

1 IN THE SENATE

BY ZIEGLER BY REQUEST

2 SENATE BILL NO. 235

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public employment; and providing  
7 for an effective date."

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

9 \* Section 1. AS 39 is amended by adding a new chapter to read:

10 CHAPTER 26. PUBLIC EMPLOYEES NEGOTIATIONS ACT.

11 Sec. 39.26.010. LEGISLATIVE PURPOSE AND INTENT: It is the  
12 purpose of the legislature in the passage of this chapter to recognize  
13 the gulf which separates the public employment sector from the private  
14 employment sector. The legislature takes due recognizance of the fact  
15 that while the private sector pursues its vital role in upholding and  
16 strengthening the sound economic principles of the free enterprise  
17 system, public employment, created and maintained for the sole purpose  
18 of providing vital services to the citizenry, must function under  
19 different precepts and principles. The legislature further recognizes  
20 that the maintenance of a sound, workable merit principle as required  
21 by the Alaska constitution in public employment is the most satis-  
22 factory way to assure that public services and employment remain at  
23 a high standard. It is the intent of the legislature in the passage  
24 of this chapter to assure that the merit principle of public employment  
25 be strengthened and so continue to play its vital role in assuring  
26 that the public receives what it pays for.

27 Sec. 39.26.020. PERSONNEL AND PUBLIC EMPLOYEES RELATIONS BOARD.  
28 There is created the Personnel and Public Employees Relations Board.

29 Sec. 39.26.030. EMPLOYEES OF THE BOARD. The board may employ a

1 director to be known as the director of the Personnel and Public  
2 Employees Relations Board, set his salary, establish terms and quali-  
3 fications of employment and delegate to him those administrative  
4 duties and responsibilities it finds advisable to carry out the  
5 purpose and intent of this chapter. Other staff may be employed as  
6 needed and shall be in the classified service.

7 Sec. 39.26.040. DUTIES OF BOARD. (a) In addition to other  
8 duties imposed on the board by this title it shall administer the policy  
9 established by this chapter which shall include but is not limited to

10 (1) certification or decertification of employee organiza-  
11 tions as exclusive representatives;

12 (2) conduct of representation elections;

13 (3) resolution of disputes, including mediation and binding  
14 arbitration activities;

15 (4) determination of appropriate collective negotiation  
16 units and employees covered by these units; and

17 (5) prevention of unfair practices.

18 (b) It is a primary responsibility of the board to determine  
19 whether or not a dispute is one that must be resolved by the legisla-  
20 ture. If the determination is made that the cause of the dispute is  
21 one that requires legislative action the parties may meet and confer  
22 and agree to recommend proper legislative action but they may not  
23 include the disputed matter in a contract until proper legislative  
24 action has been taken.

25 (c) The board may conduct hearings, issue cease and desist orders,  
26 conduct elections, and take affirmative action to effectuate the  
27 policies of this chapter. The board also has the power to petition the  
28 courts for enforcement of its orders and for appropriate relief or  
29 restraining orders.

1           Sec. 39.26.050. EMPLOYEE RIGHTS. (a) An employee has the right  
2 to organize, join and participate in, or refrain from joining, organi-  
3 zing, or participating in an employee organization of his own choosing.

4           (b) Nothing in this chapter precludes an employee, regardless of  
5 membership or nonmembership in an employee organization, from bringing  
6 matters of personal concern to the attention of appropriate officials  
7 in accordance with applicable law, regulations or established policy,  
8 or from acting on his own behalf or choosing his own attorney or agent  
9 in a grievance or appellate action; or precludes an employee who is  
10 not a member of an employee organization from having and enjoying,  
11 without discrimination, all employment rights and benefits granted by  
12 the public employer.

13           Sec. 39.26.060. EXCLUSIVE REPRESENTATIVE. (a) An employee  
14 organization designated or selected by a majority of the employees  
15 voting in a representation election provided for in sec. 40(a)(2) of  
16 this chapter in an appropriate representation unit shall be the  
17 exclusive representative of all the employees in the unit for the  
18 purpose of this chapter, and as such, is entitled to recognition by  
19 all departments, divisions, institutions, agencies, and appointing  
20 authorities as the exclusive representative, and is entitled to confer  
21 upon and present employee grievances, and to act for and to negotiate  
22 agreements covering all employees in the unit. It is responsible for  
23 representing the interest of all employees in the unit. Representation  
24 shall be impartial as to all employees in a negotiation unit but  
25 nothing in this chapter precludes the exclusive representative from  
26 negotiating for an agency shop.

27           (b) If an employee organization claims the right to act as  
28 exclusive representative for certain employees, it may file a petition  
29 with the board, setting out its claims and describing the unit for

1 which it claims the right of exclusive representation. A petition may  
2 not be considered by the board unless the organization has at least  
3 30 per cent of the employees as members in the claimed unit. The  
4 board shall notify the employees sought to be represented, investigate  
5 the petition, and may, if necessary, conduct a hearing on the appropri-  
6 ateness of the unit. If the board finds that the unit claimed or  
7 some other unit is appropriate and if authenticated dues payment  
8 records support the claim, it shall certify the results of the investi-  
9 gation to the chief executive officer of the unit, and the employee  
10 organization.

11 (c) Employees in a unit may, by filing with the board a petition  
12 signed by 30 per cent or more of the employees in the unit, seek to  
13 revoke a prior selection of an employee organization as their exclusive  
14 representative. The board, upon receipt of such a petition shall direct  
15 an election by secret ballot and certify the results of the election.  
16 However, no election may be conducted in a unit in which a contract is  
17 in existence with a properly certified exclusive representative.

18 Sec. 39.26.070. COLLECTIVE NEGOTIATIONS. (a) The intent of  
19 all negotiations shall be to develop a creative process of joint con-  
20 sultation and decision making, through open discussion, fact finding  
21 and research to resolve issues in the absence of crisis.

22 (b) The chief executive officer of a unit is empowered to negoti-  
23 ate and enter into a written agreement, for a term not to exceed three  
24 years, with a certified exclusive employee organization, covering the  
25 conditions of employment of employees in the unit.

26 (c) An exclusive representative organization selected in accor-  
27 dance with the provisions in this chapter which desires to negotiate  
28 collectively over conditions of employment shall file a written request  
29 with the board and the chief executive of the appropriate unit.

1 (d) The chief executive or his authorized representative, upon  
2 receipt of a request to negotiate from a properly designated exclusive  
3 representative, shall begin to negotiate in a timely fashion with the  
4 representatives of the organization. Unless there is mutual consent  
5 negotiations shall begin no later than 10 days after receipt of the  
6 request to negotiate.

7 (e) The procedures for negotiations may be established by the  
8 parties concerned to provide for the resolution of their disagreements.

9 (f) If an impasse in the negotiations occurs, the parties may  
10 invite the board or another mutually agreeable party to mediate the  
11 dispute.

12 (g) If mediation fails to bring agreement, either party may,  
13 60 days or more from the date of the first negotiating meeting, request  
14 any or all unresolved issues be submitted to a fact finder by notifying  
15 the other party of its intention and setting out in writing the issues  
16 to be submitted.

17 (h) Within five calendar days after receipt of the written  
18 request, the parties shall select a person to serve as a fact finder  
19 and obtain a commitment from this person to serve. If the parties  
20 are unable to agree or to obtain a fact finder, the board shall design-  
21 nate a fact finder to serve.

22 (i) The fact finder shall hold informal hearings as necessary,  
23 and provide adequate opportunity to all parties to testify fully on  
24 and present evidence regarding their respective positions. The fact  
25 finder has the power to administer oaths, take testimony or depositions  
26 of persons under oath, hold hearings, subpoena witnesses, and require  
27 the production and examination of books or papers from any source  
28 relating to the matters before the fact finder.

29 (j) The fact finder shall make a written report recommending a

1 reasonable basis for settlement of the disagreement within 15 days  
2 after his appointment.

3 (k) When prepared the written report shall be first furnished  
4 to the respective parties to the impasse, and the board shall, five  
5 days after delivery of the report, make it available to the public  
6 and issue its final decision on the dispute within 20 days of receipt  
7 of the fact finder's report if the impasse remains unresolved.

8 (l) One-half of a fee, expense, or other charge made by the fact  
9 finder shall be paid by the employee organization and one-half paid by  
10 the unit of government involved.

11 (m) Nothing in this section may be construed to prohibit the  
12 parties from voluntarily agreeing to submit any or all of the issues in  
13 dispute to final and binding arbitration at any stage in the negotiation  
14 procedures.

15 Sec. 39.26.080. GOOD FAITH NEGOTIATIONS. The chief executive  
16 officer of a unit or his legally authorized representative is required  
17 to meet with the legally authorized representative of a certified  
18 exclusive employee organization, upon request, and to negotiate in  
19 good faith for the purpose of reaching agreement, as provided for in  
20 sec. 60 of this chapter. A violation of this section is an unfair  
21 practice, and the officer is subject to appropriate discipline by the  
22 board.

23 Sec. 39.26.090. STRIKES PROHIBITED. An employee who is found by  
24 the board to have engaged, participated, or assisted in a strike  
25 against a public employer may be suspended or terminated from his  
26 public employment on the board's recommendation.

27 Sec. 39.26.100. PAYROLL DEDUCTIONS. (a) An employee organization  
28 legally selected as the exclusive representative is entitled to payroll  
29 deductions of membership dues and other employee benefits upon

1 presentation of deduction authorization cards signed by individual  
2 employees or upon the signing of a contract between the public  
3 employer and the exclusive representative which provides for an agency  
4 shop.

5 (b) Nothing in this section prevents an employee organization  
6 from representing member employees in units not covered by an exclusive  
7 representative agreement and from receiving payroll deductions in  
8 these units.

9 Sec. 39.26.110. DEFINITIONS. In this chapter unless the context  
10 requires otherwise

11 (1) "agency shop" means a contractual agreement between the  
12 public employer and the exclusive representative providing for the  
13 payment of compensable service fees to the representative for services  
14 rendered to all employees in a representation unit whether or not  
15 they are members of the employee organization having the right of  
16 exclusive representation;

17 (2) "board" means the Personnel and Public Employees  
18 Relations Board;

19 (3) "chief executive officer of a unit" means the governor  
20 or his designated representative if the unit includes employees in  
21 two or more state departments or institutions, the department head  
22 if the unit is a single department or institution, the division head  
23 if the unit is smaller than a department, the university or college  
24 president or his designated representative if the unit includes  
25 nonacademic employees of an institution of higher education, the  
26 school board or its designated representative if the unit includes  
27 nonacademic employees of a locally operated primary or secondary  
28 school, the governing body or their designated representative if the  
29 unit is an organized borough or political subdivision of the state,

1 or the chairman of the board or his designated representative if the  
2 unit is a public corporation;

3 (4) "conditions of employment" means wages, salaries,  
4 working conditions, hours or benefits, including health, welfare and  
5 retirement benefits;

6 (5) "employee" means all public employees of the state,  
7 organized boroughs, public corporations and political subdivisions of  
8 the state, but excludes all academic employees of institutions of  
9 higher education and nonacademic department heads and executive  
10 officers and all academic employees of state and locally operated  
11 schools and nonacademic department heads and executive officers and  
12 all persons elected by popular vote, or appointed to office under  
13 statute, ordinance or resolution for a specified term of office by  
14 the executive head or body of the public employer, personnel employed  
15 by the division of marine transportation as masters and members of  
16 the crews of vessels who operate the state ferry system and who are  
17 covered by collective bargaining agreements provided in AS 23.40.040,  
18 and state commissioners, deputy commissioners, directors and deputy  
19 directors who are not in the classified service;

20 (6) "employee organization" means a lawful association,  
21 federation or other organization of employees, which has as its primary  
22 purpose the improvement of working conditions and benefits among  
23 employees as defined in this chapter but does not include an organiza-  
24 tion which advocates the unlawful overthrow of the constitutional form  
25 of government of the United States or this state or which discriminates  
26 with regard to terms or conditions of membership because of race,  
27 creed, color or sex and does not include an organization which purports  
28 to, or endeavors to discipline a public employee member or any other  
29 public employee by fining, punishing, or penalizing other than through

1 cancellation of membership in the employee organization;

2 (7) "exclusive representative" means an employee organization  
3 lawfully certified by the board, to be the employee representative of  
4 a unit or lawfully selected by a representation election to be the  
5 employee representative of a unit and the exclusive representative shall  
6 be recognized as the representative for all employees in the unit;

7 (8) "collective negotiations" or "negotiations" means a  
8 mutual obligation of the public employer and the exclusive employee's  
9 representative to meet at reasonable times and negotiate in good faith  
10 with respect to wages, salaries, employee benefits, hours and all other  
11 conditions of employment to the extent that they can be negotiated  
12 without legislative action;

13 (9) "public employer" means the State of Alaska, all organ-  
14 ized boroughs, all public corporations and all political subdivisions  
15 of the state;

16 (10) "representation unit," "collective negotiation unit"  
17 or "unit" means a department, division, institution or subdivision of  
18 government, as the board determines upon petition to be appropriate,  
19 in order to assure employees their fullest freedom in exercising their  
20 rights under this title and to provide for efficient and harmonious  
21 administration of management-employee relations; it is the intent of  
22 this chapter to avoid excessive fragmentation and the board acting  
23 under this chapter may recognize a unit which is as broad in scope as  
24 an individual public employer as defined in (9) of this section;

25 (11) "unfair practice" means

26 (A) action by a public official or anyone acting for  
27 a public official as an employer to interfere with, discriminate,  
28 restrain or coerce employees in the exercise of their rights  
29 provided for in this chapter, or interference with the formation,

1 existence or administration of an employee organization or pro-  
2 viding preferential treatment for an employee based on his  
3 membership or nonmembership in an employee organization;

4 (B) use by a public employer of lockouts, contracting  
5 out of services or other similar practices, when the job can be  
6 performed adequately by public employees;

7 (C) failure of a public employer or an exclusive  
8 representative to comply with the provisions and terms of an agree-  
9 ment;

10 (D) action of an employee individually or collectively  
11 or in consort with others to coerce or intimidate an employee in  
12 the enjoyment of his legal rights or to encourage or engage in a  
13 strike or concerted refusal to perform their duties as public  
14 employees.

15 Sec. 39.26.120. SHORT TITLE. This chapter may be cited as the  
16 Public Employees Negotiations Act.

17 \* Sec. 2. AS 39.25.060(b) is amended to read:

18 (b) Members of the board shall be qualified electors of the state  
19 who are not employees or officers of the state. Members shall have a  
20 workable knowledge of and be favorably disposed to the merit principle  
21 of public employment. Not more than two members of the board may be  
22 members of the same political party.

23 \* Sec. 3. AS 39.25.060(c) is amended to read:

24 (c) A board member may be removed by the governor for cause  
25 during his term of office [HOLDS OFFICE AT THE PLEASURE OF THE GOVERNOR  
26 NOTWITHSTANDING THE MEMBER'S TERM].

27 \* Sec. 4. AS 39.25.060(d) is amended to read:

28 (d) A member of the board shall [MAY] receive \$100 a day compen-  
29 sation while performing his official duties [A PER DIEM ALLOWANCE] and

1 transportation expenses incurred in carrying out his duties.

2 \* Sec. 5. AS 39.25 is amended by adding a new section to read:

3 Sec. 39.25.065. DEFINITIONS. In this chapter unless the context  
4 requires otherwise

5 (1) "board" means the Personnel and Public Employees  
6 Relations Board;

7 (2) "cause" means

8 (A) action of a member which shows that he is consis-  
9 tently predisposed to make decisions on matters before the board  
10 indicating he does not approach each matter before the board in  
11 the impartial manner which his position demands;

12 (B) incompetency, which is the inability or the unin-  
13 tentional or intentional failure to perform the duties of the  
14 board;

15 (C) immorality, which is the commission of an act  
16 which, under the laws of the state, constitutes a crime involving  
17 moral turpitude; or

18 (D) malfeasance or misfeasance in office, which  
19 includes but is not limited to failure of the member to comply  
20 with the intent of this title and regulations lawfully promulgated  
21 under this title.

22 \* Sec. 6. This Act takes effect on January 1, 1972.