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1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

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CS FOR HOUSE BILL NO. 736

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SEVENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

7

Act."

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

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

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ARTICLE 2. PUBLIC EMPLOYMENT RELATIONS ACT.

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Sec. 23.40.070. DECLARATION OF POLICY. The legislature finds

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that joint decision making is the modern way of administering govern-

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ment. If public employees have been granted the right to share in

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the decision-making process affecting wages and working conditions,

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they have become more responsive and better able to exchange ideas

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and information on operations with their administrators. Accordingly,

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government is made more effective. The legislature further finds that

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the enactment of positive legislation establishing guidelines for

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public employment relations is the best way to harness and direct the

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energies of public employees eager to have a voice in determining

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their conditions of work, to provide a rational method for dealing

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with disputes and work stoppages, to strengthen the merit principle

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where civil service is in effect and to maintain a favorable political

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and social environment. The legislature declares that it is the public

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policy of the state to promote harmonious and cooperative relations

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between government and its employees and to protect the public by

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assuring effective and orderly operations of government. These policies

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are to be effectuated by

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(1) recognizing the right of public employees to organize

1 for the purpose of collective bargaining;

2 (2) requiring public employers to negotiate with and
3 enter into written agreements with employee organizations on matters
4 of wages, hours, and other terms and conditions of employment;

5 (3) maintaining merit system principles among public em-
6 ployees.

7 Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees
8 may self organize and form, join or assist an organization to bargain
9 collectively through representatives of their own choosing, and engage
10 in concerted activities for the purpose of collective bargaining or
11 other mutual aid or protection.

12 Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. The labor relations
13 agency shall decide in each case, in order to assure to employees the
14 fullest freedom in exercising the rights guaranteed by secs. 70 - 260
15 of this chapter, the unit appropriate for the purposes of collective
16 bargaining, based on such factors as community of interest, wages,
17 hours and other working conditions of the employees involved, the
18 history of collective bargaining, and the desires of the employees.
19 Bargaining units shall be as large as is reasonable and unnecessary
20 fragmenting shall be avoided.

21 Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) The labor
22 relations agency shall investigate a petition if it is submitted in a
23 manner prescribed by the labor relations agency and is

24 (1) by an employee or group of employees or an organization
25 acting in their behalf alleging that 30 per cent of the employees of
26 a proposed bargaining unit

27 (A) want to be represented for collective bargaining
28 by a labor or employee organization as exclusive representative,
29 or

1 (B) assert that the organization which has been certi-
2 fied or is currently being recognized by the public employer as
3 bargaining representative is no longer the representative of
4 the majority of employees in the bargaining unit; or

5 (2) by the public employer alleging that one or more organi-
6 zations have presented to it a claim to be recognized as a representa-
7 tive of a majority of employees in an appropriate unit.

8 (b) If the labor relations agency has reasonable cause to
9 believe that a question of representation exists, it shall provide
10 for an appropriate hearing upon due notice. If the labor relations
11 agency finds that there is a question of representation, it shall
12 direct an election by secret ballot to determine whether or by which
13 organization the employees desire to be represented and shall certify
14 the results of the election. Nothing in this section prohibits the
15 waiving of hearings by stipulation for the purpose of a consent
16 election in conformity with the regulations of the labor relations
17 agency or an election in a bargaining unit agreed upon by the parties.
18 The labor relations agency shall determine who is eligible to vote
19 in an election and shall establish rules governing the election. In
20 an election in which none of the choices on the ballot receives a
21 majority of the votes cast, a runoff election shall be conducted,
22 the ballot providing for selection between the two choices receiving
23 the largest and the second largest number of valid votes cast in the
24 election. If an organization receives the majority of the votes
25 cast in the election it shall be certified by the labor relations
26 agency as exclusive representative of all the employees in the bar-
27 gaining unit.

28 (c) An election may not be held in a bargaining unit or in a
29 subdivision of a bargaining unit if a valid election has been held

1 within the preceding 12 months.

2 (d) Nothing in this chapter prohibits recognition of an organi-
3 zation as the exclusive representative by a public agency by mutual
4 consent.

5 (e) No election may be directed by the labor relations agency in
6 a bargaining unit in which there is in force and effect a valid collec-
7 tive bargaining agreement, except during a 90-day period preceding the
8 expiration date. However, no collective bargaining agreement may bar
9 an election upon petition of persons in the bargaining unit but not
10 parties to the agreement if more than three years have elapsed since the
11 execution of the agreement or the last timely renewal, whichever was later.

12 Sec. 23.40.110. UNFAIR LABOR PRACTICES. (a) A public employer
13 or his agent may not

14 (1) interfere, restrain or coerce an employee in the exer-
15 cise of his rights guaranteed in sec. 80 of this chapter;

16 (2) dominate or interfere with the formation, existence or
17 administration of an organization;

18 (3) discriminate in regard to hire or tenure of employment
19 or a term or condition of employment to encourage or discourage member-
20 ship in an organization;

21 (4) discharge or discriminate against an employee because he
22 has signed or filed an affidavit, petition or complaint or given testi-
23 mony under secs. 70 - 260 of this chapter;

24 (5) refuse to bargain collectively in good faith with an
25 organization which is the exclusive representative of employees in an
26 appropriate unit, including but not limited to the discussing of
27 grievances with the exclusive representative.

28 (b) Nothing in this chapter prohibits a public employer from
29 making an agreement with an organization to require as a condition of

1 employment

2 (1) membership in the organization which represents
3 the unit on or after the 30th day following the beginning of em-
4 ployment or on the effective date of the agreement, whichever is
5 later; or

6 (2) payment by the employee to the exclusive bargaining
7 agent of a service fee to reimburse the exclusive bargaining agent for
8 the expense of representing the members of the bargaining unit.

9 (c) A labor or employee organization or its agents may not

10 (1) restrain or coerce

11 (A) an employee in the exercise of the rights guaranteed
12 in sec. 80 of this chapter, or

13 (B) a public employer in the selection of his represen-
14 tative for the purposes of collective bargaining or the adjustment
15 of grievances;

16 (2) refuse to bargain collectively in good faith with a
17 public employer, if it has been designated in accordance with the provi-
18 sions of secs. 70 - 260 of this chapter as the exclusive representative
19 of employees in an appropriate unit.

20 Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

21 If a verified written complaint by or for a person claiming to be
22 aggrieved by a practice prohibited by sec. 110 of this chapter, or a
23 written accusation that a person subject to secs. 70 - 260 of this
24 chapter has engaged in a prohibited practice, is filed with the labor
25 relations agency, it shall investigate the complaint or accusation. If
26 it determines after the preliminary investigation that probable cause
27 exists in support of the complaint or accusation, it shall try to
28 eliminate the prohibited practice by informal methods of conference,
29 conciliation, and persuasion. Nothing said or done during this

endeavor may be used as evidence in a subsequent proceeding.

Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with secs. 70 - 260 of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

Sec. 23.40.140. ORDERS AND DECISIONS. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of secs. 70 - 260 of this chapter. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond.

Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the

1 provisions of secs. 70 - 260 of this chapter, the labor relations
2 agency may issue subpoenas requiring the attendance and testimony of
3 witnesses and the production of relevant evidence.

4 (b) The labor relations agency may administer oaths, examine
5 witnesses, and receive evidence.

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

9 (d) If a person refuses to obey a subpoena issued under secs. 70 -
10 260 of this chapter, the superior court in the district in which the
11 person resides or is found may, upon application by the labor relations
12 agency, issue an order requiring him to comply with the subpoena.

13 Sec. 23.40.170. REGULATIONS. The labor relations agency may
14 adopt regulations under the Administrative Procedure Act (AS 44.62) to
15 carry out the provisions of secs. 70 - 260 of this chapter.

16 Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A
17 person who violates a provision of an order or decision of the labor
18 relations agency is guilty of a misdemeanor and is punishable by a fine
19 of not more than \$500.

20 Sec. 23.40.190. MEDIATION. If, after a reasonable period of
21 negotiation over the terms of a collective bargaining agreement, a dead-
22 lock exists between a public employer and an organization, the labor
23 relations agency may appoint a competent, impartial, disinterested
24 person to act as mediator in any dispute either on its own initiative
25 or on the request of one of the parties to the dispute. The parties
26 may also select a mediator by agreement or mutual consent. It is the
27 function of the mediator to bring the parties together voluntarily
28 under such favorable auspices as will tend to effectuate settlement of
29 the dispute, but neither the mediator nor the labor relations agency

1 have any power of compulsion in mediation proceedings.

2 Sec. 23.40.200. ARBITRATION. (a) For purposes of this section,
3 public employees are employed to perform services in one of the three
4 following classes:

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

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

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

11 (b) The class in (a)(1) of this section is composed of police
12 and fire protection employees, jail, prison and other correctional
13 institution employees, and hospital employees. Employees in this
14 class may not engage in strikes. Upon a showing by a public employer
15 or the labor relations agency that employees in this class are engaging
16 or about to engage in a strike, an injunction, restraining order, or
17 other order which may be appropriate shall be granted by the superior
18 court in the judicial district in which the strike is occurring or is
19 about to occur. If an impasse or deadlock is reached in collective
20 bargaining between the public employer and employees in this class,
21 and mediation has been utilized without resolving the deadlock, the
22 parties shall submit to arbitration to be carried out under AS 09.43.030.

23 (c) The class in (a)(2) of this section is composed of public
24 utility, snow removal, sanitation and public school and other educa-
25 tional institution employees. Employees in this class may engage in a
26 strike after mediation, subject to the voting requirement of (d) of
27 this section, for a limited time. The limit is determined by the
28 interests of the health, safety or welfare of the public. The public
29 employer or the labor relations agency may apply to the superior court

1 in the judicial district in which the strike is occurring for an order
2 enjoining the strike. A strike may not be enjoined unless it can be
3 shown that it has begun to threaten the health, safety or welfare of
4 the public. A court, in deciding whether or not to enjoin the strike,
5 shall consider the total equities in the particular class. "Total
6 equities" includes not only the impact of a strike on the public but
7 also the extent to which employee organizations and public employers
8 have met their statutory obligations. If an impasse or deadlock still
9 exists after the issuance of an injunction, the parties shall submit
10 to arbitration to be carried out under AS 09.43.030.

11 (d) The class in (a)(3) of this section includes all other
12 public employees who are not included in the classes in (a)(1) or
13 (a)(2) of this section. Employees in this class may engage in a strike
14 if a majority of the employees in a collective bargaining unit vote
15 by secret ballot to do so.

16 (e) Notwithstanding the provisions of (b), (c) and (d) of this
17 section, the employees with the concurrence of the employer may agree
18 in writing to submit a dispute arising from interpretation or applica-
19 tion of a collective bargaining agreement to arbitration.

20 (f) The parties to a collective bargaining agreement may provide
21 in the agreement a contract for arbitration to be conducted solely
22 according to the Uniform Arbitration Act (AS 09.43) if the Act is
23 incorporated into the agreement or contract by reference.

24 Sec. 23.40.210. AGREEMENT. Upon the completion of negotiations
25 between an organization and a public employer, if a settlement is
26 reached, the employer shall reduce it to writing in the form of an
27 agreement. The agreement may include a term for which it will remain
28 in effect, not to exceed three years. The agreement shall include
29 a grievance procedure which shall have binding arbitration as its

1 final step. Either party to the agreement has a right of action to
2 enforce the agreement by petition to the labor relations agency.

3 Sec. 23.40.220. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE
4 BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of
5 a public employee within a bargaining unit, the public employer shall
6 deduct from the payroll of the public employee the monthly amount of
7 dues, fees and other employee benefits as certified by the secretary
8 of the exclusive bargaining representative and shall deliver it to
9 the chief fiscal officer of the exclusive bargaining representative.

10 Sec. 23.40.230. ASSISTANCE BY DEPARTMENT OF LABOR. When state
11 employees are involved, the Department of Labor shall, if requested
12 by the personnel board, and if there is no objection by the organiza-
13 tion involved, assist the personnel board on matters such as, but not
14 limited to, conducting elections and investigating unfair labor
15 practices.

16 Sec. 23.40.240. EFFECT ON EXISTING UNITS, REPRESENTATIVES AND
17 AGREEMENTS. Nothing in this chapter terminates or modifies a collec-
18 tive bargaining unit, recognition of exclusive bargaining representa-
19 tive, or collective bargaining agreement if the unit, recognition, or
20 agreement is in effect at the time this Act becomes effective.

21 Sec. 23.40.250. DEFINITIONS. In secs. 70 - 260 of this chapter,
22 unless the context otherwise requires,

23 (1) "collective bargaining" means the performance of the
24 mutual obligation of the public employer or his designated representa-
25 tives and the representative of the employees to meet at reasonable
26 times, including meetings in advance of the budget-making process and
27 negotiate in good faith with respect to wages, hours and other terms
28 and conditions of employment, or the negotiation of an agreement, or
29 negotiation of a question arising under an agreement and the execution

1 of a written contract incorporating an agreement reached if requested
2 by either party, but these obligations do not compel either party to
3 agree to a proposal or require the making of a concession;

4 (2) "election" means a proceeding conducted by the labor
5 relations agency in which the employees in a collective bargaining unit
6 cast a secret ballot for collective bargaining representatives, or for
7 any other purpose specified in secs. 70 - 260 of this chapter;

8 (3) "labor relations agency" means the state personnel board
9 with regard to the state and employees of the state, and means the
10 Department of Labor with regard to all other public employees and all
11 other public employers;

12 (4) "organization" means a labor or employee organization
13 of any kind in which employees participate and which exists for the
14 primary purpose of dealing with employers concerning grievances, labor
15 disputes, wages, rates of pay, hours of employment and conditions of
16 employment;

17 (5) "public employee" means any employee of a public em-
18 ployer, whether or not in the classified service of the public
19 employer, except elected or appointed officials or teachers;

20 (6) "public employer" means the state or a political sub-
21 division of the state, including without limitation, a town, city,
22 borough, district, school board, board of regents, public and quasi-
23 public corporation, housing authority or other authority established
24 by law, and a person designated by the public employer to act in its
25 interest in dealing with public employees;

26 (7) "terms and conditions of employment" means the hours
27 of employment, the compensation and fringe benefits, and the employer's
28 personnel policies affecting the working conditions of the employees;
29 but does not mean the general policies describing the function and

1 purposes of a public employer.

2 Sec. 23.40.260. SHORT TITLE. Secs. 70 - 260 of this chapter may
3 be cited as the Public Employment Relations Act.

4 * Sec. 2. AS 09.43.010 is amended to read:

5 Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF
6 CHAPTER. A written agreement to submit an existing controversy to
7 arbitration or a provision in a written contract to submit to arbitra-
8 tion a subsequent controversy between the parties is valid, enforceable
9 and irrevocable, except upon grounds which exist at law or in equity
10 for the revocation of a contract. However, this chapter does not apply
11 to a labor-management contract unless it is incorporated into the
12 contract by reference or its application provided for by statute.

13 * Sec. 3. AS 23.40.010 is repealed.
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