HOUSE FINANCE COMMITTEE
March 14, 2016
1:32 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:32 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg (Via Teleconference)
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Leslie Ridle, Deputy Commissioner, Department of Administration; Kate Sheehan, Director, Division of Personnel; Representative Lora Reinbold.

PRESENT VIA TELECONFERENCE

Dan Wayne, Attorney, Legislative Legal Services.

SUMMARY

ADMINISTRATIVE CONTRACTS: BY SHELDON FISHER, COMMISSIONER, DEPARTMENT OF ADMINISTRATION

LEGAL OPINION: LEGISLATURE'S LEGAL OPTIONS CONCERNING PUBLIC EMPLOYEE COLLECTIVE BARGAINING AGREEMENTS: BY DAN WAYNE, ATTORNEY, LEGISLATIVE LEGAL SERVICES

Co-Chair Thompson reviewed the agenda for the day. He asked that cell phones be turned off or silenced.

^ADMINISTRATIVE CONTRACTS: BY SHELDON FISHER, COMMISSIONER, DEPARTMENT OF ADMINISTRATION

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LESLIE RIDLE, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, introduced the PowerPoint Presentation: "Understanding Labor Contracts." She turned to slide 2: "Bargaining 101":

- Negotiations are mandated by the Public Employment Relations Act (PERA) AS 23.40.070-23.40.250.
- The State begins bargaining successor agreements between October and December; start date may be accelerated if both parties agree.
- Wages, hours and other terms and conditions of employment are mandatory subjects of bargaining.
- The State may, but is not required to, negotiate permissive subjects of bargaining.
  - o Classification, retiree benefits, representation of non-permanent employees
- Monetary terms must be approved by the Legislature.
  - o Provided that monetary terms of agreements are submitted to the Legislature by the 60th day, PERA requires legislative session consideration during that calendar year.
  - o If rejected by the Legislature, then it is as if there is no agreement. The parties must renegotiate to impasse or agreement.
- If negotiations do not lead to agreement and mediation fails, employees have the right to strike.
  - o Exception: protective service personnel do not have the right to strike but must enter binding arbitration after impasse.
- Employees who are on strike do not get paid, but may not be terminated because they choose to lawfully strike.

- Striking employees may be replaced – either temporarily for the duration of the strike, or permanently under certain circumstances

Representative Gattis asked if the Department of Administration (DOA) had a fiscal goal in mind when negotiating. She suggested that the legislature's role was to approve an appropriation. She wondered if the department had any specific guidelines from the legislature.

Ms. Ridle responded that what Representative Gattis suggested was partially true. However, the department looked at several factors including the price of oil, budget circumstances, layoffs, and the economy. Although the goal was not tied to a specific number, the department took into considerations the economic climate of the state as well as the history of union contracts.

Representative Gattis responded that it helped her at any other time except presently. She struggled with looking at what had been done before and the current circumstances. She thought there was not enough information for DOA to do the will of the legislature. Ms. Ridle stated that the department had finished three contracts that were all zero and had furloughs attached to them. The administration had heard from the legislature and the public of the need to tighten the state's belts.

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Ms. Ridle turned to slide 3: "Monetary Terms." She explained that slide listed the different bargaining groups and the types of monetary terms that units might have. Sometimes units had different needs based on the job performed for the state.

Co-Chair Thompson announced that Representative Pruitt had joined the meeting.

Representative Wilson asked about the STEP advancement listed for the Vocational Education schools and wondered if the increase was automatic in all the other contracts. Ms. Ridle answered that for example the marine units did not have merit increases and pay increments. Shae asked Kate Sheehan to comment further.

KATE SHEEHAN, DIRECTOR, DIVISION OF PERSONNEL, DEPARTMENT OF ADMINISTRATION replied that what the department had done was listed some things unique to different contracts. She furthered that the vocational technical center teachers had a different pay plan similar to a teacher's salary rather than the merit and pay increments for most of the other contracts. They were listed because they were slightly different. She noted that there were merit and pay increments in all of the units with the exception of the marine units.

Representative Wilson asked if they were both unique to each other but not everything that had to be negotiated on the sheet. Ms. Sheehan responded that she was correct.

Representative Gattis thought that the merit and pay increments were in fact pay raises. She struggled with justifying giving raises when the state was ratcheting back in several areas. Raises were built into the contracts and therefore not zero. She would allow the department to continue with its presentation.

Ms. Ridle continued to slide 4: "Range of Options to Reach Resolution." She indicated that the slide was a visual aide to show what could happen in a negotiation. She pointed to the left side of the slide. If an agreement could not be made, the department would declare impasse. After a last best offer DOA could implement a contract on the union, although the state did not exercise the option frequently. She was unaware of any in the recent past. The department tended to obtain agreements but, it was an option. She highlighted the middle of the slide. She relayed that if both sides could not come to an agreement the department could arbitrate. There were two kinds of arbitration. The first was interest arbitration where the baby was split. The second was baseball arbitration where the arbitrator chose one side or the other. The department's goal was to negotiate and settle with a union so that both sides came to an agreement.

Ms. Ridle pointed to slide 5: "Bargaining Unit (BU) Detail." She relayed that the slide showed where the department was in negotiations with the bargaining units. She reported that the department was still in negotiations with Labor, Trades, and Crafts, Local 71 and with the Supervisors' Union of Alaska Public Employees Association (APEA). The Department of Administration had finished

negotiations with the Teachers Education Association of Mount Edgecumbe (TEAME), Alaska State Employees Association (ASEA) GGU, and finished the Confidential Employees Association (CEA) the previous Friday. It would be delivered to the legislature within 10 days as designated in statute.

Co-Chair Thompson directed Ms. Ridle to review the acronyms she was using. Ms. Ridle clarified that LTC stood for Labor Trades and Crafts: SU stood for the Supervisors' Union: TEAME stood for the Teachers at Mount Edgecumbe school in Sitka: ASEA GU stood for the Alaska State Employees Association Government Unit: CEA stood for the Confidential Employees Association.

Ms. Ridle detailed that usually the same terms as the SU were used for the non-covered employees. She reported that the department had not yet come to an agreement with the Supervisor's Unit. She suggested that if the units she had reviewed were added together they equaled about 87 percent of the state's employees. It had been a big year for negotiations for DOA. She noted that in the coming fall the department would be in negotiations with 5 bargaining units including Alaska Vocational Technical Center Teachers (AVTECTA), the Public Safety Employees Association (PSEA), the Inlandboatmen's Union of the Pacific (IBU), the Marine Engineers Beneficial Association (MEBA), and Masters, Mates, and Pilots (MMP). The Alaska Correctional Officers Association (ACOA) would be in negotiations afterwards.

Co-Chair Thompson acknowledged that Co-Chair Neuman had joined the meeting.

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Co-Chair Neuman asked about how negotiations were set up. It was laid out by the legislature not to provide for a wage increase. He wondered if the department communicated the will of the legislature to the unions prior to the official negotiations. Ms. Ridle responded in the affirmative. She explained that the department talked with the unions frequently. She furthered that the three unions representing the Alaska Marine Highway system did not have merit and pay increments. Their only raises had been through the Cost of Living Adjustment (COLA) and they had different leave arrangements and shift schedules. The department also met internally.

Co-Chair Neuman asked about the University employees. He wondered who negotiated on their behalf and queried the number of employees. Ms. Ridle stated that the university handled its own negotiations. She did not know the university's number of employees.

Co-Chair Neuman asked if the president or the board of regents did the negotiating. Ms. Ridle thought it was through the president's office. She offered to find out for the committee.

Representative Gara realized Ms. Ridle had testified that in the last round of negotiations for the most recent contracts employees agreed to not receiving raises for the following 3 years recognizing the fiscal situation. He wondered if the employees had a right to strike. Ms. Ridle responded that they did have the right to strike with the exception of Public Safety Employees.

Representative Gara did not think the union would be trying to negotiate additional raises given the fiscal situation. He reported that often contracts looked similar between the unions.

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Representative Gattis commented that in the contract negotiations there was a portion called "pay raises" and another portion referred to as "step increases." She reported that the folks in her district thought that if there was more money in a person's next pay check, it constituted a pay raise. They did not care what it was called. She furthered that if the state was paying more money, it meant it was spending more. She thought it was important to discuss step increments that equated to pay raises based on longevity. She hoped Ms. Ridle would let the legislature know how much the state would be spending and about the corresponding increases. She also asked if the state had ever frozen merit increases and pay increments. Ms. Sheehan did not believe that the state had. In 2008 pay increments were implemented in statute and through bargaining. Prior to that there were service steps and longevity that looked slightly different. The steps ended at "M" step and there were various years in between. She reiterated that to her knowledge the state had not frozen merit or pay increments.

Representative Gattis asked how the legislature would go about not paying the increments. She wondered if legislation would be necessary. Ms. Sheehan confirmed that for partially exempt employees pay increments and merit steps were in statute.

Ms. Ridle moved to slide 6: "Negotiating framework: Cash compensation." She explained the slide showed a typical range 16 GGU employee hired in 2004 through 2015. Across the employee base the high income professional employee salaries tended to be below market such as doctors, lawyers, and investment professionals. New employees also tended to be below market when hired. The low income employees started to be compensated a little higher above market. The tenured employees also tended to be above as they moved out on the steps. She pointed to the box on the left of the slide. It indicated that merit increases happened within the first through fifth year at 3.5 percent per year. The person had to receive an acceptable evaluation. Pay increments occurred from the fifth year and beyond. The increment happened every other year and was a 3.25 percent increase for the remainder of their employment.

Representative Wilson asked whether within her first 5 years of service she would have received an increase of over 15 percent. Ms. Ridle answered that an employee received an increase of approximately 3.5 percent each year.

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Representative Wilson assumed that, because the steps for the partially exempt were already in statute, the contracts currently being negotiated included step increases negotiated by the department rather than the legislature. Ms. Ridle responded in the affirmative.

Representative Wilson asked if the steps were the same for each bargaining unit. Ms. Sheehan stated that the steps were generally the same. They were slightly different for some bargaining units. Some units had a 3.75 percent merit increase while others had a 3.25 percent increase. The increment average was 3.5 percent.

Representative Wilson stated that although they were referred to as merit increases they were given as long as an employee was employed. She asked if she was correct. Ms. Ridle answered that an employee would have to receive acceptable or better on their evaluation. If an employee was given an unacceptable evaluation ranking they could be denied a merit increase.

Vice-Chair Saddler asked for the percentage of those employees who did not receive merit increases. Ms. Ridle would provide the information at a later time. Vice-Chair Saddler asked for a rough idea. Ms. Sheehan responded that it was less than 5 percent.

Vice-Chair Saddler asked about the cumulative effect of raises for 5 years at 3.5 percent. Ms. Ridle would get back to him with an answer.

Vice-Chair Saddler wanted to confirm that the merit increases and the pay increments were exclusive of COLA. Ms. Ridle confirmed that the merit and pay increments were listed on the left of slide 6. The Cost of Living Adjustment was represented by the blue line on the chart. It had increased by about 25.5 percent over the years.

Vice-Chair Saddler summarized that normally receiving a raise was when an employee made more in one year than in the previous year. While people might say that the state had a zero-zero-zero percent contract it did not mean state employees did not get raises, they just did not get COLA. They were getting 3.5 percent increases for their first 5 years of service and 3.25 percent raises every 2 years thereafter as long as they were employed. He concluded that there were raises. Ms. Sheehan indicated that Vice-Chair Saddler was correct.

Representative Gattis asked about the compounded effect of raises and whether it was greater than 15 percent. Ms. Sheehan believed so but would follow-up with the answer to her question. Representative Gattis stated that it was more.

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Representative Gara understood not granting a COLA increase because of the current budget crisis. He asked about the impact of not recognizing the merit of employees. He used

the Alaska State Troopers as an example. His understanding was that the state was already having a difficulty recruiting troopers with the current pay and benefit package. He wondered if he was correct. Ms. Sheehan believe the State of Alaska was on par with the package the Anchorage Police Department offered.

Representative Gara asked if she had any recruiting statistics. Ms. Sheehan did not have any information on the subject.

Representative Gara asked what would happen if the committee decided there would be no merit increases for police officers or state troopers who placed their lives on the line. He wondered if it would impact morale or the ability to recruit. Ms. Ridle could not answer his question precisely. She speculated that in any of the departments if merit and pay increases were frozen the state's workforce might be affected. Some employees might choose to retire or find other jobs.

Representative Gara raised the point in order for folks to consider the ramifications of their decisions. Obviously, the state needed to save money. However, saving money without considering the impacts was not necessarily the best course of action. He hoped the committee would consider the issue further.

Co-Chair Thompson added that it was important to consider that paying raises would leave less money available to keep trooper positions intact.

Vice-Chair Saddler asked if anyone had alleged that the Ferguson shooting was due to the troopers not receiving their COLAs. Ms. Ridle asked Vice-Chair Saddler to repeat his question.

Vice-Chair Gara interjected that he had not stated anything like Vice-Chair Saddler was implying.

Vice-Chair Saddler restated his question. Ms. Ridle did not know the answer to his question.

Co-Chair Thompson wanted to move on with the presentation.

Vice-Chair Saddler asked if anyone had alleged that shootings were happening in Alaska because troopers were

not getting COLA increases. Ms. Ridle responded in the negative.

Representative Wilson asked if merit increases occurred within the first 5 years and then increases were referred to as something else after that time. Ms. Ridle responded affirmatively. After year 5 they were referred to as pay increments.

Co-Chair Thompson directed Ms. Ridle to continue with the presentation.

Ms. Ridle advanced to slide 7: "Negotiating framework: Benefits":

Employee Benefits: Overall tend to be above market.

Health Benefit:

- Economy Plan – zero employee premiums
- Low deductible options across plans
- Flat rate for dependents
- Retiree health insurance with 10 years of service
- Retiree premium percentage lowers with longer term of service

Pension: Alaska Public Employees' (PERS) and Teachers' Retirement (TRS) Systems are hybrid defined benefit and defined contribution plans providing:

- Contribution amounts structured to reach retirement goals
    - PERS: 8 percent employee + 5 percent employer + 12.26 percent SBS totaling : 25.26 percent
    - TRS: 8 percent employee + 7 percent employer +12.26 percent SBS totaling: 27.26 percent
    - Most private plans offer employer match of 3 percent to 4 percent

Leave accrual (even with negotiated caps)

- Accrue 270 hours per year (36 days)
    - After 10 years, if hired before 7/1/13
    - After 15 years, if hired on or after 7/1/13

Job Flexibility

- Alternative work weeks

Hours worked: 37.5 hours

Co-Chair Thompson asked members to hold questions until the end of the presentation because of being short on time.

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Ms. Ridle turned to slide 8: "Negotiating Framework: State and National Trends":

National:
- 2007-2015 saw little to no pay increases
- Current trends include pay increases, elimination of furloughs

State:
- Municipality of Anchorage: 1.5% COLA per year for 3 years
- Anchorage School District: 1% COLA + $1,000 bonus through 2017
- Juneau School District: 2% COLA, 1-year agreement

Ms. Ridle discussed slide 9: "Bargaining Priorities." She read from the slide:

Cash Component:
- Overall below market
- Current Fiscal climate requires modest reductions
  - o Zero-Zero-Zero percent
  - o 15 hours of furlough per employee per fiscal year
  - o Modest changes to other monetary terms of the CBAs

Benefits:
- Overall above Market
- Healthcare costs are growing at a multiple of inflation making cost containment a critical objective of these negotiations
  - o Ask Employees to accept plan design changes and contribute to monthly health care premiums in order to control costs and align interests in minimizing future cost increases.
  - o For employees that are not part of AlaskaCare, we want to right-size health trust reserves

Other Priorities
- Performance Evaluations: Create a meaningful performance view system
- Consistency
  - o Create consistency in our contracts
  - o For example: Leave, administrative manual, travel rules, pay procedures
- Flexibility

    - o Create flexibility in our contracts.
    - o For example: contracting out, promotional rules
- Leave Terms - continue the progress of prior negotiations to address leave accruals

Ms. Ridle talked about slide 10: "Status of Contracts Before the Legislature":

TEAME (27 Employees)

- Contract expired June 30, 2015
- Agreement reached December 2015, ratified by members
- Contract pending Legislative approval

Terms Include:

- 0-0-0
- Addition of coordinators to improve student activity sponsorship
- Improvements and clarifications to the grievance process
- Additional time for management to complete annual evaluations
- Contract language improvements regarding leave use, cash-in, and donation

ASEA (GGU, 8,795 Employees)

- Contract expires June 30, 2016
- Agreement reached February 2016, pending ratification by embers
- Contract pending Legislative approval.

Terms Include:

- 0-0-0
- Reduced health care contribution rate in FY17
- Furloughs
- Improvements to the grievance and complaint process
- Performance tied geographic limitation for layoffs
- Contract language improvements for finance and payroll processing
- Transition fully to the Administrative Manual for Travel and Per Diem

Ms. Ridle continued to slide 11: "Status of contracts to be sent to the legislature":

Confidential Employees Association (CEA 204 Emp)

- Contract expires June 30, 2016
- Tentative Agreement reached 3/11/16
- Tentative Agreement will be sent to Legislature within 10 days

Terms Include:

- 0-0-0
- Furloughs
- Employee contribution to Health Care--Economy Plan

Ms. Ridle elaborated that for the first time they would have an employee health care contribution to their economy plan: $30 the first year, $40 the second year, and $60 the third year. She also reported that earlier in the day the department had finished its negotiations with the Marine Engineers' Beneficial Association (MEBA). The group would be sending their contract out for a vote no later than the following day recommending a positive vote. During the voting period members were not allowed to strike or do a lock out. If the vote failed arbitration would follow.

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Ms. Ridle advanced to slide 12: "FY 2017 Savings." She shared that the two charts showed the savings from negotiations with each group. If CEA employees were currently enrolled in the economy health plan and remained enrolled the contribution amount would equal $195 thousand in the first year. Their furloughs were worth about $93 thousand for the first year, and about $280 thousand over 3 years. The group was smaller with 204 members. She explained that the second chart showed furlough savings. An employee could cash in leave to offset their paycheck if they took a furlough day. The department made an estimate of how many employees would potentially cash in leave. If a furlough was worth $1.3 million the department only used a portion of that amount in anticipation that some employees would cash in their leave. The second chart was representative of what the department thought it would actually be worth. She would supply members with a similar

chart for the CEA. She noted there was a summary of the furloughs in the lower left corner.

Ms. Ridle continued to slide 13: "Update on Other Negotiations":

Labor Trades and Crafts (LTC) - 1,772 Employees

- On-going
- Likelihood of reaching agreement by 60th Day

Supervisor's Union (SU) – 2,317 Employees

- On-going
- Challenging negotiations
- Possibility of not reaching agreement by 60th Day

Marine Engineers' Beneficial Association (MEBA) – 103 Employees

- Tentative agreement July 2014 (0%- 1%- 2%). Legislature approved contract in 2015. MEBA has yet to send contract for a vote. Mediation pending.

Ms. Ridle reported that the department's hope was to finish the LTC negotiations on the 60th day. However, the next meeting was on the 59th day. The department would be getting the agreements to the legislature shortly thereafter to allow for time to consider them. The state law required that the department had them in by the 60th day. She discussed the SU agreement. She reported that she was unsure whether an agreement would be reached by the 60th day. She reiterated that the information regarding MEBA was outdated. The agreement had been completed and was going out for a vote in the current week.

Ms. Ridle discussed slide 14: "Next Steps":

- The Legislature decides whether to fund the monetary terms.
  - o The monetary terms of a collective bargaining agreement are subject to funding by legislative appropriation. (AS 23.40.21)
  - o If the Legislature fails to fund the monetary terms of an agreement, the next steps vary by bargaining unit and may be affected by whether a tentative agreement was reached with sufficient time to permit submittal by the 60th day of session.

- A contract submitted to the Legislature after the 60th day does not prevent the Legislature from either considering or funding the contract.

- If a union fails to ratify the agreement, then the funding is reduced proportionately, and we operate under status quo and return to negotiations.

Ms. Ridle elaborated that if the legislature rejected a contract the department would go back into negotiations. If the contract was not funded the process would be different. In the previous year the COLA was not funded but it was absorbed in their budget. If a contract was not established the groups operated under status quo until all of the steps were taken.

Ms. Ridle explained slide 15: "Rejection of Monetary Terms: CBA Terms." Ms. Ridle informed the committee that every bargaining group had different rules if a contract was rejected detailed on the slide. She indicated she would not be reviewing the next set of slides. They provided a breakdown of each bargaining unit including the number of people in them, and how much they were paid on average.

Co-Chair Thompson appreciated all of the work the administration was doing on negotiating. It appeared the unions had been cooperating, were concerned about the state's finances, and were responding in a positive way.

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Vice-Chair Saddler referred to slide 14 and the last bullet point. He wondered about the term "Reduced proportionately." Ms. Ridle deferred to Ms. Sheehan. Ms. Sheehan stated that essentially if the state were to fund a COLA and it failed ratification the funding would be decreased by whatever the COLA amount was. For example, if an employee was given a1 percent COLA the funding would be decreased by 1 percent if they failed to ratify.

Vice-Chair Saddler referred to slide 11 and asked what $30 equated to as a percentage of the total health care benefit cost in the economy tear. Ms. Ridle responded by first reporting that the state's health care benefit was on a calendar year starting January 1, 2017 rather than a fiscal year. She added that the contribution percentage began at about 5 percent, then 7 percent, then 9 percent from the

employee. She would get back to the representative with the percentage of the overall total.

Co-Chair Thompson clarified that Vice-Chair Saddler was asking for the overall total of the health care cost.

Vice-Chair Saddler wondered what percentage $30 represented of the total cost to the state. Ms. Ridle replied that she would get him the information. She pointed out that the $30 only applied to the economy plan. The employee contribution was higher for the economy plus plan and a contribution had always been paid for the standard plan. It was the first time employees would be contributing to the economy plan.

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Representative Gattis asked about the overall increase to the budget. Ms. Ridle clarified her question. She would provide the information to Co-Chair Thompson's office.

Representative Gattis brought up the "zero, zero, zero" comment. She wondered if there were other costs that should be conveyed. Ms. Ridle responded that each unit negotiate different things. She looked back to slide 3 which discussed monetary terms. Regarding the merit and pay increments the department did not send the amounts over separately in the budgeting process. They were absorbed in the personnel line. They have never appeared separately like the COLAs.

Representative Gattis acknowledged that the state was doing things differently in a different time.

Representative Gara had never been a fan of the high three system for folks that received the pension benefit. For example, a person that made $50 thousand for the majority of their career but moved and received a cost differential would get a substantially higher pension based on 3 years of a 20-year career. He wondered if the state had any protection against the arbitrary high three system. Ms. Ridle indicated that the department did not negotiate pension. She thought it was done through statute.

Representative Gara wondered if the department could decide not to give an employee a transfer. Ms. Ridle supposed there was the flexibility to do so but it was not part of bargaining.

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Representative Edgmon asked for information regarding the total number of state employees and a breakdown of exempt, non-exempt, university, and teacher employees. He asked Ms. Ridle to explain the furlough system. Ms. Ridle responded that it was done by hour, 15 hours total, to give flexibility to employees and the departments to figure out what worked best in implementing the furloughs.

Representative Edgmon commented that if a person's salary was reduced then somewhere down the road an employee's retirement costs would be reduced as well. Ms. Ridle concurred.

Representative Edgmon asked her to include information regarding the number of employees in each tier and the breakdown between defined benefit employees and defined contribution employees. He thought that there was both an immediate picture and a larger picture involved.

Representative Wilson asked about the $30, $60, $90 payment. Ms. Ridle responded that it was per month.

Representative Wilson asked if the state was aware of the cost increases for the different plans. Ms. Ridle did not know the specific number but thought the department was working on it.

Representative Wilson suggested that along with discussing how much employees would be pitching in any increases to health insurance premiums should be part of the discussion as well. Ms. Ridle thought the information would be available later in the week. She added that healthcare growth trends tended to be anywhere from 7 percent to 9 percent. However, the state was trying to manage down to 5 percent growth which would determine what the state brought forward for the employer contribution.

Representative Wilson wondered about paying overtime to employees covering for a furloughed employee. She thought furloughs could potentially cost the state more money. She surmised that Department of Corrections would be affected. She wondered how a furlough savings was calculated. Ms. Ridle answered that the department had tried to take Representative Wilson's concerns into consideration. The

furlough time off did not count for any employee's personal overtime. For example, if a person took furlough and came back to work the hours would not be counted and would have to work overtime based on when they actually worked. It was also the reason the department used furlough hours rather than days to provide more flexibility for departments and employees. Hopefully, employees could take time off such that it would not create more overtime.

Representative Wilson asked if the department could include an overtime limit in the written negotiation contracts. Ms. Ridle answered that it was a department duty. She thought all of the departments would be using furloughs to meet their budgets. It would behoove them to manage their overtime to offset any savings with furloughs.

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Co-Chair Neuman asked about an effort by the administration to replace higher level, more expensive employees with new hires with lower tier levels. Ms. Ridle asked if he meant something like a retirement incentive program.

Co-Chair Neuman was not referring to a retirement incentive program. He thought that more and more employees were in higher tiers. When discussing the circumstances with the commissioner he had mentioned that employees enrolled in the earlier tiers were being replaced by newer employees in a higher tier costing the state less money. Ms. Ridle responded that Tier I employees had been in the system for a long time. She was a Tier II employee and had started working for the state in the 90s. Tier I employees were likely moving towards retirement. In terms of laying them off, they probably had much higher layoff points and could not be laid off prior to a younger employee. The savings would come when Tier I employees naturally retired. An exception would be for partially exempt employees that did not have the same layoff rights. A manager might have the discretion to lay off a longer term partially exempt employee and keep a newer employee.

Co-Chair Neuman stated that there had been discussions about hiring people that have already retired. He thought the legislature had urged the administration to move away from rehiring retired employees with the hope of saving money. Ms. Ridle explained that if someone retired they could only come back as a non-permanent employee. She did

not believe they would displace a permanent employee in a layoff but they would also not be receiving retirement payments etc. She was unsure if she was answering Co-Chair Neuman's question.

Vice-Chair Saddler asked whether the state had ever evaluated whether it would be cost effective to have employee buyouts by offering retirement incentives. It could result in a long term savings to the state. He had constituents that were state employees that expressed a willingness to take a buyout. Ms. Ridle responded in the affirmative. She believed it had been in the early 2000s when a similar situation had existed. She elaborated that the evaluation revealed there were several people that retired and, after a certain amount of waiting time, came back to the state. They were not necessarily cheaper and were not necessarily replaced with a much cheaper employee. If the state was going to considering re-upping the state's retirement incentive plan, it would need to take into account what happened previously. It was questionable whether the state actually saved money.

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Vice-Chair Saddler asked about the expense of evaluating a retirement incentive program. Ms. Ridle responded that the department would be doing an evaluation, as it was not expensive. She was aware of more than one piece of legislation and reported that the idea had been discussed by others as a means of saving money.

Vice-Chair Saddler pointed to slide 11 and asked for the number of healthcare benefit plan tiers within the state system. Ms. Ridle answered that within the Alaska Care Plan there was economy, economy plus family, standard, and standard plus family, all of which required an employee contribution. There was also a premium plan, a higher cost plan, and she assumed a premium plus family plan.

Vice-Chair Saddler pointed to slide 3 related to monetary terms. He asked where the legislature would see the expense if there were changes in sea duty pay or a tool allowance. Ms. Ridle asked for clarity.

Vice-Chair Saddler elaborated that if there were changes in the monetary terms of a contract would they be folded into the contract. Ms. Sheehan replied that if there was a

change to what was currently in the agreement it would be highlighted in the monetary terms report provided to the legislature.

Representative Gattis recognized that the changes would be highlighted. However, she wondered about the things already imbedded that still had a cost. What she had heard earlier was that Ms. Riddle would get back to the committee about merit increases and pay increments. She also wondered if Ms. Ridle would get back to her about other things that had increases that were already imbedded but the state would have to pay for. Ms. Ridle replied in the affirmative.

Representative Gattis asked if she knew how many other states paid 100 percent for health insurance for their state employees. Ms. Ridle did not know how many paid 100 percent. She offered that there was a PEW report that indicated that the average contribution was about 16 percent. She thought there was a chart available.

Representative Gattis had the chart and there were 4 other states that paid 100 percent. All of the other states had their employees participating in paying for a portion of their premium. She opined that employees needed to be a part of the solution.

Co-Chair Thompson requested that the materials be sent through his office.

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Representative Munoz understood Ms. Ridle to say that the COLA was zero-zero-zero in the next round of contracts recently approved. She asked if merit increases and pay increments were discussed during negotiations. Ms. Ridle responded affirmatively. There were different proposals considered in the most recent negotiations.

Representative Munoz asked if the pay increments or merit increases had ever been altered. Ms. Ridle indicated that the department had recently reduced them. She invited Ms. Sheehan to comment further. Ms. Sheehan reported that in the last round of negotiations with the GGU, SU, and CEA the pay increments were reduced from 3.75 percent to 3.25 percent. The same was done in statute for the partially exempt.

Representative Pruitt asked for the state employee turnover percentage. Ms. Ridle deferred to Ms. Sheehan. Ms. Sheehan responded that it was an average of approximately 11 percent.

Representative Pruitt asked if exit interviews were conducted. Ms. Sheehan answered in the affirmative but added that they were not mandatory.

Representative Thompson relayed that in the remainder of the slides they showed each unit listing the average years of service.

Representative Pruitt wondered about the most common reason for employees departing state service. Ms. Ridle replied that she was unsure if there was a notable time consistently. It depended on what an employee was going through. She noted that the exit interviews were not very exhaustive because they were not mandatory or a great tool for gathering detail.

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Representative Pruitt noted employee benefits were above market. He wondered about the point at which the state could determine whether pay or benefits impacted an employee's decision to stay with the state or impacted a potential employee to take a job with the state. Ms. Ridle answered that the department did not have much data. She believed that layoffs across the state in different sectors and the economy overall would affect the state's workforce. She added that the state was in competition with the federal government because they were not seeing the same budget cuts that Alaska was seeing. It was possible that people were being hired away from state jobs to work for the federal government. The department would be working on gathering state data on the topic.

Representative Pruitt asked how long jobs stayed open after posting them. Ms. Sheehan answered that it varied for departments and for positions. For example, within her division there was a 4-week vacancy factor before a position could be filled. Each agency determined its parameters around vacancies.

Representative Gara provided an example concerning an employee who had a municipal assembly job. He had seen them

in the hallway one day working for one of the departments. They had gone from a job that paid $20 thousand per year to a job that paid $85 thousand per year. The representative asked the employee what they were doing there. The person responded that they were getting their high 3s. He believed there was a cost to the state. He thought the state should look at whether someone was going to burden the retirement system by filling a position. He was sending a message along. He noted that the state's health care premiums went up much faster that the rate of inflation. In Alaska medical costs were either the first or second highest in the nation almost every year. The rate of increases were first or second in the nation almost every year. He supposed that unless the legislature and the governor's office work together to figure out how to get control over the private sector's medical costs, overall pay packages would go up very quickly due to the cost of health insurance continuing to rise. He hoped the legislature could take some time to do something about the rise in medical costs rather than placing the burden on the employees. He believed the state should share some of the burden.

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Representative Guttenberg did not believe that the committee was touching on the issue of medical costs. The state was obligated for a significant amount of medical costs and many components. At different times he had asked the different administrations what they had been doing to drive down the costs of health care. He had never received a satisfactory answer. He posed the same question to Ms. Ridle. Ms. Ridle responded that the state was considering an employee contribution to health care. She also reported conducting better negotiations with providers to make sure the state received group rates. She mentioned the administration looking at possibly joining some health care coalitions. The administration was encouraging employee participation in wellness programs. She relayed that the state had an improvement plan in which a group of members from the employee bargaining units and the state came together to work on ways of reducing costs to both the state and to employees. The department was trying to engage the group more than in the past inviting employees to be a part of the solution to reducing health care costs. A large part of mitigating costs was negotiating with private providers.

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Representative Guttenberg thought it was time to negotiate with providers who were reluctant or resistant to negotiating for reductions. He urged the department to encourage more medical tourism (when people were sent out of state to have major medical procedures done at a cost reduction of close to 20 percent.) If the state was going to play a constructive role in driving down the cost of health care, the state had to take a stronger position with the providers. He encouraged using the option of medical tourism as a negotiation tool with providers.

Vice-Chair Saddler echoed the previous speaker. He thought there were many ways to reduce costs. He encouraged medical tourism and joining with other entities for coalitions. He had heard from some constituents that the Tier IV defined contribution as opposed to defined benefit in Tier I, Tier II, and Tier III was a disinhibiting factor from providers wanting to join up with the state. He wondered if the state had any information that indicated that the Tier IV defined contribution was making it difficult to recruit or hold state employees. Ms. Ridle did not believe the department had any proof to that effect.

Vice-Chair Saddler asked if exit interviews were mandatory or if the state could require them. Ms. Ridle responded that it could be a cultural change that managers were asked to encourage exit interviews more. She concurred with Vice-Chair Saddler that getting more information would be helpful.

Vice-Chair Saddler suggested making the completion of an exit interview a condition for an employee to receive their final paycheck.

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^LEGAL OPINION: LEGISLATURE'S LEGAL OPTIONS CONCERNING PUBLIC EMPLOYEE COLLECTIVE BARGAINING AGREEMENTS: BY DAN WAYNE, ATTORNEY, LEGISLATIVE LEGAL SERVICES

DAN WAYNE, ATTORNEY, LEGISLATIVE LEGAL SERVICES (via teleconference), explained that the legislature's role was somewhat limited. He referred to a Legal Services memo dated March, 12, 2016 regarding the legislature's role in

collective bargaining (copy on file). He pointed to the second paragraph on page 1. It indicated that the state was represented by the executive branch in collective bargaining. The legislature's role was to enact laws related to collective bargaining. He reported that the legislature's part became clear when the Public Employment Relations Act (PERA) was established. The legislature gave itself a limited role which was to review monetary terms of proposed contracts and either fund them or not.

Representative Gara asked if Mr. Wayne was completed with his presentation. Mr. Wayne was open to any questions. He had just described the legislature's role in collective bargaining. The memo went on to talk about limitations on the legislature's ability to make changes to existing agreements. The legal obstacles were problems that could arise if the legislature were to insert itself into bargaining before negotiations were completed.

Co-Chair Thompson asked how changing state laws fit into any problems with the constitutionality of what was in place in the state. Mr. Wayne referred to Article 5.6 of the Constitution of the State of Alaska which required state employment to be a merit-based system. He referred to Article 12.6 of the constitution that addressed the state personnel act. The purpose of the act was to establish a system of personnel administration that was based on the merit principle. It included recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills. Retention of employees with permanent status was based on their adequacy of their performance. The merit system was used to ensure equal treatment of applicants and employees. The idea was to protect the employment system from discriminatory behavior or decisions being made for political reasons. The legislature could adopt laws to regulate collective bargaining or regulate the employment of state employees. However, they were subject to the merit system requirement.

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Representative Wilson asked if he was saying that through statute the legislature could implement a step program where increases equaled 2 percent every 2 years versus allowing the terms to be negotiated through collective bargaining. Mr. Wayne thought that the legislature would have to amend PERA. The Public Employment Relations Act

stated that collective bargaining included wages and hours. He thought that it was possible to change terms in future rounds of negotiations if it was the will of the legislature.

Representative Wilson asked if the legislature would have to apply the change in other PERA. Mr. Wayne answered that the legislature could be fairly surgical in changing the statute.

Representative Wilson asked if the legislature was limited to taking certain unallocated amounts out if nothing changed. She wondered if the departments would decide how many people they would keep. Mr. Wayne stated that if the law did not change the legislature was limited to reviewing a collective bargaining agreement and deciding whether to fund the negotiated monetary terms.

Co-Chair Thompson referred to what Mr. Wayne stated in his memo about a substantial impairment of a contractual relationship noting that the impairment would be examined to see if it was reasonable or necessary to serve an important public purpose. He wondered what would be considered an important public service. Mr. Wayne pointed out that the section Representative Thompson was referring to through the middle of Page 4 was talking about existing contracts. It would be a situation where the legislature passed a law that impaired the obligation of an existing contract. There were constitutional bars to doing so. They were strong obstacles to overcome but not absolute. He noted that on page 3 that an impairment might be constitutional if it was reasonable and necessary to serve an important public interest. The discussion started at the bottom of page 3. If the state were to adopt a law impairing a collective bargaining unit the court would apply a 2 prong test. The first would be to determine whether the new law operated as a substantial impairment of a contract. If the answer was, "yes", then it was determined if the impairment was reasonable and necessary. In certain cases courts had approved temporary adjustments to a contract such as a city being without any money, for example. However, the courts had been pretty careful not to let the legislature do whatever it wanted. An emergency situation might be an exception.

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Representative Gattis wanted to be clear about step or merit pay. She wondered if the state was obligated to provide merit pay because of the constitution. Mr. Wayne was not saying that the only merit system that would meet a constitutional requirement was the current system the state was using. He was saying that it was the system the legislature adopted in statute. The system had been adjusted in the past. It was a combination of an automatic raise and a raise based on performance. He furthered that it was not really automatic because the state had to show that the employee received the evaluation and that it was acceptable or better. He noted a state regulation that talked about merit increases for employees. The service of the employee had to be of progressively greater value to the state. If an employee was worthy of an increase they would automatically receive one at a certain time each year based on their date of hire and length of service. He continued that when an employee reached a certain step the increases would occur every 2 years, referred to as "pay increments." Both were merit-based.

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Representative Gattis asked about passing legislation that could remove merit pay and pay increments (automatic raises). Mr. Wayne stated that the legislature could draft a bill that would remove anything. The question would be whether it could survive a legal challenge if someone contested it. He elaborated that most likely a bill that affected the penny of many people would be vulnerable to or cause a legal challenge. The outcome would depend on what was in the law and the applicability.

Representative Gattis wanted to be fair to state employees and believed that it was the function of the merit system. However, she did not believe the state needed to have built-in raises and steps. She challenged the attorney that the state had to have automatic increments built into state labor contracts. She struggled with the state having financial challenges and having to look to reduce spending while automatic raises were still in effect. She understood that the legislature was charting new territory. She disagreed with giving out raises in the current fiscal climate. She appreciated his comments.

Vice-Chair Saddler asked Mr. Wayne to confirm that under public employees versus state employees each year of a

multi-year contract was subject to separate appropriations. Mr. Wayne responded in the affirmative.

Vice-Chair Saddler asked if it was all or nothing such that the legislature could not appropriate 90 percent of the required amount. He asked if he was correct. Mr. Wayne answered that his understanding was that it was all or nothing. He suggested to do otherwise would then be negotiating, a power the legislature did not have under PERA.

Vice-Chair Saddler asked if it had ever been tried. Mr. Wayne did not know.

Vice-Chair Saddler asked about the process of the legislature exercising its authority under PERA - if the state did not appropriate money to pay for the full amount. Mr. Wayne responded that it depended on the contract and terms. It depended on the language of the contract. He noted the administration's chart that was fairly useful. There was a list of what could happen. Essentially, if the monetary terms were not funded by the legislature then the parties would likely have to renegotiate. It would be different depending on which contract was involved.

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Vice-Chair Saddler asked if saving money was an important public purpose. Mr. Wayne supposed that it would always be something that had a public purpose.

Representative Munoz understood that the Retired Public Employees Association had filed a suit against the State of Alaska over diminishment of health care benefits. She asked him to speak to the issues of that particular case and to its status. Mr. Wayne was unfamiliar with the current status of the case. He relayed that his office was not defending the case.

Representative Gara referred to page 2 of the memo that read that the United States Supreme Court looked more closely at the reasons the legislature tried to get out of the impairment clause. It also stated that a governmental entity could always find a use for extra money, especially when taxes did not have to be raised or the state could reduce its financial obligations. The contract clause would provide no protection at all. He asked how the Supreme

Court case factored into Mr. Wayne's analysis. Mr. Wayne stated that saving money might not be a sufficient public purpose. It would depend on the facts of a particular case as to whether it would overcome the constitutional protection against impairment of contracts. He thought the quote from the Supreme Court case was an attempt to point out that the court applied more scrutiny to laws passed by the legislature that impaired a contract that it was a party to. It was a sort of conflict of interest. The Supreme Court might compare contracts between transportation companies and their customers. The legislature would not be a party to the contract in the same way they would be a party to a contract between the state and the employees of the state.

3:07:08 PM

Representative Gara suggested that the constitution stated that Alaska should use the merit principle in its employment practices. He wondered if the merit principle would be violated if the state did not recognize merit. Mr. Wayne did not know what a court would say. If there was a law that stated no one ever received a raise and it was applied to everyone equally. It could possibly be another way of protecting the employment system from political influences. However, if you had a system where some employees received raises and some did not, it would likely work better in the private sector rather than the public sector. The public sector was managed by political leaders. The merit principle helped protect the employment process from politics.

Representative Gara asked if there was any case law about the merit principle where one employee was provided a merit raise and one received a raise without merit. Mr. Wayne did not know.

3:09:22 PM

Representative Gattis thought she heard Mr. Wayne suggesting that the state had to be fair to everyone. When talking about merit pay it should not be political. She thought if there was going to be a salary freeze, for example, it should be applied across the board. She believed the state had been paying merit increases no matter an employee's performance. She thought the state had been doing the opposite.

Vice-Chair Saddler asked if there was any guidance in case law that set a standard for merit increases. Mr. Wayne did not know of a case law that determined where the bar should be set. He thought that the constitutional requirement in Alaska was that there be a merit-based system. There could probably be many variations on the definition of a merit-based system. However, the underlying principle was that decisions about hiring, retention, and promotion were based on merit. The constitutional requirement meant there needed to be a system based on merit as opposed to a system that was called the "spoils" system where the people that were in charge just got to decide. The result of a spoils system was that many people ended up complaining about not being treated fairly. There were less complaints with a merit-based system. However, there would always be some people who felt like they were not receiving their due in any system.

Vice-Chair Saddler certainly wanted to be fair, to have a clear system that rewarded good behavior and good work for the state. He asked if days off, shift assignments, and work assignments could be negotiated. He asked if he was accurate. Mr. Wayne read from the Public Employment Relations Act. Collective bargaining meant the performance of the mutual obligation of the public employer or the employer's designated representatives and the representative of the employees to meet at reasonable times including meetings in advance of the budget making process in negotiating good faith in respect to wages, hours, and other terms and conditions of employment. He also read the definition of terms and conditions of employment which meant the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of employees. It did not mean the general policies describing the function and purposes of a public employer.

Co-Chair Thompson thanked Mr. Wayne for his time and for his legal opinion.

3:15:21 PM

Representative Gara stated that the end of Mr. Wayne's memo he talked about breach-of-contract. If there was a 3-year labor agreement and in the third year the legislature decided not to honor it, he wondered if it would bring in

breach-of-contract implications. Mr. Wayne responded in the affirmative.

Co-Chair Thompson referred to a case from the 80s where the legislature decided not to fund a 3 percent raise in the following year. He asked what happened. Mr. Wayne relayed that the court upheld the legislature's decision not to fund the third year. The court had stated that every year the monetary terms of a collective bargaining agreement were subject to independent legislative approval.

Vice-Chair Saddler asked if it was allowable for the legislature to decide not to appropriate the final year of a 3-year contract. Mr. Wayne responded no, it was the legislature exercising its prerogative to either fund or not fund the monetary terms of a collective bargaining agreement which could be broken down by year.

Vice-Chair Saddler asked him to reconcile his answer to his question and Vice-Chair Gara's question. Mr. Wayne thought he probably misunderstood Vice-Chair Gara's question. The question assumed there was a contract violation. If something was done to violate the contract, then the party who felt that the contract was violated could allege breach-of-contract. In the case of not funding the monetary terms of a collective bargaining agreement in its third year would not be a violation of the contract, it would be the legislature exercising its legal prerogative not to fund it.

3:17:48 PM

Representative Pruitt asked Mr. Wayne if departments could decide whether to lay people off and provide raises to the remaining personnel if the legislature did not provide funding. He wondered about adding intent language. He queried the process when the legislature chose not to provide funding in the 80s example. Mr. Wayne asked if Representative Pruitt was talking about page 7 of the memo and the discussion of the Public Employees Local 71 case from the 80s.

Representative Pruitt responded in the affirmative and added that he was asking about funding the third year of the contract. Mr. Wayne did not know if he could answer the question about the options the administration would have if

the legislature withheld funding. He was unsure if raises could be given. Union employees were subject to specific layoff terms outlined in their union contract. Contracts dictated how and when the employer could lay people off. The employees that would be laid off had rights and it was unlikely that laying off a union employee would be simple. As long as the administration did not violate the contractual terms it could juggle things around slightly. However, there were legal limitations set by the legislature. It would depend on the facts of the case and which contract applied.

Co-Chair Thompson thanked the testifier and reviewed the agenda for the following day.

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ADJOURNMENT

3:21:14 PM

The meeting was adjourned at 3:21 p.m.