

Introduced: 3/20/70
Referred: Judiciary, Labor
and Management and Finance

OS

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE
BY REQUEST

2 HOUSE BILL NO. 796

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a public employment labor relations
7 Act."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.40 is amended by adding new sections to read:

10 ARTICLE 2 PUBLIC EMPLOYMENT LABOR RELATIONS ACT.

11 Sec. 23.40.070. DECLARATION OF POLICY. The public policy of the
12 state regarding labor relations and collective bargaining in public
13 employment is as follows:

14 (1) There are three major interests involved, namely: that
15 of the public, the public employee and the public employer. These
16 interests are to a considerable extent interrelated and therefore, it
17 is the policy of this state to protect and promote each of these inter-
18 ests with due regard to the situation and to the rights of the others.

19 (2) Orderly and constructive employment relations for public
20 employees and the efficient administration of government in the state
21 serve to promote these interests. They are largely dependent upon the
22 maintenance of fair, friendly and mutually satisfactory employee-manage-
23 ment relations in public employment, and the availability of suitable
24 machinery for fair and peaceful adjustment of whatever controversies
25 may arise. It is recognized that whatever may be the rights of dispu-
26 tants with respect to each other in a controversy regarding public
27 employment relations, neither party has the right to engage in acts or
28 practices which jeopardize the public safety and interest and interfere
29 with the effective conduct of public business.

1 (3) Where permitted by secs. 70 - 280 of this chapter,
2 negotiations of terms and conditions of public employment should result
3 from voluntary agreement between the public employer and its agents,
4 as an employer, and its employees. For that purpose a public employee
5 has the right, if he desires, to associate with others in organizing
6 and in bargaining collectively through representation of his own
7 choosing, without intimidation or coercion from any source.

8 (4) It is the policy of this state, in order to preserve and
9 promote the interests of the public, the public employee and the public
10 employer, to encourage the practices and procedure of collective bar-
11 gaining in public employment subject to the public employee and related
12 laws, regulations and policies governing public employment, by es-
13 tablishing standards of fair conduct in public employment relations.

14 Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees shall
15 have, and be protected in the exercise of, the right of self-organization
16 and the right to form, join or assist any labor or employee organization,
17 to bargain collectively through representatives of their own choosing,
18 and to engage in lawful, concerted activities for the purpose of col-
19 lective bargaining or other mutual aid or protection.

20 Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. (a) The department
21 may determine, in order to insure a clear and identifiable community of
22 interest among employees affected, an appropriate bargaining unit and
23 whether the employees employed in a single or several departments,
24 divisions, institutions, crafts, professions, or occupational groupings,
25 constitute an appropriate collective bargaining unit. No collective
26 bargaining unit may include both professional and nonprofessional
27 employees unless a majority of the professional employees vote for
28 inclusion in the unit. No unit may include employees whose positions
29 are in one of the classes in sec. 260 of this chapter with employees

whose positions are in another one of the classes under the same section. The department may determine a collective bargaining unit with or without providing the employees involved an opportunity to determine for themselves whether they desire to establish themselves as an appropriate collective bargaining unit.

(b) When the department permits employees to determine for themselves whether they will constitute a separate bargaining unit, the determination shall be by secret ballot, and the department shall provide, by regulation, for voting procedure to be employed in making the determination.

(c) In determining, modifying or combining collective bargaining units, the department shall consider the duties, skills and working conditions of the public employees, the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the employees; and the desire of the public employees.

Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) Representatives chosen for the purposes of collective bargaining by a majority of the public employees voting in a collective bargaining unit shall be the exclusive representative of all the employees in the unit for the purposes of collective bargaining. An individual employee, or a minority group of employees in a collective bargaining unit, may present grievances to the public employer in person, or through representatives of their own choosing, and the public employer shall confer with the employee regarding the grievances, provided that the majority representative has been afforded the opportunity to be present in the conference and that any adjustment resulting from the conference is not inconsistent with the conditions of employment established by the majority representative and the public employer.

1 (b) When a question arises concerning the representation of
2 public employees in a collective bargaining unit, the department shall
3 determine the representative of the unit by taking a secret ballot of
4 the employees and certifying in writing the results of the election
5 to the interested parties and to the public employer. There shall be
6 included on a ballot for the election of representatives the names of
7 all persons, having an interest in representing public employees, sub-
8 mitted by a public employee or group of public employees participating
9 in the election, except that the department may exclude from the ballot
10 one who, at the time of the election, stands deprived of his rights
11 under secs. 70 - 280 of this chapter by reason of a prior adjudication
12 of his having engaged in a prohibited practice. The ballot shall be
13 prepared to permit a vote against representation by anyone named on
14 the ballot. The department's certification of the results of an
15 election shall be conclusive.

16 (c) When an election has been conducted under (b) of this section,
17 in which the name of more than one proposed representative appears on
18 the ballot and results in no conclusion, the department may if re-
19 quested by any party to the proceeding within 30 days from the date of
20 the certification of the results of the election, conduct a runoff
21 election. In the runoff election, the department may drop from the
22 ballot the name of the representative that received the least number
23 of votes at the original election, or the department shall drop from
24 the ballot the privilege of voting against any representative when the
25 least number of votes cast at the first election was against representa-
26 tion by any named representative.

27 (d) Questions concerning the determination of collective bar-
28 gaining units or representation of public employees may be raised by
29 petition of any public employee or the public employer, or the

1 representative of either of them. When it appears by the petition
2 that an emergency exists requiring prompt action, the department shall
3 act on the petition immediately and hold the election requested within
4 a time that will meet the requirements of the emergency presented. The
5 fact that one election has been held may not prevent the holding of
6 another election among the same group of public employees, if it
7 appears to the department that sufficient reason exists.

8 Sec. 23.40.110. PROHIBITED PRACTICES. (a) It is a prohibited
9 practice for a public employer individually or in concert with others
10 to:

11 (1) interfere with, restrain or coerce public employees in
12 the exercise of their rights guaranteed in sec. 80 of this chapter,

13 (2) initiate, create, dominate or interfere with the
14 formation or administration of a labor or employee organization or
15 contribute financial support to it, but the public employer is not
16 prohibited from reimbursing public employees at their prevailing wage
17 rate for the time spent conferring with its officers or agents; it is
18 not a prohibited practice for an officer or supervisor of the public
19 employer to remain or become a member of the same labor organization
20 of which its employees are members, when they perform the same work or
21 are engaged in the same profession; however, a supervisor may not
22 participate as an active member or officer of the organization,

23 (3) encourage or discourage membership in a labor or em-
24 ployee organization, employee agency, committee, association or repre-
25 sentation plan by discrimination in regard to hiring, tenure or other
26 terms or conditions of employment;

27 (4) refuse to bargain collectively on those matters pro-
28 vided for in sec. 250 of this chapter with the representative of a
29 majority of its employees in an appropriate collective bargaining unit;

1 however, when the public employer files with the board a petition re-
2 questing a determination as to majority representation, it may not be
3 considered to have refused to bargain until an election has been held
4 and the result has been certified to it by the department. A refusal
5 to bargain shall include, but not be limited to, the refusal to execute
6 a collective bargaining agreement previously agreed upon;

7 (5) violate the provisions of a written agreement concerning
8 terms and conditions of employment affecting public employees, includ-
9 ing an agreement to arbitrate, or to accept the terms of an arbitra-
10 tion award, when previously the parties agreed to accept an arbitration
11 award as final and binding upon them;

12 (6) deduct labor organization dues or assessments from a
13 public employee's earnings, unless the public employer has been pre-
14 sented with an individual order for the deduction, signed by the public
15 employee, and terminable at the end of any year of its life by the
16 public employee giving at least 30 days' written notice of the termina-
17 tion to the public employer and to the representative organization.

18 (b) It is an unfair labor practice for a public employee
19 individually or in concert with others to:

20 (1) coerce or intimidate a public employee in the exercise
21 of his legal rights, including those guaranteed in sec. 80 of this
22 chapter;

23 (2) coerce, intimidate or induce an officer or agent of the
24 public employer to interfere with any of its employees in the exercise
25 of their legal rights, including those guaranteed in sec. 80 of this
26 chapter, or to engage in a practice with regard to its employees which
27 would be a prohibited practice if undertaken by him on his own initiative;

28 (3) refuse to bargain collectively on those matters provided
29 for in sec. 250 of this chapter with the authorized officer or agent of

1 the public employer, provided it is the recognized or certified
2 exclusive collective bargaining representative of employees in an ap-
3 propriate collective bargaining unit; a refusal to bargain includes,
4 but is not limited to, the refusal to execute a collective bargaining
5 agreement previously agreed upon;

6 (4) violate the provisions of a written agreement concerning
7 terms and conditions of employment affecting public employees, includ-
8 ing an agreement to arbitrate or to accept the terms of an arbitration
9 award, where previously the parties agreed to accept an arbitration
10 award as final and binding upon them;

11 (5) coerce or intimidate a supervisory employee, officer
12 or agent of the public employer, working at the same trade or profession
13 as its employees, to induce him to become a member of or act in concert
14 with the labor organization of which they are members.

15 (c) It is a prohibited practice for a person to do or cause to
16 be done in the interest of public employers or public employees, or
17 in connection with a controversy over employment relations, any act
18 prohibited by (a) and (b) of this section.

19 Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If
20 a verified written complaint is filed by or for a person claiming to
21 be aggrieved by a prohibited practice, or a written accusation that a
22 person subject to secs. 70 - 280 of this chapter has engaged in a
23 prohibited practice is filed with the department, the department shall
24 investigate the complaint or accusation. If it determines after the
25 preliminary investigation that probable cause exists in support of the
26 complaint or accusation, it shall try to eliminate the prohibited
27 practice by informal methods of conference, conciliation, and persuasion.
28 Nothing said or done during this endeavor may be used as evidence in
29 a subsequent proceeding.

1 Sec. 23.40.130. FORM AND SERVICE OF COMPLAINT AND ACCUSATION. If
2 the department fails to eliminate the prohibited practice by concili-
3 ation and to obtain voluntary compliance with secs. 70 - 280 of this
4 chapter, or if, before it attempts conciliation, it considers that the
5 circumstances warrant, it shall serve a copy of the complaint or accusa-
6 tion upon the respondent. The form of the complaint or accusation and
7 the subsequent procedures shall be conducted in accordance with the
8 Administrative Procedure Act (AS 44.62) and the department shall have
9 the powers granted therein.

10 Sec. 23.40.140. ORDERS AND DECISIONS. If the department finds
11 that a person named in the written complaint or accusation has engaged
12 in a prohibited practice, the department shall issue and serve on the
13 person an order or decision requiring him to cease and desist from the
14 prohibited practice and to take affirmative action which will carry out
15 the policies of secs. 70 - 280 of this chapter. If the department
16 finds that no person named in the complaint or accusation has engaged
17 or is engaging in a prohibited practice, the department shall state its
18 findings of fact and issue an order dismissing the complaint or accusa-
19 tion.

20 Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The department may
21 apply to the superior court of the judicial district or division in
22 which the prohibited practice occurred for an order enjoining the pro-
23 hibited acts specified in the order or decision of the department.
24 Upon a showing by the department that the person has engaged or is
25 about to engage in the practices, an injunction, restraining order, or
26 other order which may be appropriate shall be granted by the court with-
27 out bond.

28 Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
29 For the purpose of the investigations, proceedings, or hearings which

1 the department considers necessary for the enforcement of secs. 70 -
2 280 of this chapter, the department may issue subpoenas requiring the
3 attendance and testimony of witnesses and the production of relevant
4 evidence.

5 (b) The department may administer oaths, examine witnesses, and
6 receive evidence.

7 (c) The attendance of witnesses and the production of evidence
8 may be required from any place in the state at any designated place of
9 hearing.

10 (d) If a person refuses to obey a subpoena issued under secs.
11 70 - 280 of this chapter, any superior court for the district in which
12 the contumacious person resides or is found may, upon application by
13 the department, issue an order requiring him to comply with the sub-
14 poena.

15 Sec. 23.40.170. REGULATIONS. The department may from time to
16 time issue, amend, or rescind regulations under the Administrative
17 Procedure Act (AS 44.62) to carry out the provisions of secs. 70 - 280
18 of this chapter.

19 Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
20 person who violates a provision of an order or decision of the depart-
21 ment is guilty of a misdemeanor and is punishable by a fine of not more
22 than \$500.

23 Sec. 23.40.190. PENALTY FOR OBSTRUCTING ENFORCEMENT. A person
24 who forcibly obstructs, intimidates or interferes with an authorized
25 representative of the department while the representative performs
26 duties under secs. 70 - 280 of this chapter or because the representative
27 performs those duties, is punishable by a fine of not more than \$500,
28 or by imprisonment for not more than one year, or by both.

29 Sec. 23.40.200. ARBITRATION. (a) Parties to a labor dispute

1 arising from the interpretation or application of a collective bargain-
2 ing agreement affecting terms and conditions of public employment may
3 agree in writing to have the department name arbitrators in all or any
4 part of the dispute. The department shall appoint as arbitrators only
5 competent, impartial and disinterested persons. Proceedings in arbi-
6 tration shall be conducted in accordance with the Uniform Arbitration
7 Act (AS 09.43.010 - 09.43.180) where applicable.

8 (b) The parties to a collective bargaining agreement may provide
9 in the agreement a contract for arbitration to be conducted solely
10 according to the Uniform Arbitration Act (09.43.010 - 09.43.180) if the
11 Act is incorporated into the agreement or contract by reference.

12 Sec. 23.40.210. MEDIATION. The department may appoint a compe-
13 tent, impartial, disinterested person to act as mediator in any labor
14 dispute either on its own initiative or on the request of one of the
15 parties to the dispute; or the parties may select a mediator by agree-
16 ment or mutual consent. It is the function of the mediator to bring
17 the parties together voluntarily under such favorable auspices as will
18 tend to effectuate settlement of the dispute, but neither the mediator
19 nor the board have any power of compulsion in mediation proceedings.

20 Sec. 23.40.220. FACT FINDING. (a) If, after a reasonable period
21 of negotiation over the terms of a collective bargaining agreement, a
22 deadlock exists between a public employer and a labor organization,
23 either party or the parties jointly may request the department in
24 writing to initiate fact finding in order to make recommendations to
25 resolve the existing deadlock.

26 (b) Upon receipt of a request to initiate fact finding, the
27 department shall make an investigation, either informally or by a
28 formal hearing, to determine whether the parties are, after a reason-
29 able period of negotiations, deadlocked with respect to a dispute.

1 After its investigation the department shall certify the results of the
2 investigation. If the certification requires that fact finding be
3 initiated, the department shall appoint from a list established by the
4 department a qualified disinterested person or three-member panel, when
5 jointly requested by the parties, to function as a fact finder.

6 (c) The fact finder shall establish times and place of hearings
7 and shall conduct the hearings under rules established by the depart-
8 ment. Upon request, the department shall issue subpoenas for hearings
9 conducted by the fact finder. The fact finder may administer oaths.
10 Upon completion of the hearing, the fact finder shall make written
11 findings of fact and recommendations for solution of the dispute and
12 submit them to the parties and to the department. In making its
13 findings and recommendations, the fact finder shall take into consider-
14 ation among other pertinent factors the logical and traditional concept
15 of public personnel and merit system administration concepts and
16 principles vital to the public interest in efficient and economical
17 governmental administration. Cost of fact finding proceedings shall be
18 divided equally between the parties.

19 (d) Nothing in this section may be construed as prohibiting a
20 fact finder from mediating the dispute, in which he is involved, at
21 any time prior to the issuance of his recommendations.

22 (e) Within 30 days of the receipt of the fact finder's recommen-
23 dations or within a time period agreed upon by the parties, both parties
24 shall advise each other, in writing, as to their acceptance or rejection,
25 in whole or in part, of the fact finder's recommendations and, at the
26 same time, send a copy of the notification to the department. Failure
27 to comply with the requirements of this section by the employer or
28 employee representative is a violation of sec. 110(a)(4) and (b)(3) of
29 this chapter.

1 Sec. 23.40.230. AGREEMENTS. Upon the completion of negotiations
2 between a labor organization representing a majority of employees in a
3 collective bargaining unit and a public employer, if a settlement is
4 reached, the employer shall reduce it to writing in the form of an
5 agreement. The agreement may include a term for which it will remain
6 in effect, not to exceed three years. Either party to the agreement
7 has a right of action to enforce the agreement by petition to the
8 department.

9 Sec. 23.40.240. MANAGEMENT RIGHTS. (a) Nothing in secs. 70 -
10 280 of this chapter shall interfere with the right of the public
11 employer, in accordance with applicable law and regulations to

12 (1) carry out the statutory mandate and goals assigned to the
13 department or agency utilizing personnel, methods and means in the
14 most appropriate and efficient manner possible;

15 (2) manage the employees of the department or agency; to hire,
16 promote, transfer, assign or retain employees in positions within the
17 department or agency and in that regard to establish reasonable work
18 rules;

19 (3) suspend, demote, discharge or take other appropriate
20 disciplinary action against an employee for cause, or to lay off em-
21 ployees in the event of lack of work or funds or under conditions where
22 continuation of work would be inefficient and nonproductive.

23 Sec. 23.40.250. SUBJECTS OF COLLECTIVE BARGAINING. (a) Matters
24 subject to collective bargaining are the following conditions of
25 employment:

26 (1) grievance procedures;

27 (2) application of seniority rights as affecting the
28 matters contained herein;

29 (3) work schedules relating to assigned hours and days of

1 the week and shift assignments;

2 (4) scheduling of vacations and other time off;

3 (5) use of sick leave;

4 (6) application and interpretation of established work rules,

5 (7) health and safety practices;

6 (8) intradepartmental transfers; and

7 (9) other matters consistent with this section and the
8 statutes, rules and regulations of the public employer.

9 (b) Nothing in this section shall require the employer to
10 bargain in regard to statutory and regulation provided prerogatives of
11 promotion, layoff, position classification, compensation and fringe
12 benefits, examinations, discipline, merit salary determination policy
13 and other actions provided for by law and regulations governing civil
14 service.

15 Sec. 23.40.260. STRIKES. (a) For purposes of this section,
16 public employees are employed to perform services in one of the three
17 following classes:

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

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

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

24 (b) Class (1) includes police and fire protection employees and
25 jail, prison and other correctional institution employees. Strikes by
26 employees in this class are prohibited. Upon a showing by a public
27 employer of the department that employees in this class are engaging or
28 about to engage in a strike, an injunction, restraining order, or other
29 order which may be appropriate shall be granted by the superior court

1 of the judicial district or division in which the strike is occurring
2 or is about to occur. If an impasse or deadlock is reached in collect-
3 ive bargaining between the public employer and employees in this class,
4 and mediation and fact-finding have been utilized without resolving the
5 deadlock, the parties shall submit to arbitration to be carried out
6 under the provisions of the Uniform Arbitration Act (09.43.010 - 09.43.-
7 180).

8 (c) Class (2) includes hospital, public utility, sanitation and
9 public school and other educational institution employees. Employees
10 in this class may engage in a strike, subject to the voting requirement
11 of (d) of this section, for a limited time. The limit is determined by
12 the interests of the health, safety or welfare of the public. The
13 public employer or the department may apply to the superior court of
14 the judicial district or division in which the strike is occurring for
15 an order enjoining the strike. A strike may not be enjoined unless it
16 can be shown that it has begun to threaten the health, safety or welfare
17 of the public. A court, in deciding whether or not to enjoin the strike,
18 shall consider the total equities in the particular case. Total equities
19 includes not only the impact of a strike on the public but also the
20 extent to which employee organizations and public employers have met
21 their statutory obligations.

22 (d) Class (3) includes all other public employees who are not
23 included in classes (1) or (2). Employees in this class may engage in
24 a strike if a majority of the employees in a collective bargaining unit
25 vote by secret ballot to do so.

26 Sec. 23.40.270. DEFINITIONS. In secs. 70 - 280 of this chapter,
27 unless the context otherwise requires,

28 (1) "collective bargaining" means the negotiating by the
29 public employer, by its officers and agents, and a majority of its

1 employees, by their representatives in an appropriate collective bar-
2 gaining unit, concerning terms and conditions of employment of all
3 employees in the unit in a mutual effort to reach an agreement with
4 reference to the subject under negotiation;

5 (2) "department" means the Department of Labor;

6 (3) "election" means a proceeding conducted by the department
7 in which the employees in a collective bargaining unit cast a secret
8 ballot for collective bargaining representatives, or for any other
9 purpose specified in secs. 70 - 280 of this chapter;

10 (4) "professional employee" means

11 (A) an employee engaged in work:

12 (1) predominantly intellectual and varied in
13 character as opposed to routine mental, manual, mechanical or
14 physical work;

15 (ii) involving the consistent exercise of discre-
16 tion and judgment in its performance,

17 (iii) of such a character that the output produced
18 or the result accomplished cannot be standardized in relation to
19 a given period of time,

20 (iv) requiring knowledge of an advanced type in a
21 field of science or learning customarily acquired by a prolonged
22 course of specialized intellectual instruction and study in an
23 institution of higher learning or a hospital, as distinguished
24 from a general academic education or from an apprenticeship or
25 from training in the performance of routine mental, manual or
26 physical processes; or

27 (B) an employee who:

28 (1) has completed the courses of specialized
29 intellectual instruction and study described in (4)(A)(iv) of this

1 section; and

2 (ii) is performing related work under the super-
3 vision of a professional person to qualify himself to become a
4 professional employee as defined in (4)(A) of this section;

5 (5) "public employee" means an employee of a public employer,
6 except a person elected by popular vote, appointed to office by the
7 governor; or a member of a board or commission, or a person who is
8 employed by the public employer for less than 20 hours a week;

9 (6) "public employer" means:

10 (A) the State of Alaska;

11 (B) an organized borough,

12 (C) a city of any class, whether home rule or otherwise;

13 (7) "supervisor" means any individual having authority, in
14 the interest of the public employer, to hire, transfer, suspend, lay
15 off, recall, promote, discharge, assign, reward or discipline other
16 employees, or to adjust their grievances, or effectively to recommend
17 such action, if in connection with the exercise of the foregoing the
18 exercise of the authority is not of a merely routine or clerical nature,
19 but requires the use of independent judgment.

20 Sec. 23.40.280. SHORT TITLE. Secs. 70 - 280 of this chapter
21 may be cited as the Public Employment Labor Relations Act.

22 * Sec. 2. AS 23.40.010 is repealed.

23 * Sec. 3. AS 23.40.040 is repealed.