instead, the Medical Center asserts that a wall-to-wall unit consisting of all non-supervisory employees at the Medical Center is the appropriate bargaining unit under AS 23.40.090. The Association counters that unnecessary fragmentation is not relevant in this case.

Testimony was presented on behalf of the Association from Laura Salard, Amy Smith, Alysse Maxand, Gertrude Johnson, Beth Kuehn, and Debbie Thompson. Testimony was presented on behalf of the Medical Center from Noel Rea, Olinda White, Sue Nelson, Mary Jo Pullman, Janet Buness, Kathy Jo Blackburn, Jane Bliss, and Ernie Bliss. Laura Salard also testified in rebuttal.

Issues

1. Does the statutory mandate in AS 23.40.090 against unnecessary fragmentation apply only to severance cases, and not to initial petitions for representation?

2. Should we apply the provisions of the National Labor Relations Act for determining appropriate units in health care facilities?

3. Under AS 23.40.090, would a bargaining unit consisting exclusively of non-supervisory nurses be the unit appropriate for the purposes of collective bargaining at the Wrangell Medical Center?

Findings of Fact

1. Alaska Nurses Association is recognized as a labor organization under AS 23.40.250(5).

2. The Wrangell Medical Center (the Medical Center) is a subdivision of the City and Borough of Wrangell and is recognized as a public employer under AS 23.40.250(7). (Hearing Transcript at 145). The Medical Center is administered by an elected board of directors who hire

a chief executive officer (CEO) to oversee the operation of the facility. The current CEO is Noel Rea. (Transcript at 145-146).

3. The Medical Center is a small medical facility that combines long-term and acute care treatment for patients. The 22-bed facility includes a 14-bed long-term care section and an 8-bed acute or critical care section. (Transcript at 146-147). The Medical Center is licensed as "swing bed" in its acute care section. With this designation, it can take patients who are primarily in need of rehabilitation. (Transcript at 148).

4. The Medical Center is a single-building facility, with a main floor on ground level and a basement. (Exhibit F). It takes just over a minute to walk from one end of the facility to the other end, or "pretty much anywhere" in the facility. (Transcript at 189; See Exhibit G).

5. The Medical Center has an emergency room, imaging department, and lab. It can provide chemotherapy, physical therapy, infusion, and "everything you would expect." (Testimony of Noel Rea, Transcript at 146). It provides surgery on a scheduled basis. However, the Medical Center has not delivered babies since 2002. (Transcript at 146-147).

6. There are currently 12 supervisory positions and 54 non-supervisory "regular" employees at the Medical Center. (Exhibits 2, A and B; Transcript at 171-172, and 290-291). There are also 10 "incidental" and "contract" employees. (Exhibit C). Regular employees are those who have successfully completed probation, and incidental employees are "[t]hose scheduled on an 'as needed' basis." (Exhibit E at 14). Incidental employees generally work less than half time, but may work full time temporarily to, for example, cover for a worker who is on vacation. (Transcript at 291). Incidental employees do not receive any of the benefits provided to regular employees**.** However, incidental employees receive compensation at the appropriate grade and step for the position plus ten percent. Contract employees are those whose pay terms are negotiable. (Exhibit E at 15).

7. None of the non-supervisory employees at the Wrangell Medical Center is currently represented by a labor organization for the purpose of collective bargaining. (Association Exhibit 5). There is no history of collective bargaining at the Medical Center.

8. All non-supervisory positions at the Medical Center are organized by category and job classification. (Exhibit 5; Exhibit A). The clinical services positions are under the overall supervision of the Director of Nursing and include the following:

a. Medical Technologist
b. Medical Technician
c. Radiology Technician
d. Registered Nurse
e. Medical Social Worker
f. Ward Clerk
g. Scope Tech
h. Activities Director

i. Certified Nursing Assistant
j. Nursing Assistant

The financial services positions, listed under the Chief Financial Officer, include the following:

k. Medical Records Tech
l. Patient Accounts Representative
m. Payroll/Accounts Payable
n. Visiting Physicians Clerk
o. Floating Clerical

The support services positions are under the Director of Environmental Services and include the following:

p. Cook
q. Housekeeper
r. Laundry Worker
s. Dietary Aide

(Exhibit D).

9. A consultant's review of clinical staffing at the Wrangell Medical Center resulted in a February 7, 2011, report and recommendations (Exhibit 1). Among other things, the consultant recommended additional staffing, changes to pay schedules for on-call work, and including a facilitator at staff meetings.

10. As part of the hiring process at the Medical Center, all potential employees are subject to a background check and drug testing. (Transcript at 302-303).

11. All employees are subject to and must abide by the Medical Center's Personnel Policies Manual. (Exhibit E). Each newly hired employee is given a copy of the manual and must verify that he or she has read it. The Medical Center uses an "Orientation Checklist" to explain and review employment and personnel matters with each new employee. The employee, orientation coordinator, and department head sign the checklist. (Exhibit Q). All employees are evaluated in the same manner. (Transcript at 191-192).

12. Exhibit M lists the salary structure at the Medical Center. All employees, including nurses, are paid pursuant to this structure. The Medical Center pays a consulting firm to conduct salary studies of positions that are the same or similar to those at the Medical Center. (Transcript at 200). The study incorporates salary data for positions in medical centers in Alaska, including Southeast Alaska facilities, and also the Pacific Northwest. (Transcript at 201). The Medical Center pays employees at the midpoint or above on the schedule provided by the consulting firm. (Transcript at 202).

13. All employees at the Medical Center are paid an hourly wage. (Transcript at 296).

14. Registered nurses (also referred to as nurses or RN's) are paid the highest median and highest average hourly wage of any employee position in the Medical Center. (Exhibits N and O). Medical technologists and medical social workers receive the next highest hourly pay.

15. All employees receive the same percentage pay increases, when increases are given. All employees received a 7 percent pay raise in 2010. (Transcript at 206-207). All employees other than incidental employees receive the same fringe benefits, including medical insurance, life insurance, retirement plan and supplemental annuity plan. (Transcript at 194).

16. All employees must report to work by punching into the Medical Center's time clock. They may not report more than 7 minutes prior to the start of their scheduled shift, or punch out more than 7 minutes after the end of that shift. (Exhibit E at 26). Employees may also 'clock in' to work using their computer, if the computer has CPSI software. (Transcript at 296). All employees must wear an identification badge at all times. (Exhibit E at 27).

17. The working hours and work shifts of the Medical Center's employees vary by position and even within each position. While many employees work an eight-hour shift, other employees work a 10 or 12-hour shift.

18. RN's usually work 12-hour shifts. Two RN's work on each of two 12-hour shifts at the hospital, one in the acute care section and the other in the long-term care section. These shifts may be worked by either regular employees, or incidental RN's who work only part-time. A total of eight nurses work on a 12-hour shift basis, while two nurses work 8-hour shifts. (Transcript at 84). The nurses who work 12-hour shifts typically work 3 shifts per week, for a total of 36 hours per week.

19. Certified nurse assistants generally work 40 hours per week (five 8-hour shifts). The days worked vary according to the needs of the Medical Center. (Exhibit H).

20. Ward clerk Kathy Jo Blackburn works four 10-hour shifts on consecutive days, for a total of a 40-hour work week. (Transcript at 347).

21. The personnel manual allows employees to take "at least a 30-minute non-paid [meal] break during their shift, and two 15-minute rest breaks. (Exhibit E at 8). Nurses do not often get to take meal or rest breaks.

22. Some of the employees must be on "call" during some of their days off. These employees sign up for a specified number of call shifts each month. The employees are paid $4 per hour for each hour on call. If they are actually called in to the Medical Center to work, they receive one and one-half times their regular pay, and they are guaranteed a minimum of one hour of pay. (Transcript at 195; Exhibit E at 28). Job positions required to be on call include the registered nurses, lab technicians, and radiology technicians.

23. Most nurses must be on call for approximately 8 hours per week. They get called into work 12-15 percent of their time while on call. However, not all nurses are required to be on

call. For example, Registered Nurse Laura Salard is an incidental employee who works one 12-hour shift per week. She is not required to sign up for call shifts. (Transcript at 17, 18).

24. Two other employee groups, including the 3 lab technicians and 3 radiology technicians are required to be on call. The three employees in each of these departments must take calls for approximately 40 hours per week per employee. Radiology technician Ernie Bliss testified that it is "very rare" for him to not get called into the Medical Center, while on call on weekends. (Transcript at 399).

25. Qualifications, skills, and licensing requirements vary substantially from one position to another at the Medical Center. Some positions have higher education and licensing requirements, while others have none.

26. The Medical Center requires that nurses possess at least a "nursing degree/diploma from an accredited nursing program." (Exhibit P at 8). The specific degree/diploma accepted by the Medical Center includes an associate's (two-year) degree, a diploma from a hospital, or a bachelor's degree. (Transcript at 16, 48, 74, 98, 248).

27. Job qualification minimums for other positions at the Medical Center range from an eighth grade education (laundry worker) to a master's degree (medical social worker). The medical social worker position requires a master's degree in social work from an accredited school and one year of experience in a health care setting. (Exhibit P at 38). The medical technologist must hold a bachelor of science degree in medical technology and also pass the national registry examination. (Exhibit P at 39). Certified nursing assistants must complete an educational program and pass an examination administered by the State Board of Nursing. (Transcript at 356). On the other end of the education/qualifications spectrum, laundry workers must possess a minimum of an eighth grade education, be at least 18 years old, and speak, read, and write the English language. (Exhibit 20 at 5). Housekeepers must have a grade school education. (Exhibit 19 at 5).

28. Any employee can qualify for one of the positions at the Medical Center by meeting the minimum qualifications required of that particular position. A Medical Center employee may become employed as a nurse only after attaining the required education, passing the required examination, and obtaining the required license. (Transcript at 138).

29. Nurses must obtain 30 continuing education credits every two years in order to renew their license. (Transcript at 137, 248). Certified nurse assistants must obtain 24 hours of credits every two years. (Transcript at 248, 357). Medical technologists must earn 15 credits per year, and they must be recertified every three years. (Transcript at 249-250). Lab technicians are required to earn 12 hours of credit each year and they also have a three-year certification cycle. (Transcript at 250).

30. The Medical Center provides training and seminars for employees. Certified nurse assistants receive training credits through classes arranged by their supervisor. (Transcript at 357).

31. Because the Medical Center is a small facility with a relatively small number of employees, there is a significant degree of functional integration among the employees. The employees in the various positions interact frequently.

32. The degree of functional integration is illustrated in part by the fact that some medical center employees are cross-trained to perform some duties of other positions. For example, one of the cooks is cross-trained in purchasing; a laundry worker is also a certified nurse assistant; and three of the housekeepers are cross-trained in dietary and laundry and are regularly scheduled to perform those duties. (Transcript at 369, 370). Moreover, ward clerk Kathy Jo Blackburn, the ward clerk on the Monday through Thursday shift, is also qualified as a certified nurse assistant. (Transcript at 356).

33. Nurses, nurses aides, and ward clerks work as a team in both the acute care side and the long-term care side of the Medical Center. (Transcript at 319 – 321; 326-327). There is one nurses' station in the Medical Center. The nurses, nurses aides, ward clerks, physicians, and some of the certified nurse assistants all use the nurses' station as their base work area. (Transcript at 174-75).

34. Registered nurses play a vital, central role in providing medical care at the Medical Center. Nurses are ultimately responsible for how the medical team performs at the Medical Center. (Transcript at 272-273). They perform not only their own assigned duties and responsibilities but sometimes carry out the tasks assigned to other positions at the Medical Center, when those employees are unavailable, especially during the night shift. (Transcript at 324-325).

35. Nurses also perform many non-traditional tasks at the Medical Center. They may restock supplies in the emergency room, check equipment, clean medical rooms, check for sterilization of instruments, replace batteries, spread ice melt in winter, and start plate warmers in the kitchen when they arrive at the beginning of the 4:00 a.m. shift. (Transcript at 259-260).

36. Nurses sometimes assist with taking x-rays, and they may be required to make beds if the housekeeper is not on duty. (Transcript at 321-322, 323-324). Nurses also perform housekeeping tasks if there is no housekeeper on shift. There is no housekeeper on shift between 9:00 p.m. and 7:00 a.m. Monday through Friday, and on weekends. (Transcript at 324). The nurse answers the phone when the ward clerk is not available, which includes each evening. (Transcript at 324).

37. Nurses interact more frequently with other employees at the Medical Center than they do with each other. (Transcript at 258-259). This is because there is usually only one nurse in the acute care area and one nurse in the long-term area. The nurses supervise the certified nursing assistants and ward clerks and work with them frequently to provide patient care. Nurses also work with housekeepers and, they interact with dietary personnel as needed to adjust patients' diets. (Transcript at 323). The nurses and ward clerks interact with lab personnel by inputting orders for drawing blood, for example.

38. During the night shift, the nurse may call the lab employee who is on call, and tell that employee he or she is needed to come to the Medical Center and draw blood from a patient. (Transcript at 253). The nurse may assist lab personnel if it's a difficult patient. (Transcript at 321-322). The nurse may assist in the taking of x-rays, if – for example - a patient needs help standing while waiting for x-rays to be developed. (Transcript at 322-323). A nurse may perform some of the duties of the certified nurse assistant if there is no CNA available. (Transcript at 325).

39. Nurses work with Olinda White, the office manager, to set patient costs. (Transcript at 171).[1]

40. Ward clerk Kathy Jo Blackburn, the ward clerk on the Monday through Thursday day shift, interacts with nurses "all day long. . . [f]requently." (Transcript at 358).

41. If a patient is discharged, nurses clean, strip and remake the discharged patient's bed, and housekeeping cleans the remainder of the room. (Transcript at 255).

42. Nurses may work with laundry personnel if there are any concerns related to laundry. For example, someone's dentures may get lost in bedding. The nurse would alert laundry to be on the lookout for dentures, or laundry would alert the nurse if the dentures are found. (Transcript at 255).

43. Some nurses desire to be represented for collective bargaining, and others do not desire such representation.

ANALYSIS

1. **Does the statutory mandate in AS 23.40.090 against unnecessary fragmentation apply only to severance cases, and not to initial petitions for representation**?

The Association contends that one of the factors listed in AS 23.40.090 - unnecessary fragmentation – is irrelevant to this case:

> The main concerns of fragmentation have been the increased burden of an employer in dealing with multiple units, and the general proliferation of units. Those concerns are not relevant here. Under the employer's preference, it would have to deal with a wall-to-wall unit, whereas under the [Association's] proposal, it would have to deal with a nurses unit. The net result in terms of the number of units the employer would have to deal with is the same. In other words, the small unit is not being severed from an existing unit, and there is no indication in more than 40 years of operation that the other employees will be organized. Where the certification would not 'create an additional unit,' such as where employees are moved from one unit to the other, there is no unnecessary fragmentation.

[1] Olinda White works in a job position that has responsibilities of both the chief financial officer and the office manager. She has worked at the Medical Center for more than 20 years. (Transcript at 168-169).

(Association Post-Hearing Brief at 29).

The Medical Center responds that the Association's argument is "incorrect. The statute in question makes no reference or limitation to cases only involving severance petitions. . . .The Agency does not interpret the statute to be limited to severance petitions." (Medical Center Post-Hearing Brief at 15). For support of its argument, the Medical Center cites several agency decision and orders: *Public Safety Employees Assn. v. City of Wasilla,* Decision and Order No. 286 (June 3, 2008); *Laborers Local 341 v. City of Whittier,* Decision and Order No. 242 (March 3, 1999); *Public Employees Local 71 v. Bristol Bay Borough*, Decision and Order No 181 (December 16, 1994); and *IBEW Local 1547 v. Kodiak Island Borough*, Decision and Order No. 90-5 (May 2, 1990). (See Medical Center's Post-Hearing Brief at 15).

The pertinent statute, AS 23.40.090 provides:

> The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the right guaranteed by AS 23.40.070 – 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided.

We agree with the Medical Center. This Agency and its predecessors (the State Labor Relations Agency and the Department of Labor, Labor Relations Agency)[2] have always applied the statute's unnecessary fragmentation factor in initial representation cases. In addition to the decisions cited by the Medical Center above, the following decisions from our predecessor agencies, dating back to the first order and decision issued after the effective date of the Public Employment Relations Act in 1972, address the fragmentation issue in initial petitions for representation (no carve out involved): *Order and Decision Concerning the Petition for Collective Bargaining Representative Of All Non-Certificated Employees Of The State-Operated School System*, Order and Decision No. 11 (January 17, 1974); *Petition Number 2-73,* Order and Decision No. 3 (undated); *Decision and Order Concerning Petitions Number 1-72, 2-72, 3-72, 4-72, 5-72, and Relevant Interventions and Objections*, Order and Decision Number 1 (effective March 1, 1973) (the first decision and order issued under the Public Employment Relations Act by the State Labor Relations Agency). In addition to the above decisions issued by the State Labor Relations Agency, see also the following decision issued by the Department of Labor, Labor Relations Agency: *Case Number RC-A83-1* ((August 28, 1984) (noting, at page 17 of a decision involving seven petitions for initial representation, that the "desire to avoid unnecessary fragmenting does not mandate vertical units.").

[2] This Agency was created by Executive Order in 1990. Prior to its creation, labor relations issues and disputes at the state level were handled by the State Labor Relations Agency, and political subdivision issues were handled by the Department of Labor, Labor Relations Agency. Those agencies were abolished in 1990 and this Agency took over jurisdiction.

Moreover, neither AS 23.40.090 nor any of the agency's regulations require that unnecessary fragmenting only be considered in selective fact situations. We will continue to consider this factor in all representation petitions, including initial, carve out, and accretion petitions. We decline to adopt the Association's argument in this regard.

The Association also asserts that since the nurses are apparently the only group at the Medical Center who want to be represented for collective bargaining, there will be no other bargaining units, and therefore no risk of unnecessary fragmenting. However, that is not a factor that we weigh in deciding the appropriate unit. Although the evidence indicates the nurses are the only group interested, at this time, in voting on the representation petition, current employee desire is not a guarantee that other employees will never be interested in forming a bargaining unit. While the "desires of the employees" is a factor listed in AS 23.40.090, it is only part of the determination under AS 23.40.090. The fact that only one group of public employees among all the public employees on a public employer's premises is interested currently in forming a bargaining unit does not override the concern that unnecessary fragmenting could occur.

2. Should we apply the provisions of the National Labor Relations Act for determining appropriate units in health care facilities?

Among its arguments, the Association asks this Agency to consider the National Labor Relations Act (NLRA) as guidance here, find that the Medical Center is an acute care hospital, and apply the NLRA's presumption that nurses should have their own separate unit. The Association argues that we should consider the provisions in the "[National Labor Relations Board] and the courts" that . . . "[t]ime and again, professionals are permitted to be in a different unit than non-professionals. A review of the education, training, and job duties performed by the nurses establishes that they are professional employees and should be treated as such." (Association's Post-Hearing Brief at 6-7). Later in its brief, the Association asserts as follows:

> Moreover, an analogy should be made to the findings of the National Labor Relations Board with regard to acute care facilities. The Board has found eight presumptively appropriate units: 1) physicians; 2) registered nurses; 3) other professionals; 4) technical employees; 5) skilled maintenance employees; 6) business office clerical; 7) guards; and 8) other nonprofessionals. Nurses are clearly treated differently from technical, maintenance, business office clerical, and other non-professional employees. For acute hospital care, courts and the Board have made a clear distinction between nursing and other types of work performed. The Board's rational is based on registered nurses having an impressive history of exclusive representation and collective bargaining and finding that a separate RN unit is justified on traditional community of interest grounds. In other words, federal law supports the idea that registered nurses belong in their own unit. Although ALRA is not bound by NLRB precedent on this issue, the logic of the NLRB's approach should be considered.

(Association's Post Hearing Brief at 22).

The Association is correct that the National Labor Relations Board (NLRB) has regulations providing for eight appropriate bargaining units in the health care industry, generally as it asserted in its brief.[3] The specific regulation the Association refers to, Code of Federal Regulations (C.F.R.) section 103.30(a), applies to acute care hospitals as defined in the C.F.R. at section 103.30(f). The regulations further provide that the NLRB will determine appropriate units by adjudication "[w]here extraordinary circumstances exist[.]" C.F.R. 103.30(b). Finally, the regulations provide that the NLRB will determine appropriate units by adjudication "in other health care facilities, as defined in section 2(14) of the National Labor Relations Act . . . ." 29 C.F.R. section 103.30(g). Section 2(14) of the NLRA defines the term "health care institution" to "include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person."

We agree that the nurses at the Medical Center are dedicated, hard-working professional employees. They perform a vital role in the medical care of patients at the Medical Center. The evidence in this case shows that the nurses at the Medical Center are required to perform not only the duties of their own position but sometimes the duties and tasks of other employees at the Medical Center. They direct and help provide medical care pursuant to the team health care approach taken by the Medical Center's employees.

However, this Agency and our predecessor agencies have not previously required or deemed essential that we separate professional employees from non-professional employees in determining an appropriate unit for collective bargaining, whether it be an initial petition for representation or a petition to sever a group from a represented bargaining unit. In fact, the agency's decisional history shows a relatively common thread of combining professional and other employees into mixed units, at both the state level and the political subdivision level. See, e.g., *Public Safety Employees Association v. City of Wasilla*, Decision and Order No. 286 (June 3, 2008) (combining professional police officers with other employees in a mixed unit); *Alaska Vocational Technical Education Center Teachers' Association v. State of Alaska*, Decision and Order No. 262 at 3 (February 19, 2003) (noting that the statewide general government unit, representing nonsupervisory state employees, includes technical, professional, and clerical personnel); *Alaska Public Employees Association v. Ketchikan Gateway Borough,* Decision and Order No. 259 at (June 28, 2002); and *Decision and Order Concerning Petitions Number 1-72, 2-72, 3-72, 4-72, 5-72, and Relevant Interventions and Objections*, Order and Decision Number 1 (Effective March 1, 1973). To separate out professional and nonprofessional employees in bargaining units under our jurisdiction would be a radical departure from agency precedent. If we were to depart from this long line of decisional precedent and adopt or apply the NLRB's regulations by "analogy," we would upset stability in labor relations under the Public Employment Relations Act.

We decline to make such a change and follow NLRB precedent here. First, our regulation 8 AAC 97.450(c) provides that "[r]elevant decisions of the [NLRB] and federal courts will be given great weight in the decisions and orders made under this chapter and AS 23.40.070 – 23.40.260 . . . ." This regulation applies only to NLRB and court decisions, not NLRB

[3] These regulations apply to all cases decided on or after May 22, 1989." 29 C.F.R. 103.30(e).

regulations. We realize there are many decisions addressing disputes over this section, but in any event, we find the NLRB regulation irrelevant and inapplicable to the above agency regulation.

Finally, we have already addressed a request to analogize "to the findings of the National Labor Relations Board (NLRB) with regard to acute care facilities." *Alaska Nurses Association v. Fairbanks North Star Borough School District*, Decision & Order No. 258 at 10 (January 30, 2002). We addressed the NLRB's presumption of appropriate units for eight different health care positions, including nurses. In declining to adopt the NLRB's regulations and case law, we stated:

> We find a marked difference between the [National labor Relations Act] and Alaska Public Employment Relations Act (PERA) regarding the determination of an appropriate bargaining unit for professional employees. PERA clearly departs from the NLRA and the other states in this respect. Unlike the NLRA, PERA does not distinguish between professional and non-professional employees, regarding composition of bargaining units or otherwise. Contrary to the NLRA, PERA does not contain a definition of "professional employee," nor does PERA provide for separate units of nurses or other professional employees. We find it would be inappropriate for this Agency to mandate, by decision and order, that nurses and other public employees deemed professional" should have separate units due to this status alone. Whether PERA should provide distinctions for employees based only on their professional or other status is a decision that should be left to the legislative process. Barring any future amendments to PERA, we will continue to apply the traditional factors contained in AS 23.40.090, in determining appropriate units. Accordingly, we will not give great weight to decisions of the NLRB or federal courts on this issue. 8 AAC 97.450(b).

(Decision and Order No. 258 at 11 (citations omitted)).[4]

As noted, this Agency has a long history of finding that mixed units of professional and 'nonprofessional' employees are appropriate. As in Decision and Order No. 258, we are not persuaded that we should depart from this substantial and consistent precedent under the facts of this particular case.[5]

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[4] In Decision and Order No. 258, we also pointed out that, "This is not to say that the status of 'professional employee' carries no weight in unit determinations." See footnote 18 at page 11, which cites to several agency decisions on professional employees in unit determinations.

[5] Even if we had decided to adopt the NLRB regulation here, we would reject the Association's argument. First, we would find that the Medical Center does not meet the definition of an acute care hospital that would trigger the applicability of the professional employee unit regulation. The Medical Center has almost twice as many long-term beds as acute care beds. In our view, the Medical Center would not meet the definition of an acute care facility. See also *Specialty Hospital of Washington-Hadley, LLC*, 357 NLRB No. 77, 191 L.R.R.M. (BNA) 1233 (August 26, 2011) (*Specialty Hospital*). There, the NLRB found that in a combined nursing home and acute care facility, it appeared that the NLRB's bargaining unit rules for acute care institutions would not be applicable. See *Specialty Hospital*, 357 NLRB No. 77, at 41.

3. Under AS 23.40.090, would a bargaining unit consisting exclusively of non-supervisory nurses be the unit appropriate for the purposes of collective bargaining at the Wrangell Medical Center?

Alaska Nurses Association must establish by a preponderance of the evidence that the proposed bargaining unit of non-supervisory nurses is "the unit appropriate" for collective bargaining. In doing so, it must satisfy the factors in AS 23.40.090.

We have previously concluded that in applying the factors and in determining the unit appropriate under AS 23.40.090, "[t]his statute does not require we give more weight to any one factor over other factors. Our responsibility is to insure that employees are placed in a unit that results in a community of interest based on the case's particular facts, and the factors outlined in AS 23.40.090." *Public Safety Employees Association v. City of Wasilla*, Decision and Order No. 286 (June 3, 2008) (D&O 286), at 18, citing *Alaska Correctional Officers Association v. State of Alaska*, Decision and Order No. 284, at 22 (February 28, 2008) (D&O 284).[6]

Put another way:

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

D&O 286 at 18, citing D&O 284 at 22, and *Airco, Inc. and Chauffeurs & Sales Drivers, Local Union No. 402*, 273 NLRB No. 348, 118 L.R.R.M. (BNA) 1052 (1984). We make unit decisions on a case-by-case basis.

Our regulations provide that "relevant decisions of the National Labor Relations Board and federal courts will be given great weight in the decisions and orders made under this chapter and AS 23.40.070 – 23.40.260 . . . ." Federal courts have endorsed the notion of determining community of interest on a case-by-case basis. The "central test is whether the employees share a 'community of interest,' that is, 'substantial mutual interest in wages, hours and other conditions of employment.'" *Bentson Contracting Company v. NLRB*, 941 F.2d 1262, 1265 (D.C.Cir. 1991) (quoting *Allied Chemical Workers,* 404 U.S. at 172, 92 S.Ct. at 394).

Community of Interest. The Wrangell Medical Center is a small facility. Because of its small size both in terms of physical size of the facility, the relatively small number of patients, and the relatively small number of employees, there is frequent contact among its employees, including nurses and other employees. This frequent interaction supports a strong community of interest in a wall-to-wall unit at the Medical Center. While nurses play a vital role in the

[6] We noted in D&O 286, at page 18, note 19, that D&O 284 concerned the issue whether to sever a group of employees from a wall-to-wall bargaining unit. However, we added that the analysis on weighing section 090 factors should apply in representation petitions as well.

provision of medical care at the Medical Center, they are assisted by other employees, and the medical care is provided on a team basis.

In some cases, the NLRB has been persuaded by the finding that nurses have their own supervisory hierarchy and were thus administratively segregated from other employees in health care facilities. (See discussion in Decision and Order No. 258 at 12.) There is no such segregation at the Medical Center. Nurses are 1 of 10 different job positions that are included in the clinical services group, supervised by the Director of Nursing. This group includes not only nurses but medical and radiology technicians, the social worker, ward clerk, and activities director, among others. We find this hierarchy supports a finding that the community of interest is in the wall-to-wall unit of non-supervisory employees.

Wages. Next, we find that the wages support a wall-to-wall bargaining unit. All employees are paid on an hourly basis, based on a consultant's periodic recommendations, and they are all paid on a bi-weekly basis. The Association argues that nurses are unique because they are paid at the highest range of any non-supervisory position at the Medical Center. However, they are paid, like everyone else, based on a consultant's research and recommendations, based on other similar positions in Alaska and the Pacific Northwest. The fact that they are paid a little more than some, and much more than others, does not support a finding that they should be in a separate unit. If this were so, each of the multiple different positions in the Medical Center could argue the same thing for their own separate units, just based on a different hourly wage.

Hours. Regarding hours of employment, we find that the hours of employment support a wall-to-wall bargaining unit. Although the working hours vary among employees, we find it is not unusual for different groups of employees to have different working shifts in a medical facility. Regarding the particular working hours, most nurses do work unique 12-hour shifts, three days a week, although two nurses work an eight-hour shift, like the majority of employees at the Medical Center. But other employees work shifts different than the normal eight-hour shift. The ward clerk works 10-hour shifts, four days a week. We find that the nurses' shift is not so different from that of other employees that is supports a separate nurses' unit.

The nurses also contend that being on call several shifts per month supports a finding of a separate nurses unit. However, the evidence revealed that nurses' call shift requirements are not unique at the Medical Center. The lab technicians and radiology technicians must also be on call. While the nurses must sign up for an average of 8 hours of call per week, the lab and radiology technicians must sign up for 40 hours, since there are only three in each of these positions. Based on this evidence, we find the nurses' call shift requirements do not support a separate nurses' unit.

Other Working Conditions. The other working conditions of the employees support a wall-to-wall unit. All employees check in to work using the Medical Center's time clock. All regular employees receive the same fringe benefits, including medical benefits, retirement package, and life insurance. Although nurses contend they should have a separate unit due to their licensing and education requirements, other employees at the medical center also have licensing and education (including continuing education) requirements.

There is no doubt - and it is not argued otherwise - that nurses serve a vital role in providing medical care for patients at the Medical Center. They are multi-taskers extraordinaire. However, other employees also provide medical care to patients, under the nurses' supervision. These employees work closely with the nurses to assure that patients' needs are met. The fact that the nurses are the 'lead' or serve many functions in terms of providing the medical care does not support a finding that they should have their own unit.

History of Collective Bargaining. There is no history of collective bargaining. We find this lack of history neither supports nor weighs against a nurses'-only unit.

Desires of the Employees. Some employees expressed a desire to be represented, while others expressed a desire for no representation for collective bargaining. We find this factor does not support either a nurses'-only unit or a wall-to-wall unit.

Fragmentation. We next must examine, under AS 23.40.090, the statutory mandate that "[b]argaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided." Under the facts in this petition, we find that unnecessary fragmenting would result if the 8 non-supervisory nurses were placed into their own, separate bargaining unit from the other 46 employees. As we have stated frequently, the Medical Center is a small, combined-care facility. Given the limited size of the employee population at the Medical Center, the high degree of functional integration among all 54 employees, and the close similarity of wages, hours, and other working conditions, we conclude that the unit appropriate is a wall-to-wall unit. To find otherwise here would risk unnecessary fragmenting.

Based on the factors in AS 23.40.090, such as community of interest, wages, hours, and other working conditions of the employees involved, the desires of the employees, and the concern for unnecessary fragmenting in a small medical facility like the Medical Center, we conclude that a wall-to-wall bargaining unit is the appropriate unit for employees at the Wrangell Medical Center.

CONCLUSIONS OF LAW

1. The Alaska Nurses Association is an organization under AS 23.40.250(5). The Wrangell Medical Center is a public employer under AS 23.40.250(7).

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

3. As Petitioner, the Alaska Nurses Association has the burden to prove each element of its claim by a preponderance of the evidence. 8 AAC 97.350(f).

4. The Alaska Nurses Association failed to prove its claim by a preponderance of the evidence.

5. Based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, and the prohibition against unnecessary fragmentation, a single, wall-to-wall unit of non-supervisory employees at the Medical Center is the unit appropriate for collective bargaining.

6. The history of collective bargaining and desires of employees factors neither support nor weigh against a nurses-only bargaining unit.

ORDER

1. The petition for certification of the Alaska Nurses Association to represent a unit of nurses at the Wrangell Medical Center separately from the other employees in a bargaining unit is denied. The unit appropriate for collective bargaining is a wall-to-wall unit of all non-supervisory employees. The petition for certification is remanded to Agency staff to determine whether the Alaska Nurses Association has a sufficient showing of interest for the wall-to-wall unit. If appropriate, the election shall proceed under AS 23.40.100 and relevant regulations.

2. The Wrangell Medical Center 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

_____
Matthew R. McSorley, Board Member

_____
Tyler Andrews, 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 Nurses Association vs. Wrangell Medical Center*, ALRA Case No. 10-1591-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this ___ _____ day of _____, 2011.

_____
Kathleen Wagar
Office Assistant III

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

_____

_____

_____
Signature