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1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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CS FOR SENATE BILL NO. 78 (HESS) am

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to teachers' collective bargaining
agreements; and providing for an effective date."

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

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* Section 1. AS 14.20 is amended by adding a new section to Article 6

10 to read:

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Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds

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that certificated public school employees are entitled to participate

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in formulating decisions that pertain to their employment and to the

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fulfillment of their professional duties. Effective and responsive

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administration of public schools is most readily obtained through the

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negotiation of labor agreements that incorporate both managerial and

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employee perspectives. The legislature further finds that providing

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for harmonious and cooperative relations between school boards and

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employee organizations will promote public education in the state.

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Accordingly, the legislature declares that it is in the best interest

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of the state to guarantee certificated public school employees the

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opportunity to form employee organizations and to negotiate with

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respect to the terms and conditions of their employment.

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* Sec. 2. AS 14.20.550 is amended to read:

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Sec. 14.20.550. NEGOTIATION WITH CERTIFICATED EMPLOYEES. (a)

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Each city, borough and regional school board, shall negotiate with its

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certificated employees in good faith on matters pertaining to their

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employment and the fulfillment of their professional duties.

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(b) In AS 14.20.540 - 14.20.610, "certificated employees"

1 includes teachers, counselors, principals, assistant principals, and
2 other certificated administrative personnel, but does not include
3 superintendents, assistant superintendents, and other certificated
4 executive administrative personnel who the educational employees labor
5 relations agency determines to be inappropriate members of an employee
6 negotiating unit.

7 * Sec. 3. AS 14.20.560 is repealed and reenacted to read:

8 Sec. 14.20.560. NEGOTIATING UNIT. (a) The educational employ-
9 ees labor relations agency shall decide in each case, in order to
10 assure to employees the fullest freedom in exercising the rights
11 provided under AS 14.20.540 - 14.20.610, the unit appropriate for the
12 purposes of negotiation, based on such factors as community of inter-
13 est, wages, hours, and other working conditions of the employees in-
14 volved, the history of negotiating, and the desires of the employees.
15 Negotiating units shall be as large as is reasonable and unnecessary
16 fragmenting shall be avoided.

17 (b) Upon petition for certification by 25 percent of the employ-
18 ees in a proposed negotiation unit and if the educational employees
19 labor relations agency has reasonable cause to believe that a question
20 of representation exists, the agency shall provide for an appropriate
21 hearing upon due notice. If the educational employees labor relations
22 agency finds that there is a question of representation, the educa-
23 tional employees labor relations agency shall direct an election by
24 secret ballot to determine whether or by which organization the em-
25 ployees desire to be represented and shall certify the results of the
26 election. This section does not prohibit the waiving of hearings by
27 stipulation for the purpose of a consent election or voluntary certi-
28 fication in conformity with the regulations of the educational employ-
29 ees labor relations agency or an election in a negotiating unit agreed

1 upon by the parties. The educational employees labor relations agency
2 shall determine who is eligible to vote in an election and shall adopt
3 rules governing the election. In an election in which none of the
4 choices on the ballot receives a majority of the votes cast, a runoff
5 election shall be conducted. The ballot in the runoff election shall
6 provide for selection between the two choices receiving the largest
7 and the second largest number of valid votes cast in the election. If
8 an organization receives the majority of the votes cast in the elec-
9 tion, it shall be certified by the educational employees labor rela-
10 tions agency as the exclusive representative of all the employees in
11 the negotiating unit.

12 (c) An election may not be held in a negotiating unit or in a
13 subdivision of a negotiating unit if a valid election has been held
14 within the preceding 12 months.

15 (d) This section does not prohibit recognition of an organiza-
16 tion as the exclusive representative by a board by mutual consent.

17 (e) An election may not be directed by the educational employees
18 labor relations agency in a negotiating unit in which there is in
19 force a valid agreement, except during the 90-day period preceding the
20 expiration date of the agreement. However, an agreement may not bar
21 an election upon petition of persons in the negotiating unit but not
22 parties to the agreement if more than three years have elapsed since
23 the execution of the agreement or the last timely renewal, whichever
24 was later.

25 (f) This section does not prohibit certificated administrative
26 personnel groups from choosing by secret ballot to negotiate indepen-
27 dently of other personnel. If certificated administrative personnel
28 seek to negotiate independently of other certificated employees, the
29 educational employees labor relations agency shall review the

1 submitted representation petition and, if 25 percent of the employees
2 in a proper negotiating unit sign the petition, the agency shall
3 conduct a representation election.

4 * Sec. 4. AS 14.20 is amended by adding a new section to read:

5 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board
6 shall, upon the written request of an employee bargaining organiza-
7 tion, meet with the representative of the organization within 20 days
8 after the request at a time and place to be mutually agreed upon. In
9 the same manner, representatives of an employee bargaining organiza-
10 tion are required to meet with a school board or its representatives
11 within 20 days after receiving a written request.

12 (b) Notwithstanding AS 44.62.310, a negotiating meeting may be
13 held in executive session upon mutual agreement of both parties, but
14 all final agreements shall be made at a public meeting of the school
15 board.

16 * Sec. 5. AS 14.20.570(a) is amended to read:

17 (a) Upon the written request for mediation by an employee bar-
18 gaining agency or a school board, and upon certification by the re-
19 questing party that the parties cannot agree on an independent private
20 mediator and that good faith negotiations have terminated in an im-
21 passe, the following shall occur [OCCURS]:

22 (1) Within seven days of the certification the requesting
23 party shall ask the United States Federal Mediation and Conciliation
24 Service to serve as the agency to resolve the dispute. The requesting
25 party shall notify the educational employees labor relations agency
26 that the parties have requested a mediator.

27 (2) The mediator shall chair all mediation meetings between
28 the disputing parties and attempt to resolve the differences between
29 the disputing parties and reach common acceptance of terms and

1 conditions or other items in dispute wherever possible.

2 [(3) WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES
3 TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS,
4 CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED
5 THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTEND-
6 ED.]

7 (3) [(4)] Each party to the dispute may select a team [OF
8 NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and
9 position of the group they represent [,] to the mediator.

10 * Sec. 6. AS 14.20.580 is repealed and reenacted to read:

11 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify
12 the educational employees labor relations agency when the parties
13 jointly agree, or when the mediator independently determines, that
14 further mediation would not promote resolution of the dispute. Fol-
15 lowing mediation, the parties shall observe a 10-day cooling-off
16 period.

17 * Sec. 7. AS 14.20 is amended by adding new sections to read:

18 Sec. 14.20.581. LOCAL OPTION. (a) A school board after public
19 hearing shall by written resolution decide whether last best offer
20 mediated arbitration or the right to strike shall follow the mediation
21 procedure described in AS 14.20.570. The resolution shall be adopted
22 before the mediation process begins.

23 (b) A resolution adopted in accordance with this section is
24 binding until an agreement is reached. However, the parties may
25 mutually agree to modify the option selected under this section.

26 Sec. 14.20.582. EMPLOYEE STRIKES. (a) If the board adopts a
27 resolution that authorizes employees to engage in a strike, the
28 employees may engage in a strike if a majority of the employees who
29 are members of the bargaining agency elect to do so.

1 (b) If the employees elect not to strike, the school board is
2 not required to participate in arbitration. This subsection does not
3 prohibit the parties from requesting continued assistance from the
4 educational employees labor relations agency in the resolution of the
5 dispute.

6 (c) During a strike described in (a) of this section, an
7 aggrieved person may apply to the superior court in the judicial
8 district in which the strike is occurring for an order enjoining the
9 strike. A strike may not be enjoined unless it can be shown that it
10 threatens the health, safety, or welfare of the public. A court, in
11 deciding whether to enjoin the strike, shall consider the total equi-
12 ties in each particular case. Total equities includes the impact of a
13 strike on the public as well as the extent to which employee organiza-
14 tions and public employers have met their statutory obligations. If
15 an impasse or deadlock still exists after the issuance of an injunc-
16 tion, the parties shall submit to arbitration under AS 14.20.583.

17 (d) The educational employees labor relations agency shall
18 establish procedures under which the bargaining agent shall conduct
19 the election described in this section.

20 Sec. 14.20.583. ARBITRATION. (a) The parties shall submit to
21 last best offer mediated arbitration if the board adopts a resolution
22 under AS 14.20.581 that precludes an employee strike, or if arbi-
23 tration results under AS 14.20.582(a) or (c). An agreement between a
24 board and an employee group shall include a procedure to promptly
25 select an arbitrator. If the parties are unable to agree on a contrac-
26 tual provision that provides for the selection of an arbitrator, the
27 educational employees labor relations agency shall direct the parties
28 to use the services of and comply with the procedures of the Federal
29 Mediation and Conciliation Services or the American Arbitration

1 Association in the selection of an arbitrator. An arbitrator selected
2 under this subsection shall be a resident of the state.

3 (b) In last best offer mediated arbitration under this section
4 each party shall submit a final offer on all issues in dispute. Each
5 party shall submit to the arbitrator oral or written evidence in
6 support of its position and shall be given an opportunity to respond
7 to the presentation of evidence by the other party. The arbitrator
8 may propose compromises to points in dispute. At the request of
9 either party, or on the motion of the arbitrator, the arbitrator may
10 conduct a public meeting for the purpose of allowing the parties to
11 present and explain their positions and final offers. The arbitrator
12 shall allow each party to revise its last best offer before final
13 submission to the arbitrator for decision.

14 (c) The decision of the arbitrator shall take into consideration

15 (1) the history of negotiations between the parties before
16 entering arbitration;

17 (2) the public interest and financial abilities of the
18 school district;

19 (3) the interest and welfare of the employee group;

20 (4) changes in the cost of living;

21 (5) the existing employment conditions of the employee
22 group compared with those of similar groups; and

23 (6) the salaries, fringe benefits and other conditions of
24 employment prevailing in the state labor market.

25 (d) The arbitrator shall without modification adopt the last
26 best offer of one of the parties and issue a final and binding deci-
27 sion not more than 10 days after the parties have presented their last
28 best offer.

29 (e) The parties shall share the cost of the arbitrator equally.

1 Sec. 14.20.584. ARBITRATION AWARD. (a) On application of a
2 party, the superior court shall confirm an award unless grounds are
3 urged for vacating, modifying, or correcting the award.

4 (b) On application of a party, the court shall vacate an award
5 if

6 (1) the award was procured by fraud or other undue means;

7 (2) there was evident partiality, corruption, or misconduct
8 by an arbitrator prejudicing the rights of a party;

9 (3) the arbitrator exceeded its powers;

10 (4) the arbitrator refused to postpone the hearing upon
11 sufficient cause being shown for postponement, refused to hear evi-
12 dence material to the controversy, or otherwise conducted the hearing
13 to substantially prejudice the rights of a party.

14 (c) The fact that the relief ordered by an arbitrator could not
15 or would not be granted by a court is not ground for vacating or
16 refusing to confirm the award.

17 (d) An application to the superior court under this section
18 shall be made within 90 days after delivery of a copy of the award to
19 the applicant. However, if the application is predicated upon cor-
20 ruption, fraud, or other undue means by either the opposing party or
21 an arbitrator, it shall be made within 90 days after the grounds are
22 known or should have been known.

23 (e) In vacating an award the court may order a rehearing before
24 a new arbitrator chosen as provided in the agreement, or in the ab-
25 sence of a provision in the agreement, as provided under AS 14.20.583.
26 If the award is vacated on grounds set out in (b)(3) or (4) of this
27 section, the court may order a rehearing before an arbitrator who made
28 the award or before a successor appointed as provided in this sub-
29 section. The time within which the original agreement of the parties

1 requires an arbitration award to be made is applicable to the rehear-
2 ing and commences from the date of the order requiring a rehearing.

3 (f) If the application to vacate is denied and a motion to
4 modify or correct the award is not pending, the court shall confirm
5 the award.

6 Sec. 14.20.585. MODIFICATION OR CORRECTION OF AWARD. (a) On
7 application of a party made within 90 days after delivery of a copy of
8 the award to the applicant the superior court shall modify or correct
9 the award if

10 (1) there was an evident miscalculation of figures or an
11 evident mistake in the description of a person or real or personal
12 property referred to in the award;

13 (2) an arbitrator has made an award concerning a matter not
14 submitted to the arbitrator and the award may be corrected without
15 affecting the merits of the decision upon the issues submitted; or

16 (3) the award is imperfect in a matter of form not affect-
17 ing the merits of the controversy.

18 (b) If the application of a party under this section is granted,
19 the court shall modify and correct the award to effect its intent and
20 shall confirm the award as modified and corrected. If the application
21 is denied, the court shall confirm the award as made.

22 (c) An application to modify or correct an award may be joined
23 in the alternative with an application to vacate the award.

24 * Sec. 8. AS 14.20.590 is amended to read:

25 Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements
26 executed after July 1, 1975, shall define "grievances" and provide for
27 grievance procedures for the certificated staff. The grievance
28 procedures shall provide that the final step in the procedure shall be
29 binding arbitration. The negotiations agreement shall provide a

1 method for the selection of an arbitrator to resolve grievances.

2 * Sec. 9. AS 14.20.600 is amended to read:

3 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. (a) Nothing in
4 AS 14.20.550 - 14.20.590 prohibits an employee from addressing a
5 school board, as an individual, through the regular procedures of the
6 school board for hearing individual cases.

7 (b) The educational employees labor relations agency consistent
8 with the purposes of AS 14.20.540 - 14.20.610 shall set forth proce-
9 dures to safeguard the rights of nonassociation of employees having
10 bona fide religious convictions.

11 * Sec. 10. AS 14.20 is amended by adding new sections to read:

12 Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY.

13 (a) There is established an educational employees labor relations
14 agency which consists of five members. The three members of the state
15 labor relations agency (AS 23.40) are members of the educational
16 employees labor agency. The governor shall appoint two additional
17 members to the agency one each from lists of nominees submitted by the
18 National Education Association of Alaska and the Alaska Association of
19 School Boards, each of whom must have at least three years experience
20 in matters relating to education in Alaska. The two gubernatorial
21 appointees to the educational employees labor relations agency serve
22 at the pleasure of the governor.

23 (b) Members of the educational employees labor relations agency
24 receive no compensation for their services, but are entitled to per
25 diem and travel expenses authorized for boards and commissions.

26 (c) The educational employees labor relations agency may employ
27 staff assistance as it considers necessary to implement the provisions
28 of AS 14.20.540 - 14.20.610.

29 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The

1 educational employees labor relations agency shall perform the func-
2 tions described in AS 23.40.120 - 23.40.180 to carry out the provi-
3 sions of AS 14.20.540 - 14.20.610.

4 (b) The prohibition of unfair labor practices, as described in
5 AS 23.40.110, applies to a school board and an employee organization.

6 * Sec. 11. AS 14.20.610 is amended to read:

7 Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in
8 AS 14.20.540 - 14.20.600 [14.20.550 - 14.20.600] may be construed as
9 an abrogation or delegation of the legal responsibilities, powers, and
10 duties of the school board including its right to make final decisions
11 on educational policies.

12 * Sec. 12. An existing school board shall make the local option deci-
13 sion between last best offer mediated arbitration or the right to strike
14 required under AS 14.20.581(a) added by sec. 8 of this Act within 90 days
15 after the effective date of this Act.

16 * Sec. 13. This Act does not modify or terminate a negotiating unit or
17 agreement in existence on the effective date of this Act.

18 * Sec. 14. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).