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1 IN THE HOUSE

BY THE LABOR AND
MANAGEMENT COMMITTEE

2 CS FOR 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
12 the state regarding labor relations and collective bargaining in
13 public employment is as follows:

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

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

1 the public safety and interest and interfere with the effective
2 conduct of public business.

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

11 (4) It is the policy of this state, in order to preserve
12 and promote the interests of the public, the public employee and the
13 public employer, to encourage the practices and procedure of collective
14 bargaining in public employment subject to the public employee and
15 related laws, regulations and policies governing public employment,
16 by establishing standards of fair conduct in public employment
17 relations.

18 Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees
19 have, and shall be protected in the exercise of, the right of
20 self-organization and the right to form, join or assist any labor
21 or employee organization, to bargain collectively through represen-
22 tatives of their own choosing, and to engage in lawful, concerted
23 activities for the purpose of collective bargaining or other mutual
24 aid or protection.

25 Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. (a) The depart-
26 ment may determine, in order to insure a clear and identifiable
27 community of interest among employees affected, an appropriate
28 bargaining unit and whether the employees employed in a single or
29 several departments, divisions, institutions, crafts, professions,

1 or occupational groupings, constitute an appropriate collective
2 bargaining unit. No collective bargaining unit may include
3 both professional and nonprofessional employees unless a majority
4 of the professional employees and a majority of the nonprofessional
5 employees vote for inclusion in the unit.

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

11 (c) In determining, modifying or combining collective bargaining
12 units, the department shall consider the duties, skills and working
13 conditions of the public employees, the history of collective
14 bargaining by the public employees and their bargaining representa-
15 tives, the extent of organization among the employees, and the desire
16 of the public employees.

17 Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) Represen-
18 tatives chosen for the purposes of collective bargaining by a majority
19 of the public employees voting in a collective bargaining unit shall
20 be the exclusive representative of all the employees in the unit
21 for the purposes of collective bargaining. An individual employee,
22 or a minority group of employees in a collective bargaining unit, may
23 present grievances to the public employer in person, or through
24 representatives of their own choosing, and the public employer shall
25 confer with the employee regarding the grievances if the majority
26 representative has been afforded the opportunity to be present in the
27 conference; an adjustment resulting from the conference may not be
28 inconsistent with the conditions of employment established by the
29 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 is 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 requested
19 by any party to the proceeding within 30 days from the date of the
20 certification of the results of the election, conduct a runoff election.
21 In the runoff election, the department may drop from the ballot the
22 name of the representative that received the least number of votes at
23 the original election, or the department shall drop from the ballot
24 the privilege of voting against any representative when the least number
25 of votes cast at the first election was against representation by any
26 named representative.

27 (d) Questions concerning the determination of collective bargain-
28 ing units or representation of public employees may be raised by the
29 public employer, or by a petition signed by 30 per cent of the public

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

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

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

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

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

28 (4) refuse to bargain collectively on those matters provided
29 for in sec. 250 of this chapter with the representative of a majority

1 of its employees in an appropriate collective bargaining unit; however,
2 when the public employer files with the department a petition requesting
3 a determination as to majority representation, it may not be considered
4 to have refused to bargain until an election has been held and the
5 result has been certified to it by the department; a refusal to bargain
6 includes, but is not limited to, the refusal to execute a collective
7 bargaining agreement previously agreed upon;

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

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

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

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

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

1 initiative;

2 (3) refuse to bargain collectively on those matters provided
3 for in sec. 250 of this chapter with the authorized officer or agent of
4 the public employer, if he is the recognized or certified exclusive
5 collective bargaining representative of employees in an appropriate
6 collective bargaining unit; a refusal to bargain includes, but is not
7 limited to, the refusal to execute a collective bargaining agreement
8 previously agreed upon;

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

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

18 (c) It is a prohibited practice for a labor or employee organiza-
19 tion or any other person to do or cause to be done in the interest of
20 public employers or public employees, or in connection with a contro-
21 versy over employment relations, any act prohibited by (a) and (b) of
22 this section.

23 Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If
24 a verified written complaint is filed by or for a person claiming to
25 be aggrieved by a prohibited practice, or a written accusation that a
26 person subject to secs. 70 - 280 of this chapter has engaged in a
27 prohibited practice is filed with the department, the department shall
28 investigate the complaint or accusation. If it determines after the
29 preliminary investigation that probable cause exists in support of the

1 complaint or accusation, it shall try to eliminate the prohibited
2 practice by informal methods of conference, conciliation, and persuasion.
3 Nothing said or done during this endeavor may be used as evidence in
4 a subsequent proceeding.

5 Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the department fails
6 to eliminate the prohibited practice by conciliation and to obtain
7 voluntary compliance with secs. 70 - 280 of this chapter, or if, before
8 it attempts conciliation, it considers that the circumstances warrant,
9 it shall serve a copy of the complaint or accusation upon the respondent.
10 The complaint or accusation and the subsequent procedures shall be
11 handled in accordance with the Administrative Procedure Act (AS 44.62).

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

22 Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The department may
23 apply to the superior court in the judicial district in which the pro-
24 hibited practice occurred for an order enjoining the prohibited acts
25 specified in the order or decision of the department. Upon a showing
26 by the department that the person has engaged or is about to engage
27 in the practices, an injunction, restraining order, or other order
28 which may be appropriate shall be granted by the court without bond.

29 Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)

1 For the purpose of the investigations, proceedings, or hearings which
2 the department considers necessary for the enforcement of secs. 70 -
3 280 of this chapter, the department may issue subpoenas requiring the
4 attendance and testimony of witnesses and the production of relevant
5 evidence.

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

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

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

16 Sec. 23.40.170. REGULATIONS. The department may adopt, amend,
17 or repeal regulations under the Administrative Procedure Act (AS 44.62)
18 to carry out the provisions of secs. 70 - 280 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 representa-
27 tive performs those duties, is punishable by a fine of not more than
28 \$500, 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) 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 (AS 09.43) if the Act is
11 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 department 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 or employee
23 organization, either party or the parties jointly may request the
24 department in writing to initiate fact finding in order to make recom-
25 mendations to 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 regulations established by the
8 department. Upon request, the department shall issue subpoenas for
9 hearings conducted by the fact finder. The fact finder may administer
10 oaths. Upon completion of the hearing, the fact finder shall make
11 written findings of fact and recommendations for solution of the dis-
12 pute and submit them to the parties and to the department. In making
13 his findings and recommendations, the fact finder shall take into con-
14 sideration among other pertinent factors the logical and traditional
15 concept of public personnel and merit system administration concepts
16 and 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 prohibits a fact finder from mediating
20 the dispute, in which he is involved, at any time before the issuance
21 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
24 parties shall advise each other, in writing, as to their acceptance or
25 rejection, in whole or in part, of the fact finder's recommendations
26 and, at the same time, send a copy of the notification to the depart-
27 ment. Failure to comply with the requirements of this section by the
28 employer or employee representative is a violation of sec. 110(a)(4)
29 and (b)(3) of this chapter.

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

9 Sec. 23.40.240. MANAGEMENT RIGHTS. Nothing in secs. 70 - 280
10 of this chapter interferes with the right of the public employer, in
11 accordance with applicable law and regulations, to carry out the
12 statutory mandate and goals assigned to the department or agency
13 utilizing personnel, methods and means in the most appropriate and
14 efficient manner possible.

15 Sec. 23.40.250. SUBJECTS OF COLLECTIVE BARGAINING. All matters
16 shall be subject to collective bargaining which are not in conflict
17 with the statutes, rules and regulations of the public employer.

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

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

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

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

27 (b) Class (1) includes police and fire protection employees and
28 jail, prison and other correctional institution employees. Strikes by
29 employees in this class are prohibited. Upon a showing by a public

1 employer or the department that employees in this class are engaging or
2 about to engage in a strike, an injunction, restraining order, or
3 other order which may be appropriate shall be granted by the superior
4 court in the judicial district in which the strike is occurring or is
5 about to occur. If an impasse or deadlock is reached in collective
6 bargaining between the public employer and employees in this class,
7 and mediation and fact-finding have been utilized without resolving
8 the deadlock, the parties shall submit to arbitration to be carried out
9 under the provisions of the Uniform Arbitration Act (AS 09.43).

10 (c) Class (2) includes hospital, public utility, snow removal,
11 sanitation and public school and other educational institution employees.
12 Employees in this class may engage in a strike after mediation and fact-
13 finding, subject to the voting requirement of (d) of this section, for
14 a limited time. The limit is determined by the interests of the health,
15 safety or welfare of the public. The public employer or the department
16 may apply to the superior court in the judicial district in which the
17 strike is occurring for an order enjoining the strike. A strike may
18 not be enjoined unless it can be shown that it has begun to threaten
19 the health, safety or welfare of the public. A court, in deciding
20 whether or not to enjoin the strike, shall consider the total equities
21 in the particular case. "Total equities" includes not only the impact
22 of a strike on the public but also the extent to which employee organi-
23 zations and public employers have met their statutory obligations.
24 If an impasse or deadlock still exists after the issuance of an
25 injunction, the parties shall submit to arbitration to be carried out
26 under the provisions of the Uniform Arbitration Act (AS 09.43).

27 (d) Class (3) includes all other public employees who are not
28 included in classes (1) or (2). Employees in this class may engage in
29 a strike if a majority of the employees in a collective bargaining unit

1 vote by secret ballot to do so.

2 Sec. 23,40.270. DEFINITIONS. In secs. 70 - 280 of this chapter,
3 unless the context otherwise requires,

4 (1) "collective bargaining" means the negotiating by the
5 public employer, by its officers and agents, and a majority of its
6 employees, by their representatives in an appropriate collective bar-
7 gaining unit, concerning terms and conditions of employment of all
8 employees in the unit in a mutual effort to reach an agreement with
9 reference to the subject under negotiation;

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

11 (3) "election" means a proceeding conducted by the depart-
12 ment in which the employees in a collective bargaining unit cast a
13 secret ballot for collective bargaining representatives, or for any
14 other purpose specified in secs. 70 - 280 of this chapter;

15 (4) "professional employee" means

16 (A) an employee engaged in work:

17 (i) predominantly intellectual and varied in
18 character as opposed to routine mental, manual, mechanical or
19 physical work;

20 (ii) involving the consistent exercise of discre-
21 tion and judgment in its performance;

22 (iii) of such a character that the output produced
23 or the result accomplished cannot be standardized in relation to
24 a given period of time;

25 (iv) requiring knowledge of an advanced type in a
26 field of science or learning customarily acquired by a prolonged
27 course of specialized intellectual instruction and study in an
28 institution of higher learning or a hospital, as distinguished
29 from a general academic education or from an apprenticeship or

1 from training in the performance of routine mental, manual or
2 physical processes; or

3 (B) an employee who:

4 (i) has completed the courses of specialized
5 intellectual instruction and study described in (4)(A)(iv) of this
6 section; and

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

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

14 (6) "public employer" means:

15 (A) the State of Alaska;

16 (B) an organized borough;

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

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

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

27 * Sec. 2. AS 23.40.010 is repealed.
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