



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

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March 23, 2022

The Honorable Neal Foster, Co-Chair
Alaska House of Representatives
House Finance Committee

The Honorable Kelly Merrick, Co-Chair
Alaska House of Representatives
House Finance Committee

SENT VIA EMAIL

House.Finance@akleg.gov

Re: Bonuses for executive branch employees

Dear Members of the Committee:

This letter is in response to a March 16, 2022 Legislative Affairs Agency ("LAA") memorandum which determined bonuses could not be awarded to executive branch employees without express legislative appropriations. In its memo, LAA treats bonuses as purely a bargaining issue, and makes arguments which would be sound if the issue in question was whether the specific monetary terms of bonuses needed to be in the various collective bargaining agreements. However, it reaches the wrong overall conclusion, because the monetary terms of bonuses are an appropriations issue, and as long as a proper appropriation of funds to cover the bonuses has been made, they need not be subject to further specific legislative appropriation.

I. Background

The State of Alaska maintains collective bargaining agreements with 12 employee unions subject to the terms of the Public Employee Relations Act, which is codified at AS 23.40.070-23.40.260.1 These bargaining agreements are generally for three-year terms and contain terms and conditions of employment between the State and the union members. These terms include various provisions pertaining to wages, as well as things like work schedules, annual leave, layoff, and grievance procedures.

¹ Doa.alaska.gov/dop/laborrelations/unionContracts/

The bargaining agreements are negotiated between union members and representatives of the executive branch, but they ultimately require legislative approval in an appropriations bill. Generally, all 12 union contracts are addressed in the appropriations bill every legislative session, even when a specific union contract is not subject to ratification during that cycle, because adjustments to the agreements and prior appropriations are often needed. This session, the appropriations bill is HB69, and salary and benefit adjustments to previously negotiated and approved bargaining agreements can be found in Section 74.²

II. Bonuses Are Retroactively Addressed in Budget Adjustments

In negotiating a three-year contract with a large union, the State cannot anticipate all scenarios that may unfold over the following three years, and the contracts are frequently modified by Letters of Agreement (LOAs) negotiated between the Executive Branch, through the Department of Personnel and Labor Relations, and the impacted union. Hundreds of LOAs are signed each year concerning a wide variety of issues. Sometimes an LOA may modify a contract term as it relates to all union members for the duration of the contract, sometimes it may impact terms as they pertain to a certain job class or other subset of employees, and sometimes it may only impact bargaining unit terms for one specific employee.

Sometimes LOAs have no financial implication and address issues such as shift assignments or schedules. However, LOAs are also used to address things like bonuses that may be needed on short notice to address critical recruitment or retention problems, particularly in hard-to-fill positions. In those cases, the LOA requires approval from both the Department of Administration, the department of the employee or employees in question, and the necessary union. Without this sort of recruitment and retention tool, essential positions, such as correctional nurses, could remain vacant at levels that put the State in violation of state or federal regulation.

Although these bonuses may not have been previously specifically detailed in a collective bargaining agreement, the allocation of the funds for the bonuses are subject to retroactive legislative appropriation in the salary and benefit adjustments in the appropriations bill each session. In the meantime, the reallocation of funds for things like bonuses is authorized under AS 37.070.080(e), by which a department or executive, through the Office of Management and Budget, may reallocate specific funds within a single appropriation. In the case of bonuses, if funds were appropriated for wages, they could be reallocated. Moreover, the reallocation of funds serves essential functions

² Sec. 74, ch. 1, SSSLA 2021.

allowing the executive branch to allocate money to pay for the settlement of union grievances and suits that could arguably be considered monetary terms.

LAA addresses AS 37.070.080(e) in its memorandum, claiming the argument above would fail because the transfer requires an LOA approved by the legislature. What LAA ignores is that these LOAs are retroactively approved each session in salary and benefit adjustments in the operating budget appropriation. This retroactive appropriation is absolutely necessary, as it would be impossible for the legislature to be debating and voting on the terms of hundreds of LOAs each year. If that was the case, not only would the work of the legislature never get done, but critical government services would go unprovided.

III. Prospective Bonuses for Represented Employees

LAA argues that if the legislature unilaterally initiated bonuses to union members outside the bargaining process, the action could be an unfair labor practice. This may technically be true, but, in practice, a union may be hesitant to fight against providing a substantial benefit to its members. Regardless, the Department of Law's position is bonuses would be properly addressed as has been the ongoing practice of negotiating LOAs between the unions themselves, as opposed to having the legislature approve appropriations that would later be subject to bargaining.

IV. Bonuses for Employees Subject to AS 39.27.011

In regard to classified and partially exempt employees in the executive branch who are not members of a collective bargaining unit, AS 39.27.011 sets out the monthly salary rate. While AS 39.27.011(k) outlines a procedure for increases to *monthly* salary compensation beyond the scope of the salary schedule, the statute is silent in regard to compensation beyond the "monthly basic salary schedule." AS 39.27.011(a). The key component of a salary schedule is the compensation for services paid at regular intervals.³ This is distinguishable from a bonus which is a "premium paid in addition to what is due or expected."⁴ Consequently, AS 39.27.011's intent is to establish the set, regular pay schedule for certain state employees, therefore, the statute is not concerned with forms of compensation beyond a monthly salary.

Moreover, pursuant to the Alaska Constitution, the legislature possesses the power to appropriate funds. Art. IX, § 13, Alaska Const. An appropriation consists of as "a sum

³ *Black's Law Dictionary* 1454 (9th ed. 2009).

⁴ *Black's Law Dictionary* 206 (9th ed. 2009).

of money dedicated to a particular purpose.”⁵ The legislature is free to appropriate money for essentially any public purpose. The appropriation of money to pay a bonus outside of the salary schedule set in AS 39.27.011 is clearly within the purview of the legislature.⁶ In fact, the legislature has approved bonuses for employees not covered by a collective bargaining agreement in the past.⁷ Consequently, the legislature has the authority to appropriate fund to support a bonus to classified and partially exempt employees in the executive branch.

⁵ *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 371 (Alaska 2001).

⁶ *See generally Wielechowski v. State*, 403 P.3d 1141, 1152 (Alaska 2017).

⁷ *See* sec. 1, ch. 1, TSSLA 2000

(b) Salary and Benefit Adjustments. The appropriations and reappropriations made by sec. 5 of this Act and this subsection for financing the salary and benefit adjustments for public officials, officers, and employees of the executive branch who are not members of a collective bargaining unit for the fiscal year ending June 30, 2001, total \$2,611,600. In addition to the amounts appropriated or reappropriated by sec. 5 of this Act, the sum of \$1,586,100 is appropriated from the funding sources listed in (d) of this section to the Office of the Governor, office of management and budget, for salary and benefit adjustments for public officials, officers, and employees of the executive branch who are not members of a collective bargaining unit for the fiscal year ending June 30, 2001.

(c) Legislative Intent. It is the intent of the legislature that part of the appropriations and reappropriations made or described in (b) of this section is to provide lump sum payments of \$1,200, reduced by \$50 for each pay period that the officer or employee was not in pay status in fiscal year 2000 and reduced by amounts necessary to pay mandatory employee and employer deductions, for

(1) classified and partially exempt officers and employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of AS 23.40.070 - 23.40.260 (Public Employment Relations Act), employed and in pay status on July 1, 2000

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Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca C Polyzotte". The signature is fluid and cursive, with the first name "Rebecca" written in a larger, more prominent script than the last name "Polyzotte".Handwritten initials in black ink, appearing to be "fcr". The letters are stylized and cursive, with the "f" and "c" being the most prominent.

CORI M. MILLS
DEPUTY ATTORNEY GENERAL