

1 IN THE SENATE

BY JOSEPHSON BY REQUEST

2 SENATE BILL NO. 240

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 a Public Employment Labor
7 Relations 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 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 and
16 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, and to maintain a favorable political
23 and social environment. The legislature declares that it is the
24 public policy of the state to promote harmonious and cooperative
25 relations between government and its employees and to protect the
26 public by assuring effective and orderly operations of government.
27 These policies are best effectuated by

28 (1) recognizing the right of public employees to organize
29 for the purpose of collective bargaining;

1 (2) requiring the public employers to negotiate with and
2 enter into written agreements with exclusive representatives on matters
3 of wages, hours, and other terms and conditions of employment;

4 (3) maintaining merit principles and the principle of equal
5 pay for equal work among public employees.

6 Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees
7 have, and shall be protected in the exercise of, the right of self-
8 organization and the right to form, join or assist any labor or employee
9 organization, to bargain collectively through representatives of their
10 own choosing, and to engage in lawful, concerted activities for the
11 purpose of collective bargaining or other mutual aid or protection.

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

19 Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) The department
20 shall investigate the petition when, in accordance with regulations and
21 as may be prescribed by the department a petition has been filed

22 (1) by an employee or group of employees or any labor
23 organization acting in their behalf alleging that 30 per cent of the
24 employees

25 (A) wish to be represented for collective bargaining
26 by a labor organization as exclusive representative, or

27 (B) assert that the labor organization which has been
28 certified or is currently being recognized by the public employer
29 as bargaining representative is no longer the representative of

1 the majority of employees in the unit; or

2 (2) by the public employer alleging that one or more labor
3 organizations has presented to it a claim to be recognized as a
4 representative of majority of employees in an appropriate unit.

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

23 (c) An election may not be directed in a bargaining unit or in
24 a subdivision of a bargaining unit in which, in the preceding 12-month
25 period, a valid election has been held.

26 (d) Nothing in this chapter may be construed to prohibit recog-
27 nition of a labor organization as the exclusive representative by a
28 public agency by mutual consent.

29 (e) No election may be directed by the department in a bargaining

1 unit in which there is in force and effect a valid collective bargain-
2 ing agreement. However, no collective bargaining agreement may bar an
3 election upon petition of persons in the unit but not parties to the
4 agreement if more than three years have elapsed since the execution of
5 the agreement or the last timely renewal, whichever was later.

6 Sec. 23.40.110. UNFAIR LABOR PRACTICES. (a) Public employers
7 or their representatives or their agents are prohibited from

8 (1) interfering, restraining or coercing employees in the
9 exercise of the rights guaranteed in sec. 80 of this chapter;

10 (2) dominating or interfering with the formation, existence
11 or administration of any labor organization;

12 (3) discriminating in regard to hire or tenure of employment
13 or any term or condition of employment to encourage or discourage
14 membership in a labor organization;

15 (4) discharging or otherwise discriminating against an
16 employee because he has signed or filed an affidavit, petition or
17 complaint or given information or testimony under secs. 70 - 260 of
18 this chapter;

19 (5) refusing to bargain collectively in good faith with a
20 labor organization which is the exclusive representative of employees
21 in an appropriate unit, including but not limited to the discussing
22 of grievances with the exclusive representative.

23 (b) Nothing in this chapter precludes a public employer from
24 making an agreement with a labor organization to require as a condition
25 of employment, membership in the labor organization which represents
26 the unit on or after the 30th day following the beginning of employment
27 or on the effective date of the agreement, whichever is the later.

28 (c) Labor organizations or their agents are prohibited from

29 (1) restraining or coercing

1 (A) employees in the exercise of the rights guaranteed
2 in sec. 80 of this chapter, and

3 (B) a public employer in the selection of his repre-
4 sentative for the purposes of collective bargaining or the
5 adjustment of grievances;

6 (2) refusing to bargain collectively in good faith with a
7 public employer, if they have been designated in accordance with the
8 provisions of secs. 70 - 260 of this chapter as the exclusive
9 representative of employees in an appropriate unit.

10 (d) For the purposes of secs. 70 - 260 of this chapter, to
11 bargain collectively is the performance of the mutual obligation of
12 the public employer or his designated representatives and the
13 representative of the employees to meet at reasonable times, including
14 meetings in advance of the budget-making process and negotiate in
15 good faith with respect to wages, hours and other conditions of employ-
16 ment, or the negotiation of an agreement, or negotiation of a question
17 arising under an agreement and the execution of a written contract
18 incorporating an agreement reached if requested by either party, but
19 these obligations do not compel either party to agree to a proposal
20 or require the making of a concession.

21 Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

22 If a verified written complaint is filed by or for a person claiming
23 to be aggrieved by a prohibited practice, or a written accusation that
24 a person subject to secs. 70 - 260 of this chapter has engaged in a
25 prohibited practice is filed with the department, the department shall
26 investigate the complaint or accusation. If it determines after the
27 preliminary investigation that probable cause exists in support of the
28 complaint or accusation, it shall try to eliminate the prohibited
29 practice by informal methods of conference, conciliation, and

1 persuasion. Nothing said or done during this endeavor may be used as
2 evidence in a subsequent proceeding.

3 Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the department
4 fails to eliminate the prohibited practice by conciliation and to
5 obtain voluntary compliance with secs. 70 - 260 of this chapter, or if,
6 before it attempts conciliation, it considers that the circumstances
7 warrant, it shall serve a copy of the complaint or accusation upon the
8 respondent. The complaint or accusation and the subsequent procedures
9 shall be handled in accordance with the Administrative Procedure
10 Act (AS 44.62).

11 Sec. 23.40.140. ORDERS AND DECISIONS. If the department finds
12 that a person named in the written complaint or accusation has engaged
13 in a prohibited practice, the department shall issue and serve on the
14 person an order or decision requiring him to cease and desist from the
15 prohibited practice and to take affirmative action which will carry
16 out the policies of secs. 70 - 260 of this chapter. If the department
17 finds that no person named in the complaint or accusation has engaged
18 or is engaging in a prohibited practice, the department shall state
19 its findings of fact and issue an order dismissing the complaint or
20 accusation.

21 Sec. 23.40.150. ENFORCEMENT BY INJUNCTION. The department may
22 apply to the superior court in the judicial district in which the
23 prohibited practice occurred for an order enjoining the prohibited acts
24 specified in the order or decision of the department. Upon a showing
25 by the department that the person has engaged or is about to engage
26 in the practice, an injunction, restraining order, or other order which
27 is appropriate may be granted by the court and shall be without 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 -
2 260 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,
6 and 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
9 of hearing.

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

14 Sec. 23.40.170. REGULATIONS. The department may adopt, amend,
15 or repeal regulations under the Administrative Procedure Act (AS 44.62)
16 to carry out the provisions of secs. 70 - 260 of this chapter.

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

21 Sec. 23.40.190. ARBITRATION. (a) Parties to a labor dispute
22 arising from the interpretation or application of a collective bargain-
23 ing agreement affecting terms and conditions of public employment may
24 agree in writing to have the department name arbitrators in all or any
25 part of the dispute. The department shall appoint as arbitrators only
26 competent, impartial and disinterested persons. Proceedings in arbi-
27 tration shall be conducted in accordance with the Uniform Arbitration
28 Act (AS 09.43) where applicable.

29 (b) The parties to a collective bargaining agreement may provide

1 in the agreement a contract for arbitration to be conducted solely
2 according to the Uniform Arbitration Act (AS 09.43) if the Act is
3 incorporated into the agreement or contract by reference.

4 Sec. 23.40.200. MEDIATION. The department may appoint a compe-
5 tent, impartial, disinterested person to act as mediator in any labor
6 dispute either on its own initiative or on the request of one of the
7 parties to the dispute; or the parties may select a mediator by agree-
8 ment or mutual consent. It is the function of the mediator to bring
9 the parties together voluntarily under such favorable auspices as will
10 tend to effectuate settlement of the dispute, but neither the mediator
11 nor the department have any power of compulsion in mediation proceed-
12 ings.

13 Sec. 23.40.210. FACT FINDING. (a) If, after a reasonable period
14 of negotiation over the terms of a collective bargaining agreement, a
15 deadlock exists between a public employer and a labor or employee
16 organization, either party or the parties jointly may request the
17 department in writing to initiate fact finding in order to make recom-
18 mendations to resolve the existing deadlock.

19 (b) Upon receipt of a request to initiate fact finding, the
20 department shall make an investigation, either informally or by a
21 formal hearing, to determine whether the parties are, after a reasonable
22 period of negotiations, deadlocked with respect to a dispute. After
23 its investigation the department shall certify the results of the
24 investigation. If the certification requires that fact finding be
25 initiated, the department shall appoint from a list established by the
26 department a qualified disinterested person or, when jointly requested
27 by the parties, a three-member panel, to function as a fact finder.

28 (c) The fact finder shall establish times and place of hearings
29 and shall conduct the hearings under regulations established by the

1 department. Upon request, the department shall issue subpoenas for
2 hearings conducted by the fact finder. The fact finder may administer
3 oaths. Upon completion of the hearing, the fact finder shall make
4 written findings of fact and recommendations for solution of the
5 dispute and submit them to the parties and to the department. In making
6 his findings and recommendations, the fact finder shall take into
7 consideration, among other pertinent factors, the logical and tradi-
8 tional concept of public personnel and merit system administration
9 concepts and principles vital to the public interest in efficient and
10 economical governmental administration. Cost of fact finding proceed-
11 ings shall be divided equally between the parties.

12 (d) Nothing in this section prohibits a fact finder from
13 mediating the dispute in which he is involved at any time before the
14 issuance of his recommendations.

15 (e) Within 30 days of the receipt of the fact finder's recom-
16 mendations or within a time period agreed upon by the parties, both
17 parties shall advise each other, in writing, as to their acceptance
18 or rejection, in whole or in part, of the fact finder's recommendations
19 and, at the same time, send a copy of the notification to the depart-
20 ment. Failure to comply with the requirements of this section by the
21 employer or employee representative is a violation of sec. 110(d) of
22 this chapter.

23 Sec. 23.40.220. AGREEMENTS. Upon the completion of negotiations
24 between a labor or employee organization representing a majority of
25 employees in a collective bargaining unit and a public employer, if a
26 settlement is reached, the employer shall reduce it to writing in the
27 form of an agreement. The agreement may include a term for which it
28 will remain in effect, not to exceed three years. Either party to the
29 agreement has a right of action to enforce the agreement by petition

1 to the department.

2 Sec. 23.40.230. STRIKES. (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 includes police and fire
12 protection employees and jail, prison and other correctional institu-
13 tion employees. Strikes by employees in this class are prohibited.
14 Upon a showing by a public employer or the department that employees
15 in this class are engaging or about to engage in a strike, an injunction,
16 restraining order, or other order which may be appropriate shall be
17 granted by the superior court in the judicial district in which the
18 strike is occurring or is about to occur. If an impasse or deadlock
19 is reached in collective bargaining between the public employer and
20 employees in this class, and mediation and fact finding have been
21 utilized without resolving the deadlock, the parties shall submit to
22 arbitration to be carried out under the provisions of the Uniform
23 Arbitration Act (AS 09.43).

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

1 public. The public employer or the department may apply to the
2 superior court in the judicial district in which the strike is occurring
3 for an order enjoining the strike. A strike may not be enjoined unless
4 it can be shown that it has begun to threaten the health, safety or
5 welfare of the public. A court, in deciding whether or not to enjoin
6 the strike, shall consider the total equities in the particular class.
7 "Total equities" includes not only the impact of a strike on the
8 public but also the extent to which employee organizations and public
9 employers have met their statutory obligations. If an impasse or
10 deadlock still exists after the issuance of an injunction, the parties
11 shall submit to arbitration to be carried out under the provisions of
12 the Uniform Arbitration Act (AS 09.43).

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

18 Sec. 23.40.240. UNION DUES, DEDUCTION AND AUTHORIZATION. Upon the
19 written authorization of a public employee within a bargaining unit,
20 the public employer shall deduct from the payroll of the public employee
21 the monthly amount of dues as certified by the secretary of the
22 exclusive bargaining representative and shall deliver it to the trea-
23 surer of the exclusive bargaining representative.

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

26 (1) "collective bargaining" means the negotiating by the
27 public employer, by its officers and agents, and a majority of its
28 employees, by their representatives in an appropriate collective
29 bargaining unit, concerning terms and conditions of employment of all

1 employees in the unit in a mutual effort to reach an agreement with
2 reference to the subject under negotiation;

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

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

8 (4) "labor organization" means an organization of any kind
9 in which employees participate and which exists for the primary purpose
10 of dealing with employers concerning grievances, labor disputes, wages,
11 rates of pay, hours of employment or conditions of employment;

12 (5) "public employee" means any employee of a public employer
13 whether or not in the classified service of the public employer, except
14 elected or appointed officials;

15 (6) "public employer" means the State of Alaska or a politi-
16 cal subdivision of the state, including, without limitation, a town,
17 city, borough, district, school board, board of regents, public and
18 quasi-public corporation, housing authority or other authority estab-
19 lished by law, and a person designated by the public employer to act
20 in its interest in dealing with public employees.

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

23 * Sec. 2. AS 23.40.010 is repealed.
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