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1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 736

SCS

3 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."

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 RELATIONS ACT.

11 Sec. 23.40.070. DECLARATION OF POLICY. The legislature finds
12 that joint decision making is the modern way of administering govern-
13 ment. If public employees have been granted the right to share in
14 the decision-making process affecting wages and working conditions,
15 they have become more responsive and better able to exchange ideas
16 and information on operations with their administrators. Accordingly,
17 government is made more effective. The legislature further finds that
18 the enactment of positive legislation establishing guidelines for
19 public employment relations is the best way to harness and direct the
20 energies of public employees eager to have a voice in determining
21 their conditions of work, to provide a rational method for dealing
22 with disputes and work stoppages, to strengthen the merit principle
23 where civil service is in effect and to maintain a favorable political
24 and social environment. The legislature declares that it is the public
25 policy of the state to promote harmonious and cooperative relations
26 between government and its employees and to protect the public by
27 assuring effective and orderly operations of government. These policies
28 are to be effectuated by

29 (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

1 endeavor may be used as evidence in a subsequent proceeding.

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

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

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

27 Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a)
28 For the purpose of the investigations, proceedings, or hearings which
29 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 has any power of compulsion in mediation proceedings.

2 Sec. 23.40.210. AGREEMENT. Upon the completion of negotiations
3 between an organization 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. The agreement shall include
7 a grievance procedure which shall have binding arbitration as its
8 final step. Either party to the agreement has a right of action to
9 enforce the agreement by petition to the labor relations agency.

10 Sec. 23.40.215. FUNDING. The monetary terms of any agreement
11 entered into under the Public Employment Relations Act are subject to
12 funding through legislative appropriation.

13 Sec. 23.40.220. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE
14 BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of
15 a public employee within a bargaining unit, the public employer shall
16 deduct from the payroll of the public employee the monthly amount of
17 dues, fees and other employee benefits as certified by the secretary
18 of the exclusive bargaining representative and shall deliver it to
19 the chief fiscal officer of the exclusive bargaining representative.

20 Sec. 23.40.230. ASSISTANCE BY DEPARTMENT OF LABOR. When state
21 employees are involved, the Department of Labor shall, if requested
22 by the personnel board, and if there is no objection by the organiza-
23 tion involved, assist the personnel board on matters such as, but not
24 limited to, conducting elections and investigating unfair labor
25 practices.

26 Sec. 23.40.240. EFFECT ON EXISTING UNITS, REPRESENTATIVES AND
27 AGREEMENTS. Nothing in this chapter terminates or modifies a collec-
28 tive bargaining unit, recognition of exclusive bargaining representa-
29 tive, or collective bargaining agreement if the unit, recognition, or

1 agreement is in effect at the time this Act becomes effective.

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

4 (1) "collective bargaining" means the performance of the
5 mutual obligation of the public employer or his designated representa-
6 tives and the representative of the employees to meet at reasonable
7 times, including meetings in advance of the budget-making process and
8 negotiate in good faith with respect to wages, hours and other terms
9 and conditions of employment, or the negotiation of an agreement, or
10 negotiation of a question arising under an agreement and the execution
11 of a written contract incorporating an agreement reached if requested
12 by either party, but these obligations do not compel either party to
13 agree to a proposal or require the making of a concession;

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

18 (3) "labor relations agency" means the state personnel board
19 with regard to the state and employees of the state, and means the
20 Department of Labor with regard to all other public employees and all
21 other public employers;

22 (4) "organization" means a labor or employee organization
23 of any kind in which employees participate and which exists for the
24 primary purpose of dealing with employers concerning grievances, labor
25 disputes, wages, rates of pay, hours of employment and conditions of
26 employment;

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

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

7 (7) "terms and conditions of employment" means the hours
8 of employment, the compensation and fringe benefits, and the employers's
9 personnel policies affecting the working conditions of the employees;
10 but does not means the general policies describing the function and
11 purposes of a public employer.

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

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

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

23 * Sec. 3. AS 23.40.010 is repealed.
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