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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC
DEVELOPMENT
DIVISION OF INSURANCE

IN THE MATTER OF)
TPG STAFFING, LLC)
Appellant.)
_____)

Case No. H 14-05

PROPOSED DECISION

INTRODUCTION

TPG Staffing, LLC (TPG) under a *Temporary Staffing Services Agreement* (Agreement) with SAS Retail Merchandising (SAS), provides temporary staffing personnel (Employees) to SAS at various locations in Alaska depending on SAS's staffing services needs. The Employees at these locations are stocking shelves to ensure correct product placement and requisitioning new stock, continuity in pricing and comparison-pricing with competitors, and conducting in-store product demonstrations. TPG's insurer, Liberty Mutual Insurance Company (Liberty), assigned the classification code 9521 Advertising Display Installation Service (Code 9521) to classify the Employees for workers' compensation insurance purposes. TPG maintains Liberty applied the wrong code and the proper code to assign should have been classification code 8017 Store - Retail NOC (Code 8017). TPG contested Liberty's assignment before the Alaska Review and Advisory

1 Committee's Workers Compensation Grievance Committee (Committee) which adopted
2 Liberty's position. TPG appealed to the director of the Alaska Division of Insurance
3 (director) who appointed a hearing officer to hear the case. For the reasons which follow, I,
4 as the hearing officer, affirm the Committee's decision.
5

6 DISCUSSION

7 I. ISSUE PRESENTED

8 What is the proper classification code to assign under the NCCI manuals to
9 temporary employees provided under a contract with a client to meet the client's staffing
10 services needs at various locations where the employees are stocking shelves to ensure
11 correct product placement and requisitioning new stock, continuity in pricing and
12 comparison-pricing with competitors, and conducting in-store product demonstrations?
13

14 II. BACKGROUND

15 Classification codes and their descriptions appear in the National Council on
16 Compensation Insurance (NCCI) publication *Scopes[®] of Basic Manual Classifications*
17 (*Scopes[®] Manual*). This manual "serves as a guide for understanding and assigning
18 workers' compensation classifications." (*Scopes[®] Manual* at Introduction). Under the
19 *Scopes[®] Manual*, "Code 8017 applies to retail stores that are principally engaged in selling
20 merchandise that is not described by a specialty retail store classification in the *Basic*
21 *Manual*" while "*Advertising Display Installation Service* – applies to the installation of
22 advertising displays in stores or other locations from floors or stepladders." The reference
23 to the "*Basic Manual*" refers to the NCCI *Basic Manual for Workers Compensation and*
24 *Employers Liability Insurance – 2001 Edition (Basic Manual)*. The *Basic Manual* sets
25 forth the rules for classification assignment. "In the unlikely event that there is a conflict
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between material contained in the *Basic Manual* and the *Scopes*[®] *Manual*, the information contained in the *Basic Manual* takes precedence." (*Scopes*[®] *Manual* at Introduction).

The *Basic Manual* is filed by the NCCI and approved by the director under AS 21.39.040. The NCCI is a rating organization licensed by the director under AS 21.39.060.

III. FACTS AND PROCEEDINGS

A. Initial Proceedings

On June 11, 2012, TPG and SAS entered into a written Agreement whereby TPG agreed "to provide to SAS, personnel ('Temporary Staffing Personnel') to perform the Services described in 'Schedule A' which was attached to and made a part of this Temporary Staffing Services Agreement." Schedule A was not provided by either party and is not part of the record, however, TPG's description of the services of the Employees (stocking shelves to ensure correct product placement and requisitioning new stock, continuity in pricing and comparison pricing with competitors, and conducting in-store product demonstrations) is not disputed. Nor is there any dispute that these services were performed at retail store locations in Alaska.¹

Liberty assigned the classification code 9521 for these Employees. Efforts by TPG to have the Employees re-assigned under classification code 8017 were unsuccessful and TPG, under AS 21.39.090, requested NCCI to review the dispute.²

¹ The store locations were not provided by either party and are not part of the record. The Committee's record includes references to them as "retail stores" and neither party has disputed this characterization.

² AS 21.39.090 requires the NCCI, as a rating organization, to provide "a reasonable means for a person aggrieved by the application of its rating system to be heard." The NCCI meets this requirement through the Alaska Dispute Resolution Process which is set forth in the *Basic Manual* and which provides in relevant part: "If a policyholder is unable to resolve the dispute to the policyholder's satisfaction with NCCI's assistance, then the policyholder may request in writing that NCCI refer the dispute for a hearing by the Alaska Review and Advisory Committee's Workers Compensation Grievance Committee." TPG's reliance on In the Matter of Borealis Broadcasting, Case No. H99-01 to argue that the Committee has no independent authority is incorrect as the Alaska Dispute Resolution Process was adopted by the NCCI and approved by the director after the Borealis decision.

1 B. Grievance Committee Proceedings

2 Counsel for TPG submitted a *Position Statement* to the Committee indicating "[b]y
3 contractual agreement, TPG provides SAS Retail with human resource and employee
4 management services for individuals employed in the State of Alaska. These services
5 include but are not limited to (1) payroll management and processing, (2) management of
6 employee relations issues, (3) employee onboarding, (4) benefits and workers
7 compensation management, (5) disability and sick leave management, and (6) employee
8 time management." The *Position Statement* noted that these services are important,
9 "particularly in connection with workers compensation risks, as it allows for TPG to pool
10 its risks and provide an appropriate level of coverage to protect workers while doing so at a
11 competitive price."
12

13 The *Position Statement* noted "[i]t is extremely important to understand here that
14 TPG does not actively recruit employees for SAS Retail – the affected workers are not
15 employed or recruited by TPG."³

16 The *Position Statement* also set forth the duties of the employees which includes
17 those set forth in the Initial Proceedings above.

18 The *Position Statement* included the entire description of the classification code
19 9521 "to ensure the Committee fully understands that this Code classification arises out of,
20 essentially, the risks associated with an "installation" activity" and stressed that "none of
21 the affected employees perform any such installation activity."
22

23
24 ³ The affidavit of Ryan Pomerantz, associate vice president of TPG identified the Employees in
25 question as "SAS employees." The affidavit of Timothy Felix stated: "I am the Vice President of SAS
26 Retail, the company whose employees' status for workers compensation coding purposes, is at issue in
this dispute." Both affidavits were submitted to the Committee. However, another letter in the
Committee record from Robin Greene, Corporate Counsel for TPG stated "The workers compensation
insurance for which TPG pays and receives from Liberty Mutual covers TPG employees only."

1 The *Position Statement* also provided that "[t]he designation sought by Liberty
2 Mutual, that the employees at issue are "merchandisers", and therefore by analogy should
3 be assigned to Code 9521, is belied by the fact that their primary job duties and activities
4 are within Code 8017." Portions of the description of the classification code 8017 were also
5 referenced in the *Position Statement*.

6
7 Liberty did not provide the Committee a document comparable to TPG's *Position*
8 *Statement*, but Liberty's position was summarized in a letter in the Committee record
9 identified as "Liberty's official response to the dispute" dated June 17, 2014 addressed to
10 Tim Hughes, NCCI Regulatory Services Manager, from Christopher Granato, Field Audit
11 Manager for Liberty Mutual Group Audit Services. The letter noted "Since our insured's
12 employees are working on behalf of the merchandising companies and not for the retail
13 stores themselves, they should be classified in code 9521 instead of code 8017(Retail Store
14 NOC)."⁴

15 The NCCI informed the Committee that the "classification of leased or temporary
16 workers is addressed in NCCI's *Basic Manual* Rule 1-D-3 (f). This Rule provides:

17 **(f) Employee Leasing, Labor Contractors and Temporary Labor Services**

18 (1) Workers assigned to clients must be classified the same as direct employees of
19 the client performing the same or similar duties.

20 (2) If the client has no direct employees performing the same or similar duties,
21 leased employees are classified as if they were direct employees of the client entity.

22 The NCCI also provided the Committee with the following statement from the
23 scope of Code 9521: "Separate crews (referred to as merchandisers), who are employed by

24
25 ⁴ Mr. Granato's letter also referenced "PAAS" which refers to the Insurance Services Office, Inc. (ISO)
26 Premium Audit Advisory Service (PAAS®), a source of technical information and training for
premium auditors. PAAS® is not a rate filing and has not been filed and approved by the director.
Therefore, PAAS® position is not dispositive in resolving this case.

1 manufacturers, wholesalers or specialists who perform window display or trimming
2 installation or installation of advertising displays in stores or other locations are assigned
3 by analogy to Code 9521. Merchandisers may also travel to various stores and stock
4 shelves with the appropriate merchandise."
5

6 The Committee, in executive session, reviewed the documents and testimony
7 provided. The Committee's Case Summary & Decision noted that the following was a
8 summary of the information discussed in the executive session:

- 9 • "According to NCCI's *Basic Manual* Rule 1-D-3 (f), temporary workers assigned
10 to clients must be classified the same as direct employees of the client performing
11 the same or similar duties. If the client has no direct employees performing the
12 same or similar duties, temporary employees are classified as if they were direct
13 employees of the client entity.
- 14 • In applying Rule 1-D-3 (f), if temporary workers are provided directly to a retail
15 store, Code 8017 would apply. If temporary workers are provided to a business
16 providing merchandising services, Code 9521 would apply.
- 17 • One of the clients of TPG Staffing is SAS Retail Merchandising. Based on website
18 information, SAS Retail Merchandising Solutions would be properly classified to
19 Code 9521. Therefore, Code 9521 should also apply to temporary workers
20 providing services for this client."⁵
21

22 The Committee then determined that Code 9521 was "correctly assigned to the Alaska
23 workers of TPG Staffing."

24 C. Hearing Officer Proceedings

25 _____
26 ⁵ The website information included in the Committee record was a photocopy of one page of the SAS
Retail Merchandising | Services website.

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1. Pre-Hearing Briefings

TPG's pre-hearing brief reiterated the services provided by TPG to SAS "allows for workers compensation risks to be 'pooled' in order to ensure there is a competitively priced and appropriate level of coverage to protect its workers." TPG also noted "[t]he tasks performed determine the risks to be insured" and Liberty had a "mistaken belief of the affected employees' job duties and activities." TPG repeated the same job duties as outlined in the Initial Proceedings above and noted the Employees "have never been required to install, nor have they ever installed, advertising displays in stores similar to that which was contemplated by Code 9521." TPG noted "[t]he designation sought by Liberty Mutual, that the employees at issue are 'merchandisers', and therefore by analogy should be assigned to Code 9521, is belied by the fact that their primary job duties and activities are within Code 8017." After noting that the Description [of Code 8017] *specifically* assigns 'demonstration' activity in retail stores owned by others" [t]he fact remains that when one views Code 8017 in its entirety, the affected employees involved in the matter...should be assigned to this Code and NOT to 9521." Emphasis in original.

Liberty, in its pre-hearing brief stated "[a]n insurance carrier is required to assign NCCI code classifications using the NCCI Basic Manual" and the NCCI Basic Manual Rule 1-D-3 (f) "establishes that leased employees and temporary worker services are to be classified as if they were direct employees of the client, in this case SAS." Liberty also referenced *Basic Manual* Rule 1-D which states that: "the purpose of the classification procedure is to assign the one basic classification that best describes the business of the employer within a state. Subject to certain exceptions described in this rule, the classification includes all of the types of labor found in a business. It is the business that is

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1 classified, not the individual employees, occupations, or operations within the business."
2 Emphasis in original. Liberty also stated "it is the nature of the business that employs the
3 employee, not actual activity of a particular employee in the business, that controls that
4 code assignment."
5

6 2. The Hearing

7 Both parties reiterated their positions concerning the classification codes during the
8 hearing held on this matter on July 27, 2015. However, there was additional testimony and
9 confusion expressed concerning who was the Employees' employer and the relationships
10 between TPG, SAS, and the retail stores.

11 During the hearing, TPG's counsel asked Ryan Pomerantz, associate vice president
12 of TPG the following:

13 Q. "So when you say these employees, those are the SAS employees, they are, essentially,
14 employees – the SAS employees are provided to the stores in which SAS provides
15 contracts with, correct?"

16 A. "That is correct."

17 TPG's counsel also asked:

18 Q. "The contracts we're talking about in which you supply temporary help SAS are for
19 contracts directly between SAS and the retail establishments, correct?"

20 A. "That is correct."
21

22 When TPG's counsel asked if TPG provided "employees to SAS for SAS to be able
23 to provide services to these retail establishments for shelving - - for stocking shelves", Mr.
24 Pomerantz replied "Yes, and product demonstration as well." TPG's counsel also asked the
25 following questions: "The contract that the employee is going to be signing is for the
26

1 contract directly with the retailer?" "And it's the retail relationship that is governed by the
2 contract and the employees are supplied based on the retail relationship, correct?" For both
3 questions, Mr. Pomerantz said "That is correct."
4

5 The hearing transcript also included the following interchange between Liberty's
6 counsel and Mr. Pomerantz:

7 Q. "Okay. So what you think is that if a person is working in a retail store, they get a retail
8 code even if their employer is not the retail store?"

9 A. "They should, yes."

10 Q. "So the answer to that question is yes, that's what you think?"

11 A. "But you – and you also said the employer. We're the actual employer."

12 Q. "Okay. You supply them to SAS?"

13 A. "We supply the employees to the stores."

14 Q. "And SAS pays them, is that correct?"

15 A. "No, we pay them."

16 Q. "Do their paychecks come under your federal ID number?"

17 A. "Yes, that is correct."

18 Q. "Okay. But those employees are working for SAS who turns them over to retailers, is
19 that right?"

20 A. "They're working for TPG, they're not working for SAS. We supply them to the retail
21 stores."

22 Q. "You supply them to retail stores directly?"

23 A. "That is correct."
24

25 Q. "So you have an agreement with retail stores?"
26

1 A. "No, the contract is with SAS."

2 During the hearing, the hearing officer asked Mr. Pomerantz "who actually directs
3 the employees?" Mr. Pomerantz replied that "TPG directs the employees." Counsel for
4 TPG followed up with the question "And when the employees are on site, the retail
5 establishment directs them?" Mr. Pomerantz responded "That is correct." The hearing
6 officer also asked "What is the contractual agreement though between TPG and the stores?"
7 Mr. Pomerantz said "[we] provide the temporary help that they need. Whenever they need
8 additional employees, we provide the additional temporary help." The hearing officer then
9 stated "So you're saying then TPG has the contract with the store and not SAS." At this
10 point, counsel for TPG responded in relevant part: "Essentially, I guess you could say it's a
11 licensing arrangement of some sort with SAS who put us together with the retail
12 establishment but it's – in the end, the employment relationship and the risk assigned to it
13 and the risk that workers compensation's supposed to cover its based on the relationship
14 that TPG directly supplies employees to SA – I'm sorry, to retail establishments, pays for
15 them and directs and controls those employees." However, when Liberty's counsel asked
16 "does TPG have a contract with the stores to supply employees?", counsel for TPG said
17 "TPG does not have a written contract with an individual retail establishment." Liberty's
18 counsel followed up asking "So these employees are in the store under the contractual
19 arrangement between SAS and the stores, correct?" TPG's counsel responded, "Essentially,
20 yes."
21

22 The hearing transcript also included the following interchange of questions from
23 Liberty's counsel and Mr. Pomerantz's responses:
24

25 Q. "And they [SAS] then assign workers on a temporary basis ... to the retail—"
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A. "We assign the workers."

Q. "What does SAS get from you? How do they get involved in this? If you're supplying workers to the stores, what --"

A. They basically introduce the store and ourselves.⁶

Q. "So do the workers show up at SAS before they go to the store?"

A. "No. SAS is not involved with the workers. TPG controls the workers."

Due to new information coming to light during the hearing and documents provided to the counsel for the appellee since the hearing (particularly the Agreement between SAS and TPG), the hearing officer determined that the appellee could file post-hearing brief, the appellant could file a response to the post-hearing brief, and the appellee could file a reply to the response to the post-hearing brief.

3. Post-Hearing Briefings

Liberty Mutual's post-hearing brief noted that TPG's original position "did not assert that the employees provided to SAS Retail Merchandising were supervised by TPG" and that "[t]he TPG's position did not change in its briefing before the division [hearing officer]". Liberty Mutual maintained that the "employees supplied to a merchandiser were performing merchandising services" and the issue was "not a risk assessment issue". Liberty Mutual pointed out the differences in the testimony concerning whose employees were being supplied to the retail stores and that "at no place in any previous briefing did TPG assert that it supplied employees directly to the retail stores." Liberty Mutual in its post-hearing brief questioned Mr. Pomerantz's testimony that "SAS is not involved with the workers. TPG controls the workers", when he "previously had testified that he did not even know what the workers did at the Alaska stores." Liberty Mutual also noted that TPG's

⁶ TPG's counsel interjected here "That's why we characterize it as a licensing arrangement."

1 counsel "admitted that TPG does not have a written contract with an individual retail
2 establishment". Liberty Mutual stated "there was no contractual relationship between TPG
3 and anyone except SAS Retail Merchandising, Inc." In support of this position Liberty
4 Mutual attached a copy of the Agreement between SAS and TPG as Exhibit A to its brief.
5

6 TPG's post-hearing response noted that "[t]he fact that these individuals are
7 employed by TPG has been established, and was confirmed by Mr. Pomerantz in his
8 testimony at the July 27 hearing." TPG incorporated its position on the standard of review
9 previously noted above into its post-hearing brief. TPG further noted its position that "the
10 tasks performed determine the risks to be insured." TPG maintained that "[t]he employees at
11 issue are employed by TPG (not SAS), are supplied to the retail establishments by TPG
12 (not SAS), are their paid wages and compensation by TPG (not SAS), and are 'controlled',
13 for purposes of their employment-related activities, by either TPG or by the retail
14 establishments (not SAS)." TPG also noted that "[t]he designation sought by Liberty
15 Mutual that the employees are 'merchandisers', and therefore by analogy should be
16 assigned to Code 9521, is belied by the fact that their primary job duties and activities are
17 within Code 8017." TPG also pointed out that "for Code 9521 to apply to merchandisers,
18 the risk (i.e. the merchandiser) must not own the merchandise *and the merchandise must*
19 *have been delivered to the store by someone other than the individuals stocking the shelves,*
20 and here the "merchandisers who go to the retail establishments to conduct in-store
21 demonstrations, what has been noted as a primary job function of the affected workers
22 herein, bring the merchandise with them." Emphasis in original. TPG maintained that
23 "when one views Code 8017 in its entirety, the affected employees involved in this
24 matter... should be assigned this Code and NOT to 9521." Emphasis in original. TPG's
25
26

1 contention in its post-hearing brief was "its relationship with SAS is essentially a licensing
2 agreement in which SAS facilitates the supply of TPG employees who are hired by TPG,
3 paid by TPG, receive benefits from TPG, and are controlled by TPG (or the retail
4 establishment)" and "as such the affected TPG employees should be coded as 8017 and not
5 9521.
6

7 Liberty Mutual in its post-hearing reply noted "there is no such evidence in the
8 record" that "the employees [TPG] provided to SAS Retail Merchandising were provided
9 to both SAS Retail and the 'various retail establishments in the State of Alaska'" and that
10 "the only evidence in the record is the single staffing agreement between SAS and TPG."
11 Liberty Mutual maintained that TPG was "unable to refute that the work of SAS was
12 merchandiser and that the employees supplied on a temporary basis to SAS were doing the
13 work of merchandisers... which establishes the NCCI Basic Manual Rule 1-D-3(f) for the
14 purposes of coding." Liberty Mutual's contention is "the agreement in question is one
15 between TPG and SAS Retail Merchandising," and "it is that agreement ... that governs the
16 appropriate coding in this case" and the "employees in question were merchandisers."
17

18 CONCLUSION

19 I. THE APPLICABLE NCCI RULE FOR RESOLVING THIS CASE IS RULE 1-D-3 (f).

20 The purpose of the NCCI classification system is set forth in *Basic Manual* Rule 1

21 A which provides:

22 **A. Classification System**

23 1. The purpose of the classification system is to group employers with similar
24 operations into classifications so that:

- 25 • The assigned classification reflects the exposures common to those employers
- 26 • The rate charged reflects the exposure to loss common to those employers

- 1
2 2. Subject to certain exceptions, it is the business of the employer within a state that is
classified, not separate employments, occupations or operations within the business.

3 *Basic* Manual Rule 1-D closely mirrors Rule 1 A and provides:

4 **D. Classification Procedures**

5 The purpose of the classification procedure is to assign the one basic classification that best
6 describes the business of the employer within a state. Subject to certain exceptions
7 described in this rule, each classification includes all the various types of labor found in a
business.

8 It is the business that is classified, not the individual employments, occupations or
operations within the business.

9 Without more, under these Rules, it would be the business of the Employees'
10 employer that would determine the assigned classification. However, both parties agree that
11 the Employees were temporary employees. As such, the applicable NCCI *Basic Manual*
12 Rule is Rule 1-D-3 (f) which provides:

13 **(f) Employee Leasing, Labor Contractors and Temporary Labor Services**

- 14 1. Workers assigned to clients must be classified the same as direct employees of the
15 client performing the same or similar duties.
16 2. If the client has no direct employees performing the same or similar duties, leased
17 employees are classified as if they were direct employees of the client entity.

18 This is the Rule relied upon by the Committee in making its decision. Neither TPG
19 nor Liberty Mutual has contested the applicability of this rule in this case, nor is there any
20 dispute that the Employees were temporary workers. The Committee's discussion of this
21 Rule specifically noted that "if temporary workers are provided directly to a retail store,
22 Code 8017 would apply. If temporary workers are provided to a business providing
23 merchandising services, Code 9521 would apply."

24 **II. THE EMPLOYEES ARE TPG EMPLOYEES**

1 The Agreement between TPG and SAS notes that "TPG is engaged in the business
2 of assigning its employees to perform administrative, light industrial, customer service, and
3 other office and warehouse-related services to clients." Emphasis added. Under the
4 Agreement, TPG agreed to provide to Client personnel ("Temporary Staffing Personnel").
5 Further, the Agreement required TPG to "advise each Temporary Staffing Personnel
6 assigned to perform Services for Client, that TPG is his or her employer and that Client is
7 not the employer."
8

9 Of note, TPG changed its position regarding who the employer was for the
10 Employees. TPG's *Position Statement* submitted to the Committee stated that "the affected
11 workers are not employed or recruited by TPG." Further, in an affidavit submitted to the
12 Committee, Mr. Pomerantz referred to the Employees as "SAS employees". Similarly,
13 Timothy Felix's affidavit submitted to the Committee stated: I am the Vice President of
14 SAS Retail, the company whose employees' status for workers compensation coding
15 purposes, is at issue in this dispute." TPG, in its post-hearing response, however,
16 maintained that the Employees "are hired by TPG, paid by TPG, receive benefits from
17 TPG, and are controlled by TPG (or the retail establishment)..."⁷
18

19 Given TPG's conflicting statements as to the employer of the Employees and given
20 that the Agreement between TPG and SAS states the Employees are employees of TPG I
21 find by preponderance of the evidence that the Employees were employees of TPG and not
22 SAS.⁸
23

24 ⁷ There are provisions in the agreement, however, which required SAS to provide for each temporary
employee to TPG "a completed job application, Form W-4, and Form I-9" all of which implies the
employees were hired by SAS.

25 ⁸ This finding is supported by the letter in the Committee record from Robin Greene, corporate counsel
for TPG which stated: "The workers compensation insurance for which TPG pays and receives from
26 Liberty Mutual covers TPG employees only."

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III. BECAUSE THE TPG EMPLOYEES WERE ASSIGNED TO SAS, TPG'S CLIENT WAS SAS

The only written documentation in the record regarding the assignment of the TPG Employees is the Agreement between TPG and SAS. This Agreement referred to SAS as TPG's "Client" and set forth certain documents SAS must provide to TPG "[p]rior to any Temporary Staffing Personnel reporting to Client for the performance of Services." TPG has not established that it had an agreement with the retail stores to provide them with temporary staffing services. That there was no agreement between TPG and the retail stores is confirmed by TPG's associate vice president Ryan Pomerantz. When asked if TPG had an agreement with the retail stores, Mr. Pomerantz replied "No, the contract is with SAS." TPG's client, as expressed in the Agreement, was SAS and not the retail stores. SAS is the critical link between TPG's employees and the retail stores.⁹ This critical link was confirmed by Mr. Pomerantz when questioned by TPG's counsel: "The contracts we're talking about in which you supply temporary help [to] SAS are for contracts directly between SAS and the retail establishments, correct?" Mr. Pomerantz responded by stating "That is correct." When TPG's counsel asked if TPG provided "employees to SAS for SAS to be able to provide services to these retail establishments for shelving - - for stocking shelves", Mr. Pomerantz replied "Yes, and product demonstration as well." I find by the preponderance of the evidence that the Employees were assigned to TPG's client, SAS, by TPG.¹⁰

⁹ This case would have a different result had TPG directly provided temporary employees to the retail stores under a contract it had with the stores without SAS as the link.
¹⁰ This understanding of the relationship between TPG, SAS, and the retail stores is confirmed by the Agreement which states "Client's staffing needs vary by location."

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2 IV. SAS IS A MERCHANDISER

3 The Committee determined that SAS was a merchandiser. The Committee's
4 discussion included the following: "Based on website information, SAS Retail
5 Merchandising provides a full range of merchandising services. The direct employees of
6 SAS Merchandising Solutions would be properly classified to Code 9521. Therefore, Code
7 9521 should also apply to temporary workers providing services for this client."

8 The SAS website information is included in the record from the Committee's
9 decision. The website describes states SAS offers "merchandising services: [d]edicated
10 merchandising specialists handle every aspect of you program including logistics,
11 warehousing, management, assembly, setup, tracking and real time reporting."

12 Neither party in this case disputed that SAS is a merchandiser or that the direct
13 employees of SAS would properly be classified to Code 9521, this portion of the
14 Committee's record is uncontested. Therefore, I affirm the committee's finding that SAS is
15 a merchandiser whose employees would be properly classified to Code 9521. This
16 conclusion is supported by the preponderance of the evidence.

17
18 V. HOLDING

19 I find

- 20
- The *Basic Manual* rule governing this case is Rule 1-D-3 (f)
 - the Employees are TPG employees
 - the Employees were assigned to TPG's client, SAS
 - SAS is a merchandiser
- 21
22
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24 Therefore, I uphold the Committee's decision in this case "that Code 9521 was
25 correctly assigned to the Alaska workers of TPG Staffing."
26

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DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
550 WEST SEVENTH AVENUE, SUITE 1560
ANCHORAGE, ALASKA 99501-3567
PHONE: (907) 269-7900
FAX: (907) 269-7910

IF YOU NEED HEARING ASSISTANCE, PLEASE CALL ALASKA RELAY AT 711

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Dated this 2 day of March, 2016.

Joanne S. Bennett
Joanne S. Bennett
Hearing Officer

Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 14-05 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 3rd day of March, 2016.

Lori Wing-Heier
Lori Wing-Heier
Director

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Non-Adoption Options

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 14-05 and instead orders that the case be returned to the hearing officer to
____ take additional evidence about _____
____ make additional findings about _____
____ conduct the following specific proceedings: _____

DATED this ____ day of _____, 2016.

Lori Wing-Heier
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 14-05 as follows:

Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this ____ day of _____, 2016.

Lori Wing-Heier
Director

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I hereby certify that on the 4th day of March, 2016, I mailed copies of this document to the following parties:

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Jennifer Romero

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**NOTICE OF FINAL ORDER
AND APPEAL RIGHTS
Case H 14-05**

The enclosed order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39.170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-611.