HB
453

House Health, Education & Social Services Committee Meeting/Hearing on _____ Date: _____

	Name	Address and Phone	Organization/Self	For/Against or Observing
1/	Cherie Shelley	340 N Franklin Juneau 586-2334	APEA	HB 453
2/				
3/				
4/				
5/				
6/				
7/	Bob Munnerlyn	207 Seward Bldg Juneau 586-3090	NEA - Alaska	
8/	Bob Van Houten	207 Seward Bldg - JNU	NEA - AK	
9/	Bois Greene	204 No. FRANKLIN	AASIS	
10/	Ken Spray	114 2nd ST	Local 71	HB453 FOR
11/	Dale Cheek	Dept of Labor	BX 630 Juneau Ak 99811	HB 453
12/	Gayle Schoepflin	2970 Douglas Highway Juneau AK 99801	Seventh-day Adventist Church	HB 453 amend
13/				

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M January 30, 1980

SUBJECT: Analysis of certain school collective bargaining cases.

TO: Representative Thelma Buchholdt
Chairman, House HESS Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

You have requested an analysis of Kenai Peninsula Borough v. Kenai Peninsula Ed, 572 P.2d 416 (Alaska 1977) and Kenai Peninsula Borough Sch. Dist. Etc, 590 P.2d 437 (Alaska 1979).

I am enclosing an analysis of the 1977 case from the Report of Examinations of Court Decisions, 1978 prepared by the Legislative Affairs Agency.

As an added note on the case, the Court expressed some dissatisfaction with AS 14.20.550 and AS 14.20.610 saying:

> "An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. In view of the concerns expressed on pages 419, 420 supra, we conclude that the other specific items listed on page 422 are, under the existing statutory language, non-negotiable.
>
> "It would be helpful if the legislature, through future enactments, provided more specific guidance on a number of the items which the unions seek to negotiate. Lacking that guidance, however, we cannot confidently say that the legislature intended any of these items to be bargainable. We cannot, therefore, read the statutes expansively as to the scope of what is negotiable."

The 1979 case involved the labor relations policy adopted by the Kenai Peninsula Borough School Board which included a provision that the District would not negotiate (1) with any individual who was not an employee of the School District nor (2) with an employee organization affiliated with any state or national labor union.

Two questions were involved. The first question was whether the restriction violated the rights of the employees under the first amendment to the United States Constitution.

The Court held that these restrictions on affiliation and choice of bargaining representative were unconstitutional. After examination of the facts and case law, the court stated:

> "As we read these decisions they posit a constitutional framework in which employees are free to organize and select an advocate, and from that guarantee of collective strength then lobby their various legislatures for particular rights in the employer/employee relationship. See, e.g., Atkins v. Charlotte, 296 F.Supp. 1068, 1077 (W.D.N.C. 1968). The virtue of that view is its consistent emphasis on freedom of action, and its antagonism to coercion. And within that perspective it does not follow at all, that once bargaining rights are successfully secured, as in the instant case, the constitutional rights disappear.
>
> "We affirm the superior court's judgment that the School District's policy restrictions on affiliation and choice of bargaining representative are violative of first amendment freedoms guaranteed to the non-certificated school employees."

The second question was whether these portions of the policy were severable, that is whether the remaining parts are so independent that it may be presumed that the district would have enacted the valid parts without regard to the invalid parts. The majority found the provision severable in context. Justice Rabinowitz dissented from this part of the decision finding the provisions "a paramount part of the structure upon which the Board's labor policy rested."

Copies of the decisions are enclosed.

BGB:jdn

Enclosures

KENAI PENINSULA BOROUGH SCHOOL DISTRICT, Appellant,

v.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT CLASSIFIED ASSOCIATION, Appellee.

No. 3800.

Supreme Court of Alaska.

Feb. 16, 1979.

An association recognized by a school district as the employee bargaining agent brought suit to compel the district to resume negotiations. The State of Alaska Superior Court, Third Judicial District, Peter J. Kalamarides, J., granted summary judgment to the association, finding restrictive provisions on the school board's labor policy unconstitutional but severable. The school district appealed. The Supreme Court, Matthews, J., held that: (1) the school district's asserted interest in needing to exercise prospective control over vigor with which its noncertificated employees would be represented at the bargaining table was not a paramount interest which would override the fundamental right of employees to freely choose their representative, and the district's policy restrictions on affiliation and choice of bargaining representative were violative of the Fifth Amendment freedoms guaranteed to such employees, and (2) the unconstitutional restrictions were severable, leaving remainder of the policy intact and enforceable.

Affirmed.

Rabinowitz, J., dissented in part and filed opinion.

1. Constitutional Law ⇐91

Right of employees to self-organization and to select representatives of their own choosing without restraint or coercion by employer emanates from protections afforded by First Amendment. AS 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A. Const. Amend. 1.

2. Labor Relations ⇐86, 88

Right to affiliate with union of one's choice is right of public employee as well as private employee. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A. Const. Amend. 1.

3. Labor Relations ⇐88

Public employees are free to join national as well as local unions, and such freedom has been covered by state Public Employment Relations Act. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A.Const. Amend. 1.

4. Labor Relations ⇐86

Employee's freedom in affiliation and his right to freely choose his or her representative at bargaining table are inseparable under National Labor Relations Act. AS 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2).

5. Constitutional Law ⇐91
Labor Relations ⇐88

Right of school district's noncertificated employees to select representatives of their own choosing for collective bargaining, whether from local or national organizations, without restraint or coercion by the employer was grounded firmly in First Amendment. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A. Const. Amend. 1.

6. Constitutional Law ⇐82(1)

Government may not confer statutory right or benefit and withdraw it when beneficiary exercises constitutional prerogative, nor may government confer right and condition it unconstitutionally in same breath. U.S.C.A.Const. Amend. 1.

7. Constitutional Law ⇐82(11)

Government may not require individual to relinquish rights guaranteed him by First Amendment as condition of public employment. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29

U.S.C.A. § 152(2); U.S.C.A.Const. Amend. 1.

8. Labor Relations ⇐177

Test of constitutionality of school district's labor policy's restrictions was not rational relationship test, but, rather, to override presumpt. e First Amendment right, it was necessary that school district's interest be paramount interest of vital importance, and burden was on school district to show existence of such paramount interest. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A.Const. Amend. 1.

9. Constitutional Law ⇐275(5)
Labor Relations ⇐88

School district's asserted interest in needing to exercise prospective control over vigor with which its noncertificated employees would be represented at bargaining table was not paramount interest which would override fundamental right of employees to freely choose their representative, and district's policy restrictions on affiliation and choice of bargaining representative were violative of First Amendment freedoms guaranteed to such employees. AS 23.40.070, 23.40.250(5); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A.Const. Amend. 1.

10. Labor Relations ⇐364

In determining severability of school district's labor policy, portions of which had been found unconstitutional, it was necessary first to determine whether constitutional portions, standing alone, could be given legal effect, and secondly to identify primary purpose and determine whether such purpose could be achieved with invalid provisions stricken. AS 23.40.250(5).

11. Labor Relations ⇐364

Unconstitutional restrictions in school district's labor policy were severable, leaving remainder of policy intact and enforceable. AS 23.40.250(5).

Stephen C. Hillard, Allen McGrath, and Chris J. Rigos, of Graham & James, Anchorage, for appellant.

William Jermain, of Jermain, Dunnagan & Owens, Anchorage, for appellee.

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

MATTHEWS, Justice.

On February 17, 1975, the Kenai Peninsula Borough School Board adopted a comprehensive labor relations policy by which it bound itself to recognize and bargain collectively with an organization to be formed by a majority of the non-certificated school employees of the District, *e. g.*, secretarial, custodial, and cafeteria personnel. The policy stipulated that the District would not negotiate (1) with any individual who was not an employee of the School District, nor (2) with an employee organization affiliated with any state or national labor union.[1]

The appellee Association was duly organized and subsequently recognized by the District on February 21, 1977, as the employee bargaining agent. One month later, after negotiations had not progressed to its satisfaction, in part because the School District would not permit an employee consultant into the negotiating room, the Association affiliated with the Kenai Peninsula

1. The recognition paragraph of the policy reads:

> The Kenai Peninsula Borough School District will recognize, for the purpose of discussing and negotiating mutually satisfactory agreements on specified matters pertaining to their employment, the Kenai Peninsula Borough School District classified employee group which on a certain date has, as bona fide members, a majority of the total classified staff employed by the district on that date and which files a certified list of such members with the Superintendent of Schools. The Kenai Peninsula Borough School District will negotiate only with employees of the district. The Board will not recognize for the purpose of negotiations, any union or association which is not made up exclusively of Kenai Peninsula Borough School District employees nor will the Board negotiate with a local association affiliated with a state or national union.

Federation of Teachers, itself an affiliate of the American Federation of Teachers. The District then refused to negotiate further, demanding that the Association disaffiliate from the Kenai Peninsula Federation. The Association brought suit, seeking to compel the District to resume negotiations.

On September 19, 1977, Judge Peter J. Kalamarides granted summary judgment to the Association, finding the aforementioned restrictive provisions both unconstitutional and severable from the rest of the labor policy, and ordered the District to resume negotiations. The School District appeals from both judgments. We affirm.

I

It is conceded for purposes of this litigation that the right of the non-certificated school employees to compel their employer to bargain collectively arises solely out of the labor relations policy enacted by the District. These employees are not among those within the ambit of the National Labor Relations Act, 29 U.S.C. § 152(2) (1970), or the Alaska Public Employment Relations Act, AS 23.40.250(5), and the Association, in the face of much contrary authority, does not seek to establish such a right in the federal constitution. *See, e. g., University of New Hampshire Chap. of Am. Ass'n. of Univ. Profs. v. Haselton*, 397 F.Supp. 107, 109 (D.N.H.1975); *Atkins v. Charlotte*, 296 F.Supp. 1068, 1077 (W.D.N.C.1969).

The first question that confronts us then, is whether the School District can grant non-certificated employees the right to bargain collectively and simultaneously decree whom the employees may send to the bargaining table as their representative, and with whom they may affiliate to effectuate their right under the labor policy. We hold that the first amendment prohibits such restrictions.

[1] Forty-two years ago, the Supreme Court asserted that:

> [In] safeguard[ing] the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer. . . . [the National Labor Relations Act goes no further than to safeguard] a fundamental right. . . . Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, 'instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.'

NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33–4, 57 S.Ct. 615, 622–623, 81 L.Ed. 893, 909–10 (1937) (citations omitted). The associational right so identified emanates from the protections afforded by the first amendment. *See Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 5, 84 S.Ct. 1113, 1116, 12 L.Ed.2d 89, 93 (1964).

[2, 3] It can no longer be disputed that the right to affiliate with the union of one's choice is the right of the public employee as well as the private employee. *Lontine v. VanCleave*, 483 F.2d 966, 967 (10th Cir. 1973); *Orr v. Thorpe*, 427 F.2d 1129, 1131 (5th Cir. 1970); *American Federation of State, County, & Munic. Employees v. Woodward*, 406 F.2d 137, 139 (8th Cir. 1969); *McLaughlin v. Tilendis*, 398 F.2d 287, 288 (7th Cir. 1968); *O'Brien v. Leidinger*, 452 F.Supp. 720 (E.D.Va.1978). *See Thomas v. Younglove*, 545 F.2d 1171, 1172 (9th Cir. 1976); *Lodge 1858, American Federation of Gov't. Employees v. Paine*, 141 U.S. App.D.C. 152, 164, 436 F.2d 882, 894 n.72 (1970). It is implicit in the cases just cited, that public employees are free to join a national as well as a local union, for in each case the petitioning employees had, in one manner or another, in fact affiliated with a national organization. *Accord, Atkins v. Charlotte*, 296 F.Supp. 1068 (W.D.N.C.1968). We have recognized that same freedom for employees covered by the Alaska Public Employment Relations Act, AS 23.40.070. *State v. Petersburg*, 538 P.2d 263, 267 (Alaska 1975).

[4, 5] We can find no sound basis for distinguishing an employee's freedom in affiliation from the right to freely choose his

or her representative at the bargaining table. The two are inseparable under the National Labor Relations Act, *see General Electric Co. v. NLRB*, 412 F.2d 512, 517 (2d Cir. 1969), in the Supreme Court's identification of fundamental rights in *NLRB v. Jones, supra*, and would seem to be similarly inseparable in fact. A powerful incentive in affiliating with a national union is the effective advocacy thereby secured. Governmental interference with a labor organization's ability to effectively assert its members' legal rights has been held to be an unconstitutional impairment of associational freedoms. *United Mine Workers v. Illinois State Bar Ass'n.*, 389 U.S. 217, 221–222, 88 S.Ct. 353, 355–356, 19 L.Ed.2d 426, 430–1 (1967); *Brotherhood of Railroad Trainmen*, 377 U.S. at 6, 84 S.Ct. 1113, 12 L.Ed.2d at 93. We thus find the conclusion inescapable that the right of the District's non-certificated employees to "select representatives of their own choosing for collective bargaining," be they from local or national organizations, "without restraint or coercion by their employer," is grounded firmly in the first amendment. *NLRB v. Jones, supra.*

[6, 7] The School District does not dispute this conclusion. Instead it argues that the employees represented by the Association are still quite free to join the Kenai Federation. All they cannot do is both affiliate and retain the "privilege" to bargain collectively.

Essentially the District is reiterating Holmes' observation that "[t]he petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 29 N.E. 517 (1892). In the first amendment area the distinction between right and benefit has long been dead. A government may not confer a statutory right or benefit and withdraw it when the beneficiary exercises a constitutional prerogative. Neither may it confer a right and condition it unconstitutionally in the same breath. Numerous cases in the past twenty-five years have made these propositions irrebuttable. *See, e. g. Elrod v. Burns*, 427 U.S. 347, 361, 96 S.Ct. 2673, 2683, 49 L.Ed.2d 547, 558 (1976), and the cases cited therein. *Accord, State v. Wylie*, 516 P.2d 142, 146 (Alaska 1973). As the Supreme Court recently stated in *Abood v. Detroit Board of Education*, 431 U.S. 209, 234, 97 S.Ct. 1782, 1799, 52 L.Ed.2d 261, 283 (1977):

> [A] government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment.

[8] The District is thus left with the task of persuading us that the interests embodied in the labor policy's restrictions outweigh the value of the associational freedoms impinged. The School District would have this court scrutinize its restrictive provisions only for a "rational relationship" to the interests it asserts are at stake here. But a "rational connection . . . will not suffice." *Thomas v. Collins*, 323 U.S. 516, 530, 65 S.Ct. 315, 322, 89 L.Ed. 430, 440 (1945). To override a presumptive first amendment right the School District's interest must be "paramount, one of vital importance." *Elrod*, 427 U.S. at 362, 96 S.Ct. at 2684, 49 L.Ed.2d at 559; *Woodward*, 406 F.2d at 140; *McLaughlin*, 398 F.2d at 290. And even if the School District's "purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231, 237 (1960).

The burden is on the School District to show the existence of such a paramount interest. *See Elrod*, 427 U.S. at 362, 96 S.Ct. 2673, and the cases cited therein. In its argument below the School District justified the non-affiliation provision by its interest in avoiding negotiations "conducted by outsiders." In this court it has added others: avoiding the 'rigidity in demands," the escalation of "employee relations tensions," and the "test cases" mind-set allegedly characteristic of national unions. Since "uniquely local interests" are involved, the District desires "negotiations

[that] are uniquely local in character." Finally, it argues that as a public employer it must be allowed to recognize that "[s]trong union demands may either exceed the capacity of the democratically-controlled budget process . . . or they may overwhelm a management negotiator not constrained by ordinary 'profit' motivations."

[9] The essence of the District's asserted interest is that it needs to exercise prospective control over the vigor with which its non-certificated employees will be represented at the bargaining table. We can see in this no more than a bald assertion that will lead to too much labor unrest if public employees are permitted to exercise their first amendment rights. We rejected such a contention with regard to public employees covered by the Public Employment Relations Act, *State v. Petersburg, supra*, and we reject the contention here. To construe the School District's interest here as so paramount as to override the fundamental right to freely choose one's representatives, would render the latter right illusory, for it is difficult to imagine a context in which public employees could then successfully assert it.[2]

In contending that it should be permitted to constrict the Association's effectiveness as it sees fit, the School District points to the many decisions finding that public employees cannot compel collective bargaining without statutory authority, and to those permitting restraints on the right to strike. However, those cases which uphold the aforementioned restraints take great pains to distinguish the rights in issue here.

> The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act.

International Union Local 232 v. Wisconsin Employment Relations Board, 336 U.S. 245, 259, 69 S.Ct. 516, 52[illegible], 93 L.Ed. 651, 666 (1948) (citations omitted). *See also United Federation of Postal Clerks v. Blount*, 325 F.Supp. 879, 883 (D.D.C.), *aff'd mem.*, 404 U.S. 802, 92 S.Ct. 80, 30 L.Ed.2d 38 (1971).

As we read these decisions they posit a constitutional framework in which employees are free to organize and select an advocate, and from that guarantee of collective strength then lobby their various legislatures for particular rights in the employer/employee relationship. *See, e. g., Atkins v. Charlotte*, 296 F.Supp. 1068, 1077 (W.D. N.C.1968). The virtue of that view is its consistent emphasis on freedom of action, and its antagonism to coercion. And within that perspective it does not follow at all, that once bargaining rights are successfully secured, as in the instant case, the constitutional rights disappear.

We affirm the superior court's judgment that the School District's policy restrictions on affiliation and choice of bargaining representative are violative of first amendment freedoms guaranteed to the non-certificated school employees.

II

[10] Having decided that portions of the School District's labor policy are unconstitutional, we must now decide whether these may be severed, leaving the remainder of the policy intact and enforceable.

In determining questions of severability, we make two inquiries. *Lynden Transport, Inc. v. State*, 532 P.2d 700 (Alaska 1975). First we must determine whether the unconstitutional portions of the policy, standing alone, can be given legal effect. *Id.* at 713. The School District concedes that they can, and no further discussion is necessary.

2. We note that the District has incorporated in its labor policy other means of dealing with the problems it fears a strong union will create, means which do not impinge on associational freedoms. For example, the labor policy forbids all forms of work stoppages, significantly constricts the scope of mandatory bargaining subjects, and stipulates that any agreement reached by the negotiators will only be advisory to the school board.

Second, we must identify the primary purpose of the labor policy, and determine whether this purpose can be achieved with the invalid provisions stricken. *Id.* at 714–15. "The test . . . is whether the remaining parts are so independent and complete that it may be presumed that the [School District] would have enacted the valid parts without regard to the invalid part." *Jefferson v. State*, 527 P.2d 37, 41 (Alaska 1974). It is not dispositive that the stricken portions constitute a fragment of a paragraph. *Lynden Transport, supra; Speidel v. State*, 460 P.2d 77 (Alaska 1969).

[11] We find that the primary purpose of the labor policy is stated in its preamble:

> [T]he Board wishes to maintain its long tradition of fair play with its employees by enacting a policy which will set the stage for harmonious and cooperative relations between the Board and its classified employees and to protect the public by assuring orderly and uninterrupted operations of the district.

After striking only the unconstitutional restrictions of the policy, the superior court concluded that the purpose articulated in the preamble could still be fulfilled. We concur.

The policy adopted by the school board contains more than just the language authorizing collective bargaining and limiting affiliation rights. The recognition paragraph states that the association may not limit membership on the basis of race, religion, creed, sex, or marital status. It prohibits making membership in the association or payment of dues a condition of employment. It prohibits strikes or slowdowns by association members and requires that the association assist in preventing these where possible. Beyond the recognition section, other sections of the labor policy lay down the conditions an association must meet before it will be deemed by the school board to have been authorized by the school employees to represent them. The section titled "Scope of Bargaining" narrowly limits what the association can discuss in negotiations, and prohibits negotiations on "inherent managerial policy", which includes but is not limited to

> the functions and programs of the Board, standards of services, the district budget, utilization of technology, the organizational structure of the schools and the selection and direction of personnel, including work hours, assignments, transfers, job descriptions, promotions based on merit with seniority a secondary factor, the determination of other hiring and dismissal or demotion procedures.

Other sections of the policy cover, among other things, what will happen if the parties cannot agree in negotiations, disputes procedures, and the duration of any labor agreement. All of these provisions of the labor policy apply regardless of whether the association is affiliated with a non-local organization or not.

Given the detailed nature of the labor relations policy when read as a whole, we conclude that the superior court properly found that the non-affiliation clause is severable. The primary purpose of the policy is clearly stated in the preamble. There the school board said that it wished to preserve "harmonious relations" with its classified employees and assure smooth operation of the school district. Although the non-affiliation clause may be considered an important part of the structure the board created to achieve these goals, deleting the clause will leave virtually all of the labor policy intact. Since the school board obviously considered collective bargaining important to the maintaining of good relations with its classified employees, we cannot assume that it would not have enacted the constitutional portions, had it known that two restrictions would be found unconstitutional.

AFFIRMED.

RABINOWITZ, Justice, dissenting in part.

I am in agreement with the court's holding that those portions of the School District's labor policy which place restrictions on affiliation and choice of bargaining representative are violative of the first amendment rights of non-certificated school em-

ployees. My disagreement with the court's opinion centers on the majority's conclusion that the non-affiliation clause is severable.

In discussing presumptions of separability and inseparability in *Lynden Transport, Inc. v. State*, 532 P.2d 700, 711–12 (Alaska 1975), we quoted, with approval from *Carter v. Carter Coal Co.*, 298 U.S. 238, 312, 56 S.Ct. 855, 873, 80 L.Ed. 1160, 1189 (1936), where the Supreme Court said in part:

> Under the statutory rule, the presumption must be overcome by considerations which establish 'the clear probability that the invalid part being eliminated the Legislature would not have been satisfied with what remains.'

In my view, non-affiliation is a paramount part of the structure upon which the Board's labor policy rested. Before the remainder of the policy had any applicability, the employees' organization had to meet the recognition requirement. I think it apparent that the non-affiliation clause was intended as a mandatory requirement for it embodies one of the two explicit requirements found in the recognition paragraph—the other being proof of majority representation. Thus, I conclude that it cannot be fairly said that the Board viewed the non-affiliation requirement as severable, "independent," or "non-essential." [1]

1. In short, I have concluded that the burden of proof adopted in *Lynden Transport, Inc. v. State*, 532 P.2d 700, 711–12 (Alaska 1975), as applied in the instant case, leads to the result that the non-affiliation clause was not severable. In reaching this conclusion, I assume arguendo that there is a statutory presumption of severability with regard to the Board's labor policy, but find that the record establishes the "clear probability" that the Board "would not have been satisfied" with the labor policy without the non-affiliation clause.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT and Kenai Peninsula Borough, Appellants,

v.

KENAI PENINSULA EDUCATION ASSOCIATION, Appellee.

ANCHORAGE BOROUGH EDUCATION ASSOCIATION, Appellant,

v.

GREATER ANCHORAGE AREA BOROUGH, ANCHORAGE BOROUGH SCHOOL DISTRICT, Appellee.

MATANUSKA-SUSITNA SCHOOL DISTRICT, Appellant,

v.

MATANUSKA-SUSITNA EDUCATION ASSOCIATION, Appellee.

Nos. 2470, 2492 and 2563.

Supreme Court of Alaska.

Dec. 9, 1977.

In two separate actions, teachers' associations sued school district and boroughs to compel collective bargaining in good faith. In third action, school board sought declaratory judgment that certain issues were not bargainable. Appeals were taken from judgments of the Supreme Court, Third Judicial District, Kenai and Anchorage District, James A. Hanson, Victor D. Carlson and C. J. Occhipinti, JJ., ruling in favor of school boards in one action, in favor of teachers' union in another, and in third action, in favor of board on some issues and union on others. The Supreme Court, Connor, J., held that: (1) salaries, fringe benefits, number of hours worked and amount of leave time are negotiable and (2) relief from nonprofessional chores, elementary planning time, paraprofessional tutors, teacher specialists, teacher's aides, class size, pupil-teacher ratio, teacher ombudsman, teacher evaluation of administrators, school calendar, election of instructional materials, use of secondary department heads, secondary teacher preparation and planning time and teacher representation on school board advisory committees are nonnegotiable.

Affirmed in part, reversed in part.

1. Labor Relations ⇐178

Questions concerning public school teachers' salaries, number of hours to be worked and amount of leave time are all so closely connected with economic well-being of individual teacher that they are negotiable and subject to collective bargaining under statutes governing negotiation with certificated employees and legal responsibilities of school board. AS 14.20.550, 14.20.610.

2. Labor Relations ⇐178

Following specific items pertaining to public school teachers are, under existing statutory language, nonnegotiable: relief from nonprofessional chores; elementary planning time; paraprofessional tutors; teacher specialists; teacher's aides; class size; pupil-teacher ratio; teacher ombudsman; teacher evaluation of administrators; school calendar; selection of instructional materials; use of secondary department heads; secondary teacher preparation and planning time, and teacher representation on school board advisory committees. AS 14.20.550, 14.20.610.

3. Labor Relations ⇐179

As to matters which affect educational policy and are therefore not negotiable, there is implicit in statutes governing negotiation with certificated employees and legal responsibilities of school board intention that school boards meet and confer with union and it is desirable that boards consider teacher proposals on such questions. AS 14.20.550, 14.20.610.

4. Statutes ⇐216

Even if it were placed in evidence, reliance upon privately expressed opinion is

letter of a former legislator in construing statutes governing negotiation with certificated employees and legal responsibilities of school board would be impermissible, and therefore resort to letter as means of legal interpretation was therefore error in action in which collective bargaining requirements for public school teachers was in issue. AS 14.20.550, 14.20.610.

Allen McGrath and John R. Snodgrass, Jr., of Graham & James, Anchorage, for School Districts.

John R. Strachan, Anchorage, for Education Associations.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR, ERWIN and BURKE, Justices.

CONNOR, Justice.

These cases present important questions of labor law and constitutional law concerning the collective bargaining requirements for teachers in the public schools. Two of these cases are before us because the teachers' associations (the unions) have sued school districts and boroughs (the school boards) to compel collective bargaining in good faith under AS 14.20.550. In the third, a school board seeks a declaratory judgment that certain issues are not bargainable. The school boards, while not disputing the unions' right to collective bargaining on a number of employment-related issues, contend that they should not be forced to bargain collectively on various items which they regard as affecting educational policy. Educational policy, the school boards contend, must be determined only by the public through the legislature and, by delegation, through the school boards. We will examine the more specific issues later in this opinion. They include such items as class size and the use of teacher specialists and para-professionals. Of the three trial courts which passed on the matter, one ruled in favor of the school boards,[1] one ruled in favor of the teachers' union,[2] and one split the various items, ruling for the board on some and the unions on others.[3]

I. *Introduction*

To facilitate the understanding of our more detailed legal discussion later in this opinion, we will summarize at the outset the contentions of the parties. The statutes at issue in this litigation are AS 14.20.550 and .610, which provide:

"Sec. 14.20.550. *Negotiation with certificated employees.* Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)."

"Sec. 14.20.610. *Legal responsibilities of boards.* Nothing in §§ 550–600 of this chapter may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies. (§ 1 ch 18 SLA 1970)."

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does

1. *Anchorage Borough Ed. Ass'n v. GAAB. Anchorage Borough School Dist.*, No. 2492 (hereinafter Anchorage).

2. *Kenai Pen. Borough Sch. Dist. and Kenai Pen. Borough v. Kenai Pen. Ed. Ass'n*, No. 2470 (hereinafter Kenai).

3. *Matanuska-Susitna Sch. Dist. v. Matanuska-Susitna Ed. Ass'n*, No. 2563 (hereinafter Mat-Su).

not have the final decisions on matters subject to good faith collective bargaining, since if management adheres to its determined policies, it violates the law.

The school boards contend that the submission of educational policies to a good faith collective bargaining requirement would remove the final decisions on such matters from the boards, contrary to the intent of the legislature expressed in AS 14.20.610. The boards contend that to require bargaining on questions of educational policy would also contravene the Alaska Constitution, art. VII, § 1, which makes education the exclusive domain of the legislature.[4] *See Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971). Delegation of part of the decision-making power on educational policy to labor unions is unconstitutional, they urge, because the union is a private organization, unaccountable to the public. The union can use the power for its own ends, and is under no duty to foster educational policies which are in the general public interest.

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision-making power inherent in a labor negotiations requirement. They further argue that they represent professional employees, and that their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

The unions argue that the Alaska teachers' collective bargaining statutes are more comprehensive than those found elsewhere, and hence the scope of bargaining should be interpreted broadly. The school boards assert that the Alaska Constitution as interpreted in *Macauley v. Hildebrand, supra*, is more adamant than provisions in other states in placing education firmly within the legislative prerogative. Therefore, collective bargaining must yield across a wide range of issues affecting educational policy.

II. *Scope of the Duty to Bargain*

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.[5] Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining

4. Alaska Constitution, art. VII, § 1 states:
"The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

5. *Fibreboard Paper Products Corp. v. N. L. R. B.*, 379 U.S. 203, 85 S.Ct. 398, 13 L.Ed.2d 233 (1964) (management decision to subcontract out the work of some employees must be bargained); *International Ladies' Garment Workers Union v. N. L. R. B.*, 150 U.S.App.D.C. 71, 463 F.2d 907 (1972) (decision to relocate the business to another state subject to bargaining); *Royal Typewriter Co.*, 209 N.L.R.B. 1006, 1012 (1974) (decision to close a plant subject to bargaining). *But see General Motors Corp.*, 191 N.L.R.B. 951 (1971), *aff'd sub nom., International Union, United Auto. A. & A. Imp. Wkrs. v. N. L. R. B.*, 152 U.S.App.D.C. 274, 277, 470 F.2d 422, 425 (1972) (decision to sell part of business not bargainable).

does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.[6] Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

When we turn to employment in the public sector, and particularly in education, the question of what is properly bargainable is thrown into more doubt. If teachers' unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the broad public interest.[7]

Recently the United States Supreme Court had occasion to comment upon the differences between collective bargaining in the public and private sectors. In *Abood v. Detroit Board of Education*, 431 U.S. 209, 227–28, 97 S.Ct. 1782, 1795–96, 52 L.Ed.2d 261, 279–80 (1977), the Court, speaking through Mr. Justice Stewart, observed:

> "A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondently less concerned that high prices due to costly wage demands will decrease output and hence employment.
>
> The government officials making decisions as the public 'employer' are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority—department managers, budgetary officials, and legislative bodies—are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.
>
> Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to

6. *Sign and Pictorial Union Local 1175 v. N. L. R. B.*, 136 U.S.App.D.C. 144, 149, 419 F.2d 726, 731 (D.C.Cir. 1969); *N. L. R. B. v. General Electric Co.*, 418 F.2d 736, 756–62 (2d Cir. 1969), *cert. denied*, 397 U.S. 965, 90 S.Ct. 995, 25 L.Ed.2d 257 (1970); *N. L. R. B. v. McLane Co.*, 405 F.2d 483, 484 (5th Cir. 1968); *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134–35 (1st Cir. 1953), *cert. denied*, 346 U.S. 887, 74 S.Ct. 139, 98 L.Ed. 391 (1953) ("the employer is obliged to make *some* reasonable effort in *some* direction to compose his differences with the union"; emphasis in original); *Majure v. N. L. R. B.* 196 F.2d 735 (5th Cir. 1952). *See generally* Swerdlow, Freedom of Contract in Labor Law, 51 *Tex.L.Rev.* 1 (1972).

7. As one commentator has noted, "what is in the best interest of the students and the community is not always in the best interests of teachers." Rund, Symposium on Teacher Bargaining: Commentary, 50 *Ind.L.J.* 344, 350 (1975).

a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

In a concurring opinion in that case Mr. Justice Powell noted the similarity between a public sector union and a conventional political party:

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, state and federal governments, the union's objective is to obtain favorable decisions—and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country."

431 U.S. at 256, 97 S.Ct. at 1810, 52 L.Ed.2d at 298.[8]

The legislature was evidently cognizant of this concern when it enacted AS 14.20.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

The school boards initially argue that to make matters of school operation and educational policy subject to collective bargaining amounts to an unconstitutional delegation of governmental power to the unions.

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, *e. g., Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 80 L.Ed. 1160 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. *E. g., United States v. Rock Royal Cooperative, Inc.*, 307 U.S. 533, 577–78, 59 S.Ct. 993, 83 L.Ed. 1446 (1939) (cooperative marketing program from agricultural products); *Agricultural Prorate Comm'n v. Superior Court*, 5 Cal.2d 550, 55 P.2d 495, 504–06 (Cal.1936) (same); *Potter v. New Jersey Supreme Court*, 403 F.Supp. 1036, 1039–40 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). *See generally*,

8. The holding of the majority in *Abood* was that a union shop or agency shop agreement for public employees, requiring all employees in the bargaining unit to make financial contributions to the union, did not violate the first amendment rights of employees who objected to the union. The same rule obtains for unions in the private sector. Although Justice Powell concurred in the majority's decision to remand the case for further proceedings, he disagreed with this constitutional holding. Unlike the majority, he felt that the differences between public and private employment compelled a holding that agency shop or union shop agreements in the public sector are forbidden by the first amendment.

See generally Rehmus, Constraints on Local Governments in Public Employee Bargaining, 67 *Mich.L.Rev.* 919 (1969); Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 *U.C.L.A.L.Rev.* 867 (1972); Summers, Public Sector Bargaining: Problems of Government Decisionmaking, 44 *U.Cinn.L.Rev.* 669 (1975); Summers, Public Employee Bargaining: A Political Perspective, 83 *Yale L.J.* 1156 (1974); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 *Yale L.J.* 1107 (1969); Project, Collective Bargaining and Politics in Public Employment, 19 *U.C.L.A.L.Rev.* 887, 1010-51 (1972).

1 K. Davis, Administrative Law Treatise § 2.14 (Supp.1970) (collecting cases). *See also* 1 *Id.* § 2.15 (1958).

Furthermore, the statute merely requires the school board to negotiate with the union. It does not require the board to accept any particular proposal the union might offer. It does not require, and probably does not permit, the board to delegate to the union the sole power to make any decision. Therefore, cited cases invalidating outright grants of governmental power to private groups, *e. g., Hetherington v. McHale*, 458 Pa. 479, 329 A.2d 250 (1974), and *Bayside Timber Co. v. Bd. of Supervisors*, 20 Cal.App.3d 1, 97 Cal.Rptr. 431 (1971), are not apposite.

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, or both. *Chicago Div. of Ill. Ed. Ass'n v. Board of Ed.*, 76 Ill.App.2d 456, 222 N.E.2d 243, 251 (1966); *Joint School Dist. No. 8 v. Wisc. Emp. Rel. Bd.*, 37 Wis.2d 483, 155 N.W.2d 78, 83 (1967); *State v. City of Laramie*, 437 P.2d 295, 300 (Wyo.1968) (firemen). In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

Courts in other jurisdictions have considered problems similar to those which we confront here. It is instructive, though not determinative, to look to the case law of other jurisdictions as an aid to interpretation.

The court in *Dunellen Bd. of Education v. Dunellen Ed. Ass'n*, 64 N.J. 17, 311 A.2d 737 (1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.[9]

National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed., 212 Kan. 741, 512 P.2d 426 (1973), is closely analogous to the case at bar. There the teachers' association negotiated under a statute which permitted it to "participate in professional negotiation with boards of education . . . for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." The state constitution, like Alaska's, gave the legislature the power to provide for public schools. The negotiations reached an impasse after the board took the position that all matters, whether negotiable under the statute or not, were of a policy nature subject to unilateral change by the board and could not be incorporated into a contract, while the teachers asserted that nearly everything pertaining to school operations was negotiable.

9. The teachers' unions in the case at bar argue that *Dunellen* was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and *Dunellen* has been followed by the courts despite the statutory amendment. *See, e. g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n*, 135 N.J.Super. 269, 343 A.2d 133 (1975).

On appeal the Kansas Supreme Court was confronted with the same problem that we are: how to frame a test which would delimit those matters which are bargainable from those which are not. The Kansas court held that salaries, vacations, and sick leave are negotiable. In so doing it pointed out that the term "policy" is not helpful, because even salaries are a matter of policy. It drew the following distinction:

> "The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." 512 P.2d at 435.

While the *Shawnee Mission* case represents a commendable attempt to balance competing claims, it does not provide a test which is useful in determining the negotiability of specific subjects. In other words, it does not provide any comforting guidance in determining how, in the last analysis, the balance should be weighed between the school boards and the teachers.

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. *See* Summers, *supra*, 83 *Yale L.J.* at 1181–82, 1194–95. *But see* Wollett, The Coming Revolution in Public School Management, 67 *Mich. L.Rev.* 1017 (1969) (argues that these subjects should be bargainable).

III. *Specific Issues*

[1] We will now consider the Alaska situation in more detail. At the outset it appears to us that questions concerning salaries, the number of hours to be worked, and amount of leave time are all so closely connected with the economic well-being of the individual teacher that they must be held negotiable under our statutes. The troubling question is what other items are bargainable.

[2] The various trial courts in these cases considered such items as (1) relief from non-professional chores, (2) elementary planning time, (3) para-professional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees.

The testimony adduced in the trial courts does not provide us with much enlightenment as to why any of these items should fall on one side of the line or another. Realistically the two areas, i. e., (1) educational policy, and (2) matters pertaining to employment and professional duties, merge into and blend with each other at many points. Logically and semantically it is nearly impossible to assign specific items to one category and not the other. Certain examples may make this point more clearly.

In the *Mat-Su* case the teachers have asked for a planning period of 45 minutes "to be taken during the academic portion of the day." Were this merely a request for planning time, it might be considered negotiable. The demand that it be during the academic portion of the day, however, presents an additional complication: whether, as a matter of educational policy, elementary school children should have one teacher with them throughout the day or whether they are old enough to be taught by different people. This presents a basic educational decision. While the amount of paid time available to a teacher for preparation of lesson plans affects the teacher directly, the demand that such time be available "during the academic portion of the day" presents a policy question.

Similarly, the question of class size affects directly the amount of work a teacher must perform. But the determination of optimum class size is quite basic to school policy and management, and potentially has a substantial impact on the school district's personnel expenditures. A number of courts have found this to be clearly non-negotiable. *See National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed.*, 512 P.2d 426, 435 (Kan.1973); *West Irondequoit Teachers Ass'n v. Helsby*, 35 N.Y.2d 46, 358 N.Y.S.2d 720, 315 N.E.2d 775, 777–78 (N.Y. App.1974); *School Dist. of Seward Ed. Ass'n v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752, 759 (1972); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387, 403 (Me.1973).

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable.[10] In view of the concerns expressed on pages 419, 420 *supra*, we conclude that the other specific items listed on page 422 are, under the existing statutory language, non-negotiable.

It would be helpful if the legislature, through future enactments, provided more specific guidance on a number of the items which the unions seek to negotiate. Lacking that guidance, however, we cannot confidently say that the legislature intended any of these items to be bargainable. We cannot, therefore, read the statutes expansively as to the scope of what is negotiable.

[3] As to matters which affect educational policy and are, therefore, not negotiable, we believe that there is nevertheless implicit in our statutes the intention that the school boards meet and confer with the unions. It is desirable that the boards consider teacher proposals on such questions. This will encourage teachers to give the boards the benefit of their expertise, and to make their positions known for the board's use in establishing educational policy.

[4] One minor question remains. In the *Kenai* case the trial court, in construing the statutes, relied upon the privately expressed opinion, by means of a letter, of a former legislator. The legislator's opinion was not a matter of public record, subject to judicial notice, nor was it introduced in evidence. Even if it were placed in evidence, reliance upon it would be impermissible under *Alaska Public Employees Ass'n v. State*, 525 P.2d 12, 16 (Alaska 1974). Resort to the letter as a means of legal interpretation was, therefore, error.

AFFIRMED IN PART, REVERSED IN PART.

10. In the list of proposals submitted in the *Kenai* case, for example, it appears that some 38 of the 47 proposals would come within the categories of items we have concluded are negotiable. These items are set forth in the appendix to this opinion.

APPENDIX

LIST OF NEGOTIABLE AND NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores [11]
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators
5. Teacher Aides
6. Para-Professionals
7. PTR Formula
8. Specialists
9. Calendar

Those items which are negotiable are:

1. Recognition
2. Negotiation Procedures
3. Grievance Procedures
4. Salary Schedule Conditions
5. Salary Schedule
6. Automatic Cost of Living
7. Extra Curricular and Extra Duty
8. Extended Contract
9. Additional Educational Employment
10. Life Insurance
11. Health Insurance
12. Liability Insurance
13. Automobile Allowance
14. Tuition/In-Service Workshops
15. Reimbursement for Physical Examinations
16. Sabbatical Leave
17. Career Development
18. Administrative Leave
19. Personal Leave
20. Sick Leave and Bereavement
21. Personal and Sick Leave for Half-Time Employees
22. Unpaid Leave of Absence
23. Maternity Leave
24. Political Leave
25. Duty-Free Lunch
26. Teacher Preparation Periods
27. Monthly Planning Time
28. In-Service Days
29. Discretional Materials
30. Personnel Files
31. Teacher Transfer
32. Teacher Retention
33. Job Openings
34. Reduction of Staff
35. Teacher Contracts
36. Association Rights and Privileges
    (a) Information
    (b) Release Time for Meetings
    (c) Use of School Buildings
    (d) Use of School Equipment
    (e) Supplies
    (f) Mail Facilities
    (g) Subcontracting
    (h) Non jeopardy
    (i) Exclusive Rights
    (j) KPEA Professional Leave
    (k) Dues Deduction/Continuing Membership
    (l) Other Deductions
    (m) Conformity to Law
    (n) School Board Agenda
    (o) Preliminary Draft of Budget
37. Agreement Print-up and Dissemination
38. Duration on Contract

11. In the *Kenai* case this item was described in the negotiating document as follows:

"RELIEF FROM NON-PROFESSIONAL CHORES

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should be utilized to this end, therefore, they agree as follows: Teachers shall not be required to perform the following duties:

A. Non-instructional assignments, including but not limited to, supervising of cafeterias, sidewalks, bus loading, or unloading, or playgrounds of more than fifteen (15) minutes daily.

B. Collecting money from students.

C. Cumulative record cards and other clerical and/or custodial functions."

These matters seem so closely related to school board policy as to be non-negotiable. We do not pass upon other conceivable non-professional functions. We also do not know what is specifically meant by "custodial" functions, and do not, therefore, pass upon that aspect of this item.

AS 14.20.550

NEGOTIATION WITH CERTIFICATED EMPLOYEES. Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties.

AS 14.20.610

LEGAL RESPONSIBILITIES OF BOARDS. Nothing in §§ 550 - 600 of this chapter may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies.

The court was asked to declare what issues pertaining to public school teachers are, under existing statutory language, subject to negotiation under collective bargaining and what matters are educational policy and thus non-negotiable. The court noted that educational policy and matters pertaining to employment and professional duties merge into and blend with each other at many points. The court took into account the many factors which figure into the balance of power between public employee unions and public employers in finding that a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. The court noted that bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. Utilizing this standard, the court felt it could conclude that salaries, fringe benefits, the amount of hours worked, and the amount of leave time are negotiable, but that other issues, such as (1) relief from non-professional chores, (2) elementary planning time, (3) para-professional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees were non-negotiable in light of the necessity of preserving the school board's effective control of educational policy.

(Kenai Peninsula Borough v. Kenai Peninsula Ed., Alaska, 572 P.2d 416)

1/28/79

Name	Address & Phone #	Organization	Bill No.
Judy DuBois	P.O. Box 1149 Juneau AK 99811	Dept. of LABOR	H.B. 453
Robert Smathers			
Ron Lorensen	210 N. Franklin, Juneau 99801 586-6994	for Lower Kuskokwim School Dist.	HB 453
Charlie Arteaga	1411 W 33rd Anc.	NEA-Alaska	HB 453
Jim Mannens			
Charles L. D'Amelle	207 Second Bldg - Juneau	NEA-Alaska	HB 453
Bob Van Houte	9851 Basher Dr. - Anc. 99507	NEA-Alaska	HB 453
Bob Greene	3146-48th one NE SALEM, OR	C.P.O. - NEA	HB 453
Hugo Olson	204 No. FRANKLIN St.	Assn Alaska School Bds	H.B 453
Bob McHenry			
[illegible]	Box 63 Nunik Alaska	Kuspuk School Board	HB 453
Cherie Shelley	P.O. Box 108 ANIAK	Kuspuk Sch. Dist	HB 453
CLIFF HARTMAN	P.O. Box 101 ANIAK	Kuspuk Sch. Dist.	H.B 453
	340 N. Franklin - Juneau		
	1433 W. 13th Anch AK 586 2334	APEA	HB 453
		586-9707	

M.M.H.
W.B.P.
L.T.F.
C.N.D.
T.G.B.
A.M.S.
J.R.W.
T.J.B.

THE SUPREME COURT OF THE STATE OF ALASKA

KENAI PENINSULA BOROUGH SCHOOL DISTRICT,

Appellant,

v.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT CLASSIFIED ASSOCIATION,

Appellee.

File No. 3800

O P I N I O N

[No. 1802 - February 16, 1979]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Peter J. Kalamarides, Judge.

Appearances: Stephen C. Hillard, Allen McGrath, Chris J. Rigos, Graham & James, Anchorage, for Appellant. William K. Jermain, Jermain, Dunnagan & Owens, Anchorage, for Appellee.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Burke and Matthews, Justices.

MATTHEWS, Justice.
RABINOWITZ, Justice, dissenting in part.

On February 17, 1975, the Kenai Peninsula Borough School Board adopted a comprehensive labor relations policy by which it bound itself to recognize and bargain collectively with an organization to be formed by a majority of the non-certificated school employees of the District, e.g., secretarial, custodial, and cafeteria personnel. The policy stipulated that the District would not negotiate (1) with

any individual who was not an employee of the School District, nor (2) with an employee organization affiliated with any state or national labor union.[1]

The appellee Association was duly organized and subsequently recognized by the District on February 21, 1977, as the employee bargaining agent. One month later, after negotiations had not progressed to its satisfaction, in part because the School District would not permit an employee consultant into the negotiating room, the Association affiliated with the Kenai Peninsula Federation of Teachers, itself an affiliate of the American Federation of Teachers. The District then refused to negotiate further,

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1. The recognition paragraph of the policy reads:

> The Kenai Peninsula Borough School District will recognize, for the purpose of discussing and negotiating mutually satisfactory agreements on specified matters pertaining to their employment, the Kenai Peninsula Borough School District classified employee group which on a certain date has, as bona fide members, a majority of the total classified staff employed by the district on that date and which files a certified list of such members with the Superintendent of Schools. The Kenai Peninsula Borough School District will negotiate only with employees of the district. The Board will not recognize for the purpose of negotiations, any union or association which is not made up exclusively of Kenai Peninsula Borough School District employees nor will the Board negotiate with a local association affiliated with a state or national union.

demanding that the Association disaffiliate from the Kenai Peninsula Federation. The Association brought suit, seeking to compel the District to resume negotiations.

On September 19, 1977, Judge Peter J. Kalamarides granted summary judgment to the Association, finding the aforementioned restrictive provisions both unconstitutional and severable from the rest of the labor policy, and ordered the District to resume negotiations. The School District appeals from both judgments. We affirm.

I

* It is conceded for purposes of this litigation that the right of the non-certificated school employees to compel their employer to bargain collectively arises solely out of the labor relations policy enacted by the District. These employees are not among those within the ambit of the National Labor Relations Act, 29 U.S.C. §152(7) (1970), or the Alaska Public Employment Relations Act, AS 23.40.250(5), and the Association, in the face of much contrary authority, does not seek to establish such a right in the federal constitution. See, e.g., University of New Hampshire Chap. of Am. Ass'n. of Univ. Profs. v. Haselton, 39 F.Supp. 107, 109 (D.N.H. 1975); Atkins v. Charlotte, 296 F.Supp. 1068, 1077 (W.D.N.C. 1969).

"The first question that confronts us then, is whether the School District can grant non-certificated employees the right to bargain collectively and simultaneously decree whom the employees may send to the bargaining table as their representative, and with whom they may affiliate to effectuate their right under the labor policy. We hold that the first amendment prohibits such restrictions.

Forty-two years ago, the Supreme Court asserted that:

> [In] safeguard[ing] the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer. . . . [the National Labor Relations Act goes no further than to safeguard] a fundamental right. . . . Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, 'instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both.'

NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 33-4, 81 L.Ed. 893, 909-10 (1937)(citations omitted). The associational right so identified emanates from the protections afforded by the first amendment. See Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1, 5, 12 L.Ed.2d 89, 93 (1964).

** It can no longer be disputed that the right to affiliate with the union of one's choice is the right of the public employee as well as the private employee. Lontine v. VanCleave, 483 F.2d 966, 967 (10th Cir. 1973); Orr v. Thorpe, 427 F.2d 1129, 1131 (5th Cir. 1970); American Federation of State, County, & Munic. Employees v. Woodward, 406 F.2d 137, 139 (8th Cir. 1969); McLaughlin v. Tilendis, 398 F.2d 287, 288 (7th Cir. 1968); O'Brien v. Leidinger, 452 F.Supp. 720 (E.D.Va. 1978). See Thomas v. Younglove, 545 F.2d 1171, 1172 (9th Cir. 1976); Lodge 1858, American Federation of Gov't. Employees v. Paine, 436 F.2d 882, 894 n.72 (D.C. Cir. 1970). It is implicit in the cases just cited, that public employees are free to join a national as well as a local union, for in each case the petitioning employees had, in one manner or another, in fact affiliated with a national organization. Accord, Atkins v. Charlotte, 296 F.Supp. 1068 (W.D.N.C. 1968). We have recognized that same freedom for employees covered by the Alaska Public Employment Relations Act, AS 23.40.070. State v. Petersburg, 538 P.2d 263, 267 (Alaska 1975).

We can find no sound basis for distinguishing an employee's freedom in affiliation from the right to freely choose his or her representative at the bargaining table. The two are inseparable under the National Labor Relations Act, see General Electric Co. v. NLRB, 412 F.2d 512, 517 (2d

Cir. 1969), in the Supreme Court's identification of fundamental rights in NLRB v. Jones, supra, and would seem to be similarly inseparable in fact. A powerful incentive in affiliating with a national union is the effective advocacy thereby secured. Governmental interference with a labor organization's ability to effectively assert its members' legal rights has been held to be an unconstitutional impairment of associational freedoms. United Mine Workers v. Illinois State Bar Ass'n., 389 U.S. 217, 221-222, 19 L.Ed 2d 426, 430-1 (1967); Brotherhood of Railroad Trainmen, 377 U.S. at 6, 12 L.Ed.2d at 93.* We thus find the conclusion inescapable that the right of the District's non-certificated employees to "select representatives of their own choosing for collective bargaining," be they from local or national organizations, "without restraint or coercion by their employer," is grounded firmly in the first amendment. NLRB v. Jones, supra.

The School District does not dispute this conclusion. Instead it argues that the employees represented by the Association are still quite free to join the Kenai Federation. All they cannot do is both affiliate and retain the "privilege" to bargain collectively.

Essentially the District is reiterating Holmes' observation that "[t]he petitioner may have a constitutional

right to talk politics, but he has no constitutional right to be a policeman." McAuliffe v. Mayor of New Bedford, 29 N.E. 517 (Mass. 1892). In the first amendment area the distinction between right and benefit has long been dead. A government may not confer a statutory right or benefit and withdraw it when the beneficiary exercises a constitutional prerogative. Neither may it confer a right and condition it unconstitutionally in the same breath. Numerous cases in the past twenty-five years have made these propositions irrebuttable. See, e.g. Elrod v. Burns, 427 U.S. 347, 361, 49 L.Ed.2d 547, 558 (1976), and the cases cited therein. Accord, State v. Wylie, 516 P.2d 142, 146 (Alaska 1973). As the Supreme Court recently stated in Abood v. Detroit Board of Education, 431 U.S. 209, 234, 52 L.Ed.2d 261, 283 (1977):

> [A] government may not require an individual to relinquish rights granted him by the First Amendment as a condition of public employment.

The District is thus left with the task of persuading us that the interests embodied in the labor policy's restrictions outweigh the value of the associational freedoms impinged. The School District would have this court scrutinize its restrictive provisions only for a "rational relationship" to the interests it asserts are at stake here. But a "rational connection . . . will not suffice." Thomas v. Collins, 323 U.S. 516, 530, 89 L.Ed. 430, 440 (1945). To

override a presumptive first amendment right the School District's interest must be "paramount, one of vital importance." Elrod, 427 U.S. at 362, 49 L.Ed.2d at 559; Woodward, 406 F.2d at 140; McLaughlin, 398 F.2d at 290. And even if the School District's 'purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U.S. 479, 488, 5 L.Ed.2d 231, 237 (1960).

The burden is on the School District to show the existence of such a paramount interest. See Elrod, 427 U.S. at 362, and the cases cited therein. In its argument below the School District justified the non-affiliation provision by its interest in avoiding negotiations "conducted by outsiders." In this court it has added others: avoiding the "rigidity in demands," the escalation of "employee relations tensions," and the "test cases" mind-set allegedly characteristic of national unions. Since "uniquely local interests" are involved, the District desires "negotiations [that] are uniquely local in character." Finally, it argues that as a public employer it must be allowed to recognize that "[s]trong union demands may either exceed the capacity of the democratically-controlled budget process . . . or they may overwhelm a management negotiator not constrained by ordinary 'profit' motivations."

The essence of the District's asserted interest is that it needs to exercise prospective control over the vigor with which its non-certificated employees will be represented at the bargaining table. We can see in this no more than a bald assertion that it will lead to too much labor unrest if public employees are permitted to exercise their first amendment rights. We rejected such a contention with regard to public employees covered by the Public Employment Relations Act, State v. Petersburg, supra, and we reject the contention here. To construe the School District's interest here as so paramount as to override the fundamental right to freely choose one's representatives, would render the latter right illusory, for it is difficult to imagine a context in which public employees could then successfully assert it.[2]

In contending that it should be permitted to constrict the Association's effectiveness as it sees fit, the School District points to the many decisions finding that public employees cannot compel collective bargaining

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2. We note that the District has incorporated in its labor policy other means of dealing with the problems it fears a strong union will create, means which do not impinge on associational freedoms. For example, the labor policy forbids all forms of work stoppages, significantly constricts the scope of mandatory bargaining subjects, and stipulates that any agreement reached by the negotiators will only be advisory to the school board.

without statutory authority, and to those permitting restraints on the right to strike. However, those cases which uphold the aforementioned restraints take great pains to distinguish the rights in issue here.

> The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act.

International Union Local 232 v. Wisconsin Employment Relations Board, 336 U.S. 245, 259, 93 L.Ed. 651, 666 (1948)(citations omitted). See also United Federation of Postal Clerks v. Blount, 325 F.Supp. 879, 883 (D.D.C.), aff'd mem., 404 U.S. 802, 30 L.Ed.2d 38 (1971).

As we read these decisions they posit a constitutional framework in which employees are free to organize and select an advocate, and from that guarantee of collective strength then lobby their various legislatures for particular rights in the employer/employee relationship. See, e.g., Atkins v. Charlotte, 296 F.Supp. 1068, 1077 (W.D.N.C. 1968). The virtue of that view is its consistent emphasis on freedom of action, and its antagonism to coercion. And within that perspective it does not follow at

all, that once bargaining rights are successfully secured, as in the instant case, the constitutional rights disappear.

** We affirm the superior court's judgment that the School District's policy restrictions on affiliation and choice of bargaining representative are violative of first amendment freedoms guaranteed to the non-certificated school employees.

f

Having decide that portions of the School District's labor policy are unconstitutional, we must now decide whether these may be severed, leaving the remainder of the policy intact and enforceable.

In determining questions of severability, we make two inquiries. Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975). First we must determine whether the constitutional portions of the policy, standing alone, can be given legal effect. Id. at 713. The School District concedes that they can, and no further discussion is necessary.

Second, we must identify the primary purpose of the labor policy, and determine whether this purpose can be achieved with the invalid provisions stricken. Id. at 714-15. "The test . . . is whether the remaining parts are so independent and complete that it may be presumed that the

[School District] would have enacted the valid parts without regard to the invalid part." Jefferson v. State, 527 P.2d 37, 41 (Alaska 1974). It is not dispositive that the stricken portions constitute a fragment of a paragraph. Lynden Transport, supra; Speidel v. State, 460 P.2d 77 (Alaska 1969).

We find that the primary purpose of the labor policy is stated in its preamble:

> [T]he Board wishes to maintain its long tradition of fair play with its employees by enacting a policy which will set the stage for harmonious and cooperative relations between the Board and its classified employees and to protect the public by assuring orderly and uninterrupted operations of the district.

After striking only the unconstitutional restrictions of the policy, the superior court concluded that the purpose articulated in the preamble could still be fulfilled. We concur.

The policy adopted by the school board contains more than just the language authorizing collective bargaining and limiting affiliation rights. The recognition paragraph states that the association may not limit membership on the basis of race, religion, creed, sex, or marital status. It prohibits making membership in the association or payment of dues a condition of employment. It prohibits strikes or slow-downs by association members and requires

that the association assist in preventing these where possible. Beyond the recognition section, other sections of the labor policy lay down the conditions an association must meet before it will be deemed by the school board to have been authorized by the school employees to represent them. The section titled "Scope of Bargaining" narrowly limits what the association can discuss in negotiations, and prohibits negotiations on "inherent managerial policy", which includes but is not limited to

> the functions and programs of the Board, standards of services, the district budget, utilization of technology, the organizational structure of the schools and the selection and direction of personnel, including work hours, assignments, transfers, job descriptions, promotions based on merit with seniority a secondary factor, the determination of other hiring and dismissal or demotion procedures.

Other sections of the policy cover, among other things, what will happen if the parties cannot agree in negotiations, disputes procedures, and the duration of any labor agreement. All of these provisions of the labor policy apply regardless of whether the association is affiliated with a non-local organization or not.

Given the detailed nature of the labor relations policy when read as a whole, we conclude that the superior court properly found that the non-affiliation clause is severable. The primary purpose of the policy is clearly

stated in the preamble. There the school board said that it wished to preserve "harmonious relations" with its classified employees and assure smooth operation of the school district. Although the non-affiliation clause may be considered an important part of the structure the board created to achieve these goals, deleting the clause will leave virtually all of the labor policy intact. Since the school board obviously considered collective bargaining important to the maintaining of good relations with its classified employees, we cannot assume that it would not have enacted the constitutional portions, had it known that two restrictions would be found unconstitutional.

AFFIRMED.

RABINOWITZ, Justice, dissenting in part.

I am in agreement with the court's holding that those portions of the School District's labor policy which place restrictions on affiliation and choice of bargaining representative are violative of the first amendment rights of non-certificated school employees. My disagreement with the court's opinion centers on the majority's conclusion that the non-affiliation clause is severable.

In discussing presumptions of separability and inseparability in Lynden Transport, Inc. v. State, 532 P.2d 700, 711-12 (Alaska 1975), we quoted, with approval from Carter v. Carter Coal Co., 298 U.S. 238, 312, 80 L. Ed. 1160, 1189 (1936), where the Supreme Court said in part:

> Under the statutory rule, the presumption must be overcome by considerations which establish 'the clear probability that the invalid part being eliminated the legislature would not have been satisfied with what remains.'

In my view, non-affiliation is a paramount part of the structure upon which the Board's labor policy rested. Before the remainder of the policy had any applicability, the employees' organization had to meet the recognition requirement. I think it apparent that the non-affiliation clause was intended as a mandatory requirement for it embodies one of the two explicit requirements found in the recognition paragraph -- the other being proof of majority representation.

Thus, I conclude that it cannot be fairly said that the Board viewed the non-affiliation requirement as severable, "independent," or "non-essential."[1]

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1. In short, I have concluded that the burden of proof adopted in Lynden Transport, Inc. v. State, 532 P.2d 700, 711-12 (Alaska 1975), as applied in the instant case, leads to the result that the non-affiliation clause was not severable. In reaching this conclusion, I assume arguendo that there is a statutory presumption of severability with regard to the Board's labor policy, but find that the record establishes the "clear probability" that the Board "would not have been satisfied" with the labor policy without the non-affiliation clause.

Alaska Supreme Court Decision on Scope of Negotiations Under Teacher Bargaining Law

IN THE SUPREME COURT
OF THE STATE OF ALASKA

KENAI PENINSULA BOROUGH
SCHOOL DISTRICT and KENAI
PENINSULA BOROUGH

v.

KENAI PENINSULA EDUCATION
ASSOCIATION,
Appellee.

File No. 2470

ANCHORAGE BOROUGH EDUCATION
ASSOCIATION,
Appellant,

v.

GREATER ANCHORAGE AREA BOROUGH,
ANCHORAGE BOROUGH SCHOOL DISTRICT,
Appellee.

File No. 2492

MATANUSKA-SUSITNA SCHOOL DISTRICT,
Appellant,

v.

MATANUSKA-SUSITNA EDUCATION
ASSOCIATION,
Appellee.

File No. 2563

(No. 1537 - December 9, 1977)

Appeals from the Superior Court of the State of Alaska, Third Judicial District, at Kenai, No. 2470, James A. Hanson, Judge; at Anchorage, No. 2492, Victor D. Carlson, Judge; at Anchorage, No. 2563, C.J. Occhipinti, Judge.

Appearances: Allen McGrath and John R. Snodgrass, Jr., of Graham and James, Anchorage, for School Districts. John R. Strachan, Anchorage, for Education Associations.

Before: Boochever, Chief Justice, Rabinowitz, Connor, Erwin, and Burke, Justices.

CONNOR, Justice.

These cases present important questions of labor law and constitutional law concerning the collective bargaining requirements for teachers in the public schools. Two of these cases are before us because the teachers' associations (the unions) have sued school districts and boroughs (the school boards) to compel collective bargaining in good faith under AS 14.20.550. In the third, a school board seeks a declaratory judgment that certain issues are not bargainable. The school boards, while not disputing the unions' right to collective bargaining on a number of employment-related issues, contend that they should not be forced to bargain collectively on various items which they regard as affecting educational policy. Educational policy, the school boards contend, must be determined only by the public through the legislature and, by delegation, through the school boards. We will examine the more specific issues later in this opinion. They include such items as class size and the use of teacher specialists and paraprofessionals. Of the three trial courts which passed on the matter, one ruled in favor of the school boards,[1] one ruled in favor of the teachers' union,[2] and one split the various items, ruling for the board on some and the unions on other.[3]

I. Introduction

To facilitate the understanding of our more detailed legal discussion later in this opinion, we will summarize at the outset the contentions of the parties. The statutes at issue in this litigation are AS 14.20.550 and .610, which provide:

"Sec. 14.20.550. Negotiation with certificated employees. Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (§1 ch 18 SLA 1970; am §3 ch 71 SLA 1972; am §21 ch 124 SLA 1975)."

"Sec. 14.20.610. Legal responsibilities of boards. Nothing in §§550-600 of this chapter may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies. (§1 ch 18 SLA 1970)."

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does not have the final decisions on matters subject to good faith collective bargaining, since if management adheres

to its determined policies, it violates the law.

The school boards contend that the submission of educational policies to a good faith collective bargaining requirement would remove the final decisions on such matters from the boards, contrary to the intent of the legislature expressed in AS 14.20.610. The boards contend that to require bargaining on questions of educational policy would also contravene the Alaska Constitution, art. VII, §1, which makes education the exclusive domain of the legislature.[4] See Macauley v. Hildebrand, 491 P.2d 120 (Alaska 1971). Delegation of part of the decision making power on educational policy to labor unions is unconstitutional, they urge, because the union is a private organization, unaccountable to the public. The union can use the power for its own ends, and is under no duty to foster educational policies which are in the general public interest.

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision making power inherent in a labor negotiations' requirement. They further argue that they represent professional employees, and that their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

The unions argue that the Alaska teachers' collective bargaining statutes are more comprehensive than those found elsewhere, and hence the scope of bargaining should be interpreted broadly. The school boards assert that the Alaska Constitution as interpreted in Macauley v. Hildebrand, supra, is more adamant than provisions in other states in placing education firmly within the legislative prerogative. Therefore, collective bargaining must yield across a wide range of issues affecting educational policy.

II. Scope of Duty to Bargain

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.[5] Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.[6] Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy making powers of an employer by curtailing any absolute directives on his part.

When we turn to employment in the public sector, and particularly in education, the question of what is properly bargainable is thrown into more doubt. If teachers' unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the board public interest.[7]

Recently the United States Supreme Court had occasion to comment upon the differences between collective bargaining in the public and private sectors. In Abood v. Detroit Board of Education, ___U.S.___, 52 L.Ed.2d 261, 279-80 (1977), the Court, speaking through Mr. Justice Stewart, observed:

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public sector union is correspondently less concerned that high prices due to costly wage demands will decrease output and hence employment.

The government officials making decisions as the public 'employer' are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority - department managers, budgetary officials, and legislative bodies - are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decision making by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters - taxpayers, users of particular government

services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

In a concurring opinion in that case Mr. Justice Powell noted the similarity between a public sector union and a conventional political party:

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decision making in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal state and federal governments, the union's objective is to obtain favorable decisions - and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country." 52 L.Ed.2d at 298.[8]

The legislature was evidently cognizant of this concern when it enacted AS 14.20.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

The school boards initially argue that to make matters of school operation and educational policy subject to collective bargaining amounts to an unconstitutional delegation of governmental power to the unions.

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, e.g., Carter v. Carter Coal Co., 298 U.S. 238, 311 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. E.G., United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 577-78 (1939)(cooperative marketing program from agricultural products); Agricultural Prorate Comm'n v. Superior Court, 55 P.2d 495, 504-06 (Cal. 1936)(same); Potter v. New Jersey Supreme Court, 403 F. Supp. 1036, 1039-40 (D.N.J. 1975), aff'd, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally, 1 K. Davis, Administrative Law Treatise §2.14 (Supp. 1970) (collecting cases). See also 1 Id. §2.15 (1958).

Furthermore, the statute merely requires the school board to negotiate with the union. It does not require the board to accept any particular proposal the union might offer. It does not require, and probably does not permit, the board to delegate to the union the sole power to make any decision. Therefore, cited cases invalidating outright grants of governmental power to private groups, e.g., Hetherington v. McHale, 329 A.2d 250 (Pa. 1974), and Bayside Timber Co. v. Bd. of Supervisors, 97 Cal. Rptr. 431 (App. 1971), are not apposite.

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, or both. Chicago Div. of Ill. Ed. Ass'n v. Board of Ed., 222 N.E.2d 243, 251 (Ill. App. 1966); Joint School Dist. No. 8 v. Wisc. Emp. Rel. Bd., 155 N.W.2d 78, 83 (Wisc. 1967); State v. City of Laramie, 437 P.2d 295, 300 (Wyo. 1968) (firemen).

In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

Courts in other jurisdictions have considered problems similar to those which we confront here. It is instructive, though not determinative, to look to the case law of other jurisdictions as an aid to interpretation.

The court in Dunellen Bd. of Education v. Dunellen Ed. Ass'n., 311 A.2d 737 (N.J. 1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.[9]

National Ed. Assn'n of Shawnee Mission, Inc. v. Board of Ed., 512 P.2d 426 (Kansas 1973), is closely analogous to the case at bar. There the teachers' association negotiated under a statute which permitted it to "participate in professional negotiation with boards of

education . . . for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." The state constitution, like Alaska's, gave the legislature the power to provide for public schools. The negotiations reached an impasse after the board took the position that all matters, whether negotiable under the statute or not, were of a policy nature subject to unilateral change by the board and could not be incorporated into a contract, while the teachers asserted that nearly everything pertaining to school operations was negotiable.

On appeal the Kansas Supreme Court was confronted with the same problem that we are: how to frame a test which would delimit those matters which are bargainable from those which are not. The Kansas court held that salaries, vacations, and sick leave are negotiable. In so doing it pointed out that the term "policy" is not helpful, because even salaries are a matter of policy. It drew the following distinction:

"The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." 512 P.2d at 435.

While the Shawnee Mission case represents a commendable attempt to balance competing claims, it does not provide a test which is useful in determining the negotiability of specific subjects. In other words, it does not provide any comforting guidance in determining how, in the last analysis, the balance should be weighed between the school boards and teachers.

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. See Summers, supra, 83 Yale L.J. at 1181-82, 1194-95. But see Wollett, The Coming Revolution in Public School Management, 67 Mich. L. Rev. 1017 (1969) (argues that these subjects should be bargainable).

III. Specific Issues

We will now consider the Alaska situation in more detail. At the outset it appears to us that questions concerning salaries, the number of hours to be worked, and amount of leave time are all so closely connected with the economic well-being of the individual teacher that they must be held negotiable under our statutes. The troubling question is what other items are bargainable.

The various trial courts in these cases considered such items as (1) relief from non-professional chores, (2) elementary planning time, (3) paraprofessional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees.

The testimony adduced in the trial courts does not provide us with much enlightenment as to why any of these items should fall on one side of the line or another. Realistically the two areas, i.e., (1) educational policy, and (2) matters pertaining to employment and professional duties, merge into and blend with each other at many points. Logically and semantically it is nearly impossible to assign specific items to one category and not the other. Certain examples may make this point more clearly.

In the Mat-Su case the teachers have asked for a planning period of 45 minutes "to be taken during the academic portion of the day." Were this merely a request for planning time, it might be considered negotiable. The demand that it be during the academic portion of the day, however, presents an additional complication: whether, as a matter of educational policy, elementary school children should have one teacher with them throughout the day or whether they are old enough to be taught by different people. This presents a basic educational decision. While the amount of paid time available to a teacher for preparation of lesson plans affects the teacher directly, the demand that such time be available "during the academic portion of the day" presents a policy question.

Similarly, the question of class size affects directly the amount of work a teacher must perform. But the determination of optimum class size is quite basic to school policy and management, and potentially has a substantial impact on the school district's personnel expenditures. A number of courts have found this to be clearly non-negotiable. See National Ed. Ass'n. of Shawnee Mission, Inc. v. Board of Ed., 512 P.2d 426, 435 (Kan. 1973); West Irondequoit Teachers Ass'n v. Helsby, 315 N.E.2d 775, 777-78 (N.Y. App. 1974); School Dist. of Seward Ed. Ass'n v. School Dist. of Seward, 199 N.W.2d 752, 759 (Neb. 1972); City

of Biddeford v. Biddeford Teachers Ass'n, 304 A.2d 387, 403 (Maine 1973).

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable.[10] In view of the concerns expressed on page 7-10 supra, we conclude that the other items listed on page 17 are, under the existing statutory language, non-negotiable.

It would be helpful if the legislature, through future enactments, provided more specific guidance on a number of the items which the unions seek to negotiate. Lacking that guidance, however, we cannot confidently say that the legislature intended any of these items to be bargainable. We cannot, therefore, read the statutes expansively as to the scope of what is negotiable.

As to matters which affect educational policy and are, therefore, not negotiable, we believe that there is nevertheless implicit in our statutes the intention that the school boards meet and confer with the unions. It is desirable that the boards consider teacher proposals on such questions. This will encourage teachers to give the boards the benefit of their expertise, and to make their positions known for the board's use in establishing educational policy.

One minor question remains. In the Kenai case the trial court, in construing the statutes, relied upon the privately expressed opinion, by means of a letter, of a former legislator. The legislator's opinion was not a matter of public record, subject to judicial notice, nor was it introduced in evidence. Even if it were placed in evidence, reliance upon it would be impermissible under Alaska Public Employees Ass'n v. State, 525 P.2d 12, 16 (Alaska 1974). Resort to the letter as a means of legal interpretation was, therefore, error.

AFFIRMED IN PART, REVERSED IN PART.

APPENDIX

LIST OF NEGOTIABLE
AND NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators
5. Teacher Aides
6. Para-Professionals
7. FTE Formula
8. Specialists
9. Calendar

Those items which are negotiable are:

1. Recognition
2. Negotiation Procedures
3. Grievance Procedures
4. Salary Schedule Conditions
5. Salary Schedule
6. Automatic Cost of Living
7. Extra Curricular and Extra Duty
8. Extended Contract
9. Additional Educational Employment
10. Life Insurance
11. Health Insurance
12. Liability Insurance
13. Automobile Allowance
14. Tuition/In-Service Workshops
15. Reimbursement for Physical Examinations
16. Sabbatical Leave
17. Career Development
18. Administrative Leave
19. Personal Leave
20. Sick Leave and Bereavement
21. Personal and Sick Leave for Half-Time Employees
22. Unpaid Leave of Absence
23. Maternity Leave
24. Political Leave
25. Duty-Free Lunch
26. Teacher Preparation Periods
27. Monthly Planning Time
28. In-Service Days
29. Discretional Materials
30. Personnel Files
31. Teacher Transfer
32. Teacher Retention
33. Job Openings
34. Reduction of Staff
35. Teacher Contracts
36. Association Rights and Privileges
    (a) Information
    (b) Release Time for Meetings
    (c) Use of School Buildings
    (d) Use of School Equipment
    (e) Supplies
    (f) Mail Facilities
    (g) Subcontracting
    (h) Non Jeopardy
    (i) Exclusive Rights
    (j) KPEA Professional Leave
    (k) Dues Deduction/Continuing Membership
    (l) Other Deductions
    (m) Conformity to Law
    (n) School Board Agenda
    (o) Preliminary Draft of Budget
37. Agreement Print-up and Dissemination
38. Duration of Contract

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[1]Anchorage Borough Ed. Ass'n v. GAAB, Anchorage Borough School Dist., No. 2492 (hereinafter Anchorage).

[2]Kenai Pen. Borough Sch. Dist. and Kenai Pen. Borough v. Kenai Pen. Ed. Ass'n, No. 2470 (hereinafter Kenai).

[3]Matanuska-Susitna Sch. Dist. v. Matanus-

ka-Susitna Ed. Ass'n, No. 2563 (hereinafter Mat-Su).

[4]Alaska Constitution, art. VII, §1 states: "The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

[5]Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964) (management decision to subcontract out the work of some employees must be bargained); International Ladies' Garment Workers Union v. N.L.R.B., 463 F.2d 907 (D.C. Cir. 1972) (decision to relocate the business to another state subject to bargaining); Royal Typewriter Co., 209 N.L.R.B. 1006, 1012 (1974) (decision to close a plant subject to bargaining). But see General Motors Corp., 191 N.L.R.B. 951 (1971), aff'd sub nom. International Union, United Auto. A. & A. Imp. Wkrs. v. N.L.R.B., 470 F.2d 422, 425 (D.C. Cir. 1972) (decision to sell part of business not bargainable).

[6]Sign and Pictorial Union Local 1175 v. N.L.R.B., 419 F.2d 726, 731 (D.C. Cir. 1969); N.L.R.B. v. General Electric Co., 418 F.2d 736, 756-62 (2d Cir. 1969), cert. denied, 397 U.S. 965 (1970); N.L.R.B. v. McLane Co., 405 F.2d 483, 484 (5th Cir. 1968); N.L.R.B. v. Reed & Prince Mfg. Co., 205 F.2d 131, 134-35 (1st Cir. 1953), cert. denied, 346 U.S. 887 (1953) ("the employer is obliged to make some reasonable effort in some direction to compose his differences with the union"; emphasis in original); Majure v. N.L.R.B., 198 F.2d 735 (5th Cir. 1952). See generally Swordlow, Freedom of Contract in Labor Law, 51 Tex. L. Rev. 1 (1972).

[7]As one commentator has noted, "what is in the best interest of the students and the community is not always in the best interests of teachers." Rand, Symposium on Teacher Bargaining: Commentary, 50 Ind. L.J. 344, 350 (1975).

[8]The holding of the majority in Abood was that a union shop or agency shop agreement for public employees, requiring all employees in the bargaining unit to make financial contributions to the union, did not violate the first amendment rights of employees who objected to the union. The same rule obtains for unions in the private sector. Although Justice Powell concurred in the majority's decision to remand the case for further proceedings, he disagreed with this constitutional holding. Unlike the majority, he felt that the differences between public and private employment compelled a holding that agency shop or union shop agreements in the public sector are forbidden by the first amendment.

See generally Rehmus, Constraints on Local Governments in Public Employee Bargaining, 67 Mich. L. Rev. 919 (1969); Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 U.C.L.A. L. Rev. 867 (1972); Summers, Public Sector Bargaining: Problems of Government Decisionmaking, 44 U. Cinn. L. Rev. 669 (1975); Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. 1156 (1974); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 Yale L.J. 1107 (1969); Project, Collective Bargaining and Politics in Public Employment, 19 U.C.L.A. L. Rev. 887, 1010-51 (1972). Supp. 1036, 1039-40 (D.N.J. 1975), aff'd, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally, 1 K. Davis, Administrative Law Treatise §2.14 (Supp. 1970) (collecting cases). See also 1 Id. §2.15 (1958).

[9]The teachers' unions in the case at bar argue that Dunnellen was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and Dunnellen has been followed by the courts despite the statutory amendment. See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 343 A.2d 133 (N.J. Super. 1975).

[10]Or 5 U.S.C. §7512(a) under the Veterans Preference Act.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill 453 "An Act relating to Labor Relations between School
Title Boards and other public employers and their employees."

Requested by HESS Committee Date 4/18/79

II. FISCAL DETAIL

Agency Affected Department of Labor

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Wage and Hour Administration

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100	PERSONAL SERVICES		28.8	28.8	28.8	28.8	28.8
200	TRAVEL		16.1	17.2	18.4	19.7	21.0
300	CONTRACTUAL		10.7	11.4	12.3	13.1	14.0
400	COMMODITIES		.2	.2	.2	.3	.3
500	EQUIPMENT		0	0	0	0	0
600	LAND & STRUCTURES		0	0	0	0	0
700	GRANTS, CLAIMS, ETC.		0	0	0	0	0
	TOTAL		55.8	57.6	59.7	61.9	64.1

FUNDING (Thousands of Dollars)

GENERAL FUND	55.8	57.6	59.7	61.9	64.1	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	1	1	1	1	1	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. Personal Services cost of current salary schedule cost (1/28/80), does not reflect any outstanding salary increases not yet approved by Legislature.

2. Travel to remote areas, $15,000 - Wage & Hour Investigator I, Range 16, Juneau.

3. Contractual Services, $10,000, includes Legal Services cost for Attorney General's Office.

4. Equipment, $1,000 - Desk, Chair, Bookcase, Calculator and recorder.

5. Inflation factor used - 7% for all items, except Personal Services.

6. Assumes effective date of July 1, 1980.

IV. DATE January 28, 1980 PREPARED BY James Souby III

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

TOTEM ASSOCIATION OF EDUCATIONAL SUPPORT PERSONNEL

3205 East 17th Anchorage, AK 99504
w-278-9531, h-276-7585

January 23, 1980

Representative Thelma Buchholdt
Pouch V
Juneau, Alaska 99811

Dear Representative Buchholdt

It is our understanding that House Bill 453 is scheduled for a hearing before the Health, Education & Social Services Committee, which you chair, on January 28, 1980.

H.B. 453 is very important to every non-certificated school district employee throughout the state. As we explained to you in our letter of November 1979, we strongly support legislation which would bring classified employees under the protection of the Public Employment Relations Act, which H.B. 453 does.

Thank you for scheduling a hearing for this bill. We will be closely monitoring the progress of H.B. 453 and stand ready to provide you with any information you may need.

Sincerely

TOTEM ASSOCIATION OF EDUCATIONAL
SUPPORT PERSONNEL

Patricia M. Gold

Patricia M. Gold, President

pmg/js

CLASSIFIED PERSONNEL ORGANIZATION
Fairbanks North Star Borough School District
958 Cowles—Room 261
Fairbanks, Alaska 99701 (907) 452-2023

January 18, 1980

Representative Thelma Buchholdt, Chairperson
House Committee on Health, Education and Social Services
Pouch V
Juneau, Alaska 99811

Dear Representative Buchholdt:

Our organization has been informed that H.B. 453 is scheduled for committee hearing on January 28, 1980.

H.B. 453 is very important to our organization and to all non-certificated employees of school districts throughout the State of Alaska. Therefore we support H.B. 453 most vigorously, and urge its passage.

The intent of the legislature when the Public Employment Relations Act was enacted was to create an orderly process by which public employees could collectively resolve problems. The law provides for a problem-solving mechanism which results in acceptable agreement. The law also defines unfair labor practices and provides that mechanism for resolving such charges. Under PERA, finality to the collective bargaining process and related concerns is provided either through binding arbitration or the right to strike. Non-certificated school district employees do not have the above provisions of law available to them. Equity requires that this small group of public employees also be afforded recognition as provided by the Public Employment Relations Act.

We would like to take this opportunity to thank you for your concern in this matter. If we can assist you in gaining passage of this legislation, please so advise.

Sincerely

Iola Harris,
President

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 453

Title An Act relating to labor relations between school boards and other public employers and their employees

Requested by House HESS Date 1/24/80

II. FISCAL DETAIL

Agency Affected Department of Education

Program Category Affected Education

BRU, Program, or Subprogram(s) Affected

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Fiscal impact cannot be quantified

IV. DATE 1/28/80 PREPARED BY William D. Thomson, Deputy Commissioner

AGENCY Department of Education

PHONE 465-2800

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

February 1, 1980

SHARON J. DOWELL
5703 STERLING WAY
ANCHORAGE, ALASKA 99504

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Representative:

Like most Alaska voters, I believe that a worker should not be forced to join or support a union in order to get or keep a job.

Please cast your every vote against H.B. 453 - or any other bill that would force teachers and education employees to pay a union in order to work.

I'll be very interested to hear from you on your stand concerning this issue.

Sincerely yours,

Sharon Dowell

February 1, 1980

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Representative:

Like most Alaska voters, I believe that a worker should not be forced to join or support a union in order to get or keep a job.

Please cast your every vote against H.B. 453 - or any other bill that would force teachers and education employees to pay a union in order to work.

I'll be very interested to hear from you on your stand concerning this issue.

Sincerely yours,

Tawana John

ST RT BOX 1783-J
Anch 99502

Hon. Mike
AK House o
State Capi
Juneau, Ak

February 1, 1980

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Representative:

Like most Alaska voters, I believe that a worker should not be forced to join or suppor' a union in order to get or keep a job.

Please cast your every vote against H.B. 453 - or any other bill that would force teachers and education employees to pay a union in order to work.

I'll be very interested to hear from you on your stand concerning this issue.

Sincerely yours,

Mary L. Cook

Mary L. Cook
Box 1557, Star Route A
Anchorage, AK 99507

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, AK 99811

February 1, 1980

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Representative:

Like most Alaska voters, I believe that a worker should not be forced to join or support a union in order to get or keep a job.

Please cast your every vote against H.B. 453 - or any other bill that would force teachers and education employees to pay a union in order to work.

I'll be very interested to hear from you on your stand concerning this issue.

Sincerely yours,

M Sanders

M Sanders
1503-B East 40th
Anchorage, AK 99504

Hon. Mike Miller
Alaska House of Representatives
State Capitol
Juneau, AK 99811

P.O. Box 406
Haines, Alaska 99827
September 31, 1980

Representative Mike Miller
Alaska House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Representative Miller:

Like most Alaskan voters, I believe that a worker should not be forced to join or support a union in order to get or keep a job.

Please cast your vote against H. B. 453--or any other bill that would force teachers and education employees to pay a union in order to work.

I'll be interested to hear from you on your stand concerning this issue.

Thank you very much for your kind attention to this matter.

Yours truly,

Alan W. Heinrich

ALan W. Heinrich

The National Right to Work Agency in Virginia

called 1/17/80

Against HB 453

contact person
Ruth Ann Hoel
703- 573-8550

(6) For the purposes of This Section The arbitrators shall be selected in This manner. The Teachers shall apoint one of the Panel of arbitrators. The school board shall apoint One of The arbitrators and One shall be elected From the school district boundrys on an at large basis. All Three members shall be Resedences of The district.

PROPOSED AMENDMENT TO HB 453
Offered by the Seventh Day Adventist Church

On page 1, line 17, after " . . . agreement.", insert the following:

However, agreement involving union security including an all union agreement or agency agreement must safeguard the rights of non-association employees, based on bona fide religious tenents or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union dues and initiation fees and assessment, if any, to a non-religious, non-union charity mutually agreed upon by the employee affected and the representative of the employee's bargaining organization to which such employee would otherwise pay dues. The employee shall furnish written proof that this has been done.

TESTIMONY OF LORI SEARS, NEA-ALASKA BEFORE THE JOINT MEETING OF THE HESS COMMITTEE - April 7, 1979

Working Conditions for Teachers

As a result of the narrow view School Boards are taking on items that are negotiable and the 1977 Supreme Court decision, we are seeking the inclusion of working conditions as negotiable items between teachers and their school boards.

The recent DOE Task Force report on Regional High Schools cited the high teacher turnover, among other things, as an interruption in the educational process of rural children. We believe that that high turnover, in part, is due to teachers not being properly informed of the demands placed upon them that are beyond the normal duties of a classroom teacher.

Many accept a teaching position and then discover their duties include additional non-instructional duties that have not been spelled out in the teaching contract or the negotiated agreement. Some of the activities required of teachers by districts are:

- Repair and maintain the school's generators
- Be present at all Community School Committee meetings, Parent advisory meetings for: Indian Education, Johnson O'Malley, Title I and Special Ed
- Supervise and handle paperwork (tends to be massive) for: janitors, cooks, and aides
- Supervise lunch hours
- Provide/supervise community recreation and/or activities like: town movies, dances, PE activities in the gym
- Emergency repairs to schools (if the roof leaks, fix it)
- Haul freight to school from airport or river

In our urban areas, the greatest working condition is the number of students one is required to teach without regard for the type of student who is to be instructed. With mainstreaming of the exceptional child being an intregal part of our classrooms, teachers are finding classloads to be excessive when three or four severely handicapped youngsters are placed in already crowded classrooms. We support the education of all exceptional children in the least restrictive environment, but we do not feel proper attention has been given to the problems the classroom teacher faces when mainstreaming is done without regard to class size.

We feel that the negotiations table is a proper setting to discuss these duties and requirements placed upon teachers that have been narrowly construed to be policy matters rather than conditions pertaining to the fulfillment of our professional duties.

ANALYSIS OF HOUSE BILL 453

Department of Labor
Office of the Commissioner
Phone: 465-2700

April 19, 1979

Title: "An Act relating to labor relations between school boards and other public employers and their employees."

This legislation would make it mandatory for all school boards to permit their non-certificated employees to enter into collective bargaining and they would be covered by the Public Employment Relations Act. This bill would cover persons that have been barred form entering into collective bargaining under present law. The Department of Labor acts as the Labor Relations Agency for all public employees except State employees and would have to take on the added duties for these employees to conduct elections, hold hearings and settle grievances throughout the state.

Section 1. AS 14.20.550 sets out what the school board must negotiate with the certified teachers on, and (b) gives the Department of Labor the authority to settle any disagreements over working conditions if the certificated employees and school boards cannot agree.

Section 2. AS 23.40.100(b) makes it mandatory that no representation be placed on the initial election ballots, for elections conducted under the Public Employment Relations Act.

Section 3. AS 23.40.200(c) prohibits non-certificated employees of school boards from engaging in a strike.

Section 4. AS 23.40.250(5) and (6): (5) takes away the exemption for non-certificated school board employees. (6) makes a school board a public employer under PERA.

Section 5. AS 23.40.250 defines school board for PERA.

Section 6. makes it mandatory for school boards to permit their non-certificated employees to enter into collective bargaining covered by the Public Employment Relations Act.

Section 7. Any collective bargaining agreement already entered into are not covered by these laws.

Fiscal Impact - The bill would require one new position with adequate funding for additional travel and other non-personal services expenses.

Conflicting Bills - Senate Bill 213

Departmental Position - Neutral

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

February 5, 1980

The Honorable Mike Miller
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Miller:

The Juneau School Board wishes to go on record as being opposed to House Bill 453 and House Bill 487 for the following reasons and respectfully request that you do not support them.

House Bill 453 provides the right to strike to all employees of the School District, and in addition, provides mandatory bargaining to all employees with broad interpretations to what must be bargained. At the present time the Juneau School District negotiates with their classified employees so the legislation is not necessary, and above all, should not include the right for any employees to strike. Please remember that school boards in Alaska cannot raise money on their own, but must come to the Borough Assembly or Legislature for additional revenue. A striking action against the Board allows them no additional revenue with which to resolve the strike. Therefore, educational programs are cut back.

House Bill 487 on binding arbitration removes the decision making authority from the elcted representatives of the people. Instead of leading to a solution of the problem by serious negotiations by both parties to avoid arbitration, often one or the other parties will hold out for arbitration. Historically arbitrators split the difference and everyone holds out with extreme offers as tactical maneuvers.

It is our opinion that the State Board of Education request to the Governor to form a Blue Ribbon Committee to seek the best alternative to the serious problems of negotiation should be honored. Passage of legislation before the study would be premature.

With the legislatures having second thoughts over the collective bargaining of State employees and contemplating some modifications, it seems appropriate to allow a study of the problems to take place before enacting legislation that may not serve any useful purpose.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill 453
Title "An act relating to labor relations between school boards and other public employees and their employees"
Requested by Parr Date 4/18/79

II. FISCAL DETAIL
Agency Affected Department of Labor
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Wage and Hour Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		29.5	31.3	33.2	35.2	37.3
200 TRAVEL		15.0	15.9	16.9	17.9	19.0
300 CONTRACTUAL		10.0	10.6	11.2	11.9	12.6
400 COMMODITIES		.2	.2	.2	.2	.3
500 EQUIPMENT		1.0	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		55.7	58.0	61.5	65.2	69.2

FUNDING (Thousands of Dollars)

GENERAL FUND		55.7	58.0	61.5	65.2	69.2
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Department must assume that all non-certificated employees of school boards will enter into collective bargaining. It would require travel to all areas of the state to conduct elections, hold hearings, resolve grievances and unfair labor practices.

It would require the addition of one W/H Investigator I, Range 16, stationed in Juneau. $15,000.00 in additional travel funds to travel to all of the remote areas, $10,000.00 contractual for legal services for the Attorney General's Office, and additional printing costs. $200.00 for commodities and $1,000.00 for equipment; this would include a desk at $329.71, chair $135.63, bookcase $102.04, calculator $209.50 and recorder $223.00.
6% inflation factor used in expenditure analysis.

IV. DATE 4/18/79 PREPARED BY James M. Bouby III
AGENCY Labor
PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/78)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

HB 453 Original bill

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill 453
Title "An act relating to labor relations between school [illegible] and other public employees and their employees"
Requested by Rep. Date 4/18/79

II. FISCAL DETAIL
Agency Affected Department of Labor
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Wage and Hour Administration
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
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200	TRAVEL		15.0	15.9	16.9	17.9	19.0
300	CONTRACTUAL		10.0	10.6	11.2	11.9	12.6
400	COMMODITIES		.2	.2	.2	.2	.3
500	EQUIPMENT		1.0	0	0	0	0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		55.7	58.0	61.5	65.2	69.2

FUNDING (Thousands of Dollars)

GENERAL FUND		55.7	58.0	61.5	65.2	69.2
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1	1	1	1	1
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The Department must assume that all non-certificated employees of school districts will enter into collective bargaining. It would require travel to remote areas of the state to conduct elections, hold hearings, resolve representation disputes and unfair labor practices.

It would require the addition of one W/H Investigator I, Range 16, stationed in Juneau. $15,000.00 in additional travel funds to travel to all of the remote areas, $10,000.00 contractual for legal services for the Attorney General's Office, and additional printing costs. $200.00 for commodities and $1,000.00 for equipment; this would include a desk at $329.71, chair $135.63, bookcase $102.04, calculator $109.50 and recorder $223.00.
6% inflation factor used in expenditure analysis.

IV. DATE 4/18/79 PREPARED BY James M. Baxley III
AGENCY Labor
PHONE 465-2720

Original: Legislative Finance
cc: Budget and Management
✓Prime Sponsor (First Legislator Named) Rep Charlie Parr

23-001 (Rev. 12/78)

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02166 NL ANCHORAGE AK 50 03-07 810P AST

PMS REP THELMA BUCHHOLDT

JUN

WE ARE APPALLED BY THE COMPROMISING POSITION IN WHICH HB489 PLACES LOCAL SCHOOL BOARDS. WE WILL LOSE LOCAL CONTROL ENTIRELY

PLEASE VOTE NO

HEATHER FLYNN

ANCHORAGE SCHOOL BOARD

HFSS coming up on Com. on Friday

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02098 POM ANCHORAGE ALASKA 15 02-01 750P AST

PMS REP BUCHHOLDT

JUN

I SINCERELY URGE THE PASSAGE OF HB489 TO STOP THE

DISCRIMINATION AGAINST THE NONCERTIFIED SCHOOL EMPLOYEES

CARL W JONES PO BOX 684 HOMER AK 99603

FEB 1 1978

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02078 NL ANCHORAGE ALASKA 50 02-01 810P AST

PMS REP BUCHHOLDT

JUN

I URGE FULL SUPPORT OF HB489 FOR PASSAGE THIS LEGISLATIVE SESSION.

MARGO KALVA BOX 1262 SOLDOTNA AK

TELEGRAM

...CA ALASKA COMMUNICATIONS, IN...
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02088 NL ANCHORAGE ALASKA 50 02-01 810P AST

PMS REP BUCHHOLDT

JUN

I URGE FULL SUPPORT OF HB489 FOR PASSAGE THIS LEGISLATIVE SESSION.

DORIS B BAXLEY BOX 335 SOLDOTNA AK

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02107 NL ANCHORAGE ALASKA 50 02-01 730P AST

PMS REP BUCHHOLD:

JUN

ONGLY URGE YOUR COMMITTEE TO PASS HB489

IN THE BEST INTEREST OF THE NONCERTIFIED PUBLIC EMPLOYEES

OF ALASKA.

DARLENE TACHICK BOX 1506 SOLDOTNA AK 99669

1978 FEB 1 PM 8 03

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

#

02116 NL ANCHORAGE ALASKA 50 02-01 830P AST

PMS REP BUCHHOLDT

JUN

I URGE FULL SUPPORT OF HB489 FOR PASSAGE THIS LEGISLATIVE SESSION.

DARWIN AND KAYE WALDSMITH BOX 154 NINILCHIK AK 99639

1978 FEB 1 PM 8

TELEGRAM

DBA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1978 FEB 1 PM 11

#

02145 POM ANCHORAGE ALASKA 15 02-01 925P AST

PMS REP BUCHHOLDT

JUN

IM IN FULL SUPPORT OF HB489.

ROY E BROWN JR TEACHER KENAI CENTRAL HIGH SCHOOL

BOX 762 SOLDOTNA AK

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

FEB 2 PM 1978

02155 POM ANCHORAGE ALASKA 15 02-01 938P AST

PMS REP THELMA BUCHHOLDT

JUN

UURGE YOU SUPPORT HB489 TO END NEGOTIATION DISCRIMINATION

AGAINST CLASSIFIED EMPLOYEES.

GARY AND GEORGIA ALEXANDER

ROUTE 2 BOX 745 SOLDOTNA AK

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6140
JUNEAU, ALASKA 99801

02068 NL TDA KENAI ALASKA 56 02-01 0605P AST

PMS REP THELMA BUCHHOLDT

JUN

I SINCERELY URGE THE PASSING OF HB489 TO STOP THE DISCRIMINATION AGAINST THE NON-CERTIFICATED SCHOOL EMPLOYEES. RECOGNITION MUST BE GIVEN TO THESE EMPLOYEES TO INSURE THAT THEY DO IN FACT HAVE THE SAME BARGAINING RIGHTS AS ANY OTHER PUBLIC EMPLOYEES.

GAIL M SIBSON PRESIDENT KENAI PENINSULA BOROUGH SCHOOL DISTRUCT CLASSIFIED ASSOTION LOCAL 3255 AFT PO BOX 1221 HOMER AK 99603

ST. MARY'S SCHOOL DISTRICT

BOX 71
ST. MARYS. ALASKA
99658

LICAUVICUAG ELEMENTARY

ANDREAFSKY HIGH

Feb. 13, 1978

Representative William Akers
Pouch V-State Capitol
Juneau, Alaska 99811

Dear Billy:

I have heard about HB 489 which would require School Boards to bargain with classified employees.

We here do this already. Every year our certified and classified staffs negotiate an annual agreement with the Shcool Board. Obviously we are in favor of both classified and certified employees negotiating with the School Board.

Our negotiations with both groups is held within the parameters of the recent Alaska Supreme Court decision which outlines negotiable and non-negotiable items for certified public school teachers in Alaska.

We would very definitely oppose any legislation which would give our certified staff the right to strike. I understand this is what some of the House HESS Committee would like to see happen since they are talking about placing these employees under the State Public Employees Relations Act.

With every best wish, I remain,

Yours sincerely,

Walter E. Brown

Walter E. Brown
Superintendent

xc: Senator John Sackett
Representative Thelma Buckholdt ✓
William D. Overstreet, Association of Alaska School Boards

WEB:deb

Signed and today,
DoPass - Friano

KODIAK ISLAND BOROUGH SCHOOL DISTRICT
P.O. BOX 886
KODIAK, ALASKA 99615
TELEPHONE: (907) 486-3131

February 4, 1980

The Honorable Thelma Buchholdt
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Representative Buchholdt:

The Kodiak Island Borough School District opposes the passage of HB 487 providing for binding arbitration in teacher negotiations. Neither binding arbitration or right to strike laws are the only solution to solving collective bargaining issues. It has been proven that good faith negotiations, presently provided for in State law, do work. Salaries for teachers in Alaska are comparable with other states that provide for both more restrictive and more liberal solutions to collective bargaining. In fact, we question that binding arbitration or the right to strike is a solution at all. They both create problems for local citizens by removing the right to locally determine the fate of their schools, and in the case of a strike, cause an unnecessary division in the parents, students and other constituents of the local district. The point is--education is a local responsibility. State law should not provide for outside third-parties to mandate local outcomes and remove the control of schools from local citizens.

As we stated earlier, the collective bargaining process (good faith negotiations) as it exists now, works. Currently, elected board representatives and representatives of teacher groups can and do sit down to work out mutually acceptable agreements. The give and take of negotiations provides an acceptable process which does function adequately. Can teachers honestly say that the negotiations process, as provided in Alaska State law, does not give them with a wage commensurate with teachers throughout the nation, and in keeping with other Alaskan professionals? We think not.

The law protects the teacher's right to a job by provisions for continuing the contract. The law protects the citizen's rights by mandating local control. Teachers and elected Boards have the responsibility to negotiate. Providing for binding arbitration or the right to strike will erode and eventually destroy that process.

We urge you to reject any proposals that provide for State laws which result in the abdication by local boards and teacher associations of their collective responsibility to negotiate.

Sincerely,

John E. Anttonen

John E. Anttonen
Superintendent

CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT
P.O. BOX 808 • DOUGLAS, ALASKA 99824

February 5, 1980

The Honorable Thelma Buchholdt
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Buchholdt:

The Juneau School Board wishes to go on record as being opposed to House Bill 453 and House Bill 487 for the following reasons and respectfully request that you do not support them.

House Bill 453 provides the right to strike to all employees of the School District, and in addition, provides mandatory bargaining to all employees with broad interpretations to what must be bargained. At the present time the Juneau School District negotiates with their classified employees so the legislation is not necessary, and above all, should not include the right for any employees to strike. Please remember that school boards in Alaska cannot raise money on their own, but must come to the Borough Assembly or Legislature for additional revenue. A striking action against the Board allows them no additional revenue with which to resolve the strike. Therefore, educational programs are cut back.

House Bill 487 on binding arbitration removes the decision making authority from the elected representatives of the people. Instead of leading to a sclution of the problem by serious negotiations by both parties to avoid arbitration, often one or the other parties will hold out for arbitration. Historically arbitrators split the difference and everyone holds out with extreme offers as tactical maneuvers.

It is our opinion that the State Board of Education request to the Governor to form a Blue Ribbon Committee to seek the best alternative to the serious problems of negotiation should be honored. Passage of legislation before the study would be premature.

With the legislatures having second thoughts over the collective bargaining of State employees and contemplating some modifications, it seems appropriate to allow a study of the problems to take place before enacting legislation that may not serve any useful purpose.

The Juneau School District would appreciate your support on these two matters.

Sincerely,

Carole Burger

Carole Burger, President
Juneau School Board

DLMK/CB:m

cc: Mr. Robert Greene, Executive Secretary, Association of Alaska School Boards

GREATER SITKA BOROUGH SCHOOL DISTRICT
ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P. O. BOX 179 SITKA, ALASKA 99835

JOHN E. COFFEE
SUPERINTENDENT

January 30, 1980

Representative Thelma Buchholdt
AK State House of Representatives
Pouch V, State Capitol Building
Juneau, AK 99811

Dear Representative Buchholdt:

I am writing because of my concern about two pieces of legislation that are before your H. E. S. S. Committee at this time. They are H.B. 487 and H.B. 453. The passage of these bills would result in the following:

(1) give teachers the right to strike
(2) allow school district classified employees the right to organize and strike
(3) expand what is bargainable
(4) provide binding arbitration in teacher bargaining

I believe that these bills together constitute a tremendous threat to local decision making and the local school board's right to operate a district responsibly and make some final decisions.

Binding arbitration would effectively place decision making authority in the hands of an entity outside the school district. This would be in direct contradiction to the local control theory of government. School boards are elected by law to manage the affairs of the district. They are, further, required by law to bargain in good faith on various items. This is currently done throughout the State. The result has been, generally, the highest paid teachers in the nation, working, in my view, in some of the best working conditions in the nation. I would refer you to the 1978-79 Alaska Association of School Boards publication entitled Survey of School District Budgeted Revenues, Expenditures, and Employee Benefits. It is my view that teacher unions are doing very well without having further advantages of binding arbitration, expanded bargainable items, and the right to strike.

In Sitka, we have recently received an advisory arbitrator's report that the Board has approved and that the teacher's union will vote on

soon. Hopefully, this will be the culmination of negotiations that began in November of 1978. If the report is accepted we will have a beginning teacher salary here of over $20,000. and a top salary of over $36,000.

The school boards I have worked for in Juneau and Sitka have been made up of reasonable people whose main motives have been to serve the community they represent. Final decision making authority on items that are bargainable must not be taken away from such local officials and given to an outside arbitrator.

I am hopeful that the representative of the Alaska School Board's Association, Mr. Robert Greene, and the respresentative of the Alaska Association of School Administrators, Dr. Cliff Hartman, will be listened to carefully by the H. E. S. S. Committee when they discuss the ramifications of these proposed bills. It is vital that such legislation not become law.

Sincerely,

John E. Coffee, Superintendent
Sitka Borough School District

cc: Senator Pete Meland
Representative Richard Eliason
Mr. Robert Greene, A. A. S. B.
Dr. Cliff Hartman, A. A. S. A.
Sitka School Board

JEC:vhv

LAW OFFICES

JOSEPHSON, TRICKEY & LORENSEN, INC.

210 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801
907 586-6994, 586-6997

JOE P. JOSEPHSON
HOWARD S. TRICKEY
RONALD W. LORENSEN*
NANCY R. GORDON
TIM MacMILLAN

*Juneau

ANCHORAGE:
425 "G" STREET
SUITE 930
ANCHORAGE, ALASKA 99501
907 276-7133

January 28, 1980

The Honorable Thelma Buchholdt
Chairman
House Health, Education and Social
Services Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: HB 487, Relating to Arbitration and Teacher Negotiations

Dear Representative Buchholdt:

The following comments regarding HB 487 (Arbitration and Teacher Negotiations) are submitted on behalf of the Lower Kuskokwim School District.

HB 487 would mandate that binding arbitration be utilized as the final step in employment contract negotiations between teacher bargaining groups and local school boards. The issue of binding arbitration, of course, has been fervently (and often emotionally) debated over the last few years, with the Anchorage teachers' strike of last Fall serving to punctuate emphatically the need for some orderly and reasoned approach to the problems of collective bargaining impasse. In fact, the path of resolution followed by the Superior Court in Anchorage in responding to that strike seems to indicate that, in the absence of a legislative framework for resolution of bargaining impasses, the courts will take it upon themselves to act as binding arbitrators, rather than permit the civil disobedience and disruption which can arise in teacher strikes. The task, therefore, becomes one of identifying alternative solutions to the impasse problem and analyzing their respective merits in the light of the various policy considerations which impact upon labor relations between public schools and their teacher employees.

Binding arbitration as proposed in HB 487 is one possible solution. However, until this approach can be examined and analyzed in comparison with other approaches to bargaining impasse, there is no assurance that this impasse resolution mechanism is the most appropriate one for education in Alaska. The state Board of Education recently adopted a resolution requesting the Governor to appoint a panel to study and develop alternative solutions to the bargaining impasse problem, and we understand that this panel will be appointed in the very near future. Consequently, we would suggest that further consideration on HB 487 be delayed until the Governor's panel has had an opportunity to

carry out its tasks and report back with its findings and recommendations. Once this has been accomplished, your committee could review the available alternatives and decide which of them most closely fits within the various policy considerations which are important to it in the area of education.

With respect to the particular approach to bargaining impasse proposed by HB 487, we have a couple of comments. First of all, it is not clear from the bill precisely what elements of the collective bargaining process are intended to be subject to binding arbitration. For instance, while it seems clear that binding arbitration would apply to disputes concerning salary and other financial benefits of teachers, it is not clear whether items regarding working conditions which do not directly involve financial considerations would also be subject to binding arbitration. Further, would the bill require that those items of negotiations which are not mandatory subjects of bargaining nonetheless be subject to binding arbitration? We would certainly hope not. Similarly, we also wonder whether the bill would require that disputes over questions of precise contract language be subject to binding arbitration, rather than just the general outlines of disputed proposals. Clarification of these kinds of questions seems vital if the impasse resolution procedure adopted by the Legislature, whatever its form, is to have any hope of achieving its desired effect.

Our second main point with respect to HB 487 deals with subparagraph (c) of proposed AS 14.20.585. That provision is apparently intended to preclude arbitrators from making awards which would result in increased costs to a school district. That goal, of course, has much to recommend it. However, from a practical point of view, it would be very difficult, if not impossible, to establish that a particular award would actually increase the cost of school district operations so as to require a municipality to increase its local tax rate or to require increased state funding for a regional educational attendance area, since the argument can always be made that additional costs in one area of operations can always be absorbed by reducing planned expenditures in some other area of the budget.

Sincerely yours,

LOWER KUSKOKWIM SCHOOL DISTRICT

Carl A. Peterson

Carl Peterson, Superintendent

JOSEPHSON, TRICKEY & LORENSEN, INC.

By: Ronald W. Lorensen

RWL:jf

KODIAK ISLAND BOROUGH SCHOOL DISTRICT
P.O. BOX 886
KODIAK, ALASKA 99615
TELEPHONE: (907) 486-3131

February 4, 1980

The Honorable Thelma Buchholdt
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Representative Buchholdt:

The Kodiak Island Borough School District opposes the passage of HB 487 providing for binding arbitration in teacher negotiations. Neither binding arbitration or right to strike laws are the only solution to solving collective bargaining issues. It has been proven that good faith negotiations, presently provided for in State law, do work. Salaries for teachers in Alaska are comparable with other states that provide for both more restrictive and more liberal solutions to collective bargaining. In fact, we question that binding arbitration or the right to strike is a solution at all. They both create problems for local citizens by removing the right to locally determine the fate of their schools, and in the case of a strike, cause an unnecessary division in the parents, students and other constituents of the local district. The point is--education is a local responsibility. State law should not provide for outside third-parties to mandate local outcomes and remove the control of schools from local citizens.

As we stated earlier, the collective bargaining process (good faith negotiations) as it exists now, works. Currently, elected board representatives and representatives of teacher groups can and do sit down to work out mutually acceptable agreements. The give and take of negotiations provides an acceptable process which does function adequately. Can teachers honestly say that the negotiations process, as provided in Alaska State law, does not give them with a wage commensurate with teachers throughout the nation, and in keeping with other Alaskan professionals? We think not.

The law protects the teacher's right to a job by provisions for continuing the contract. The law protects the citizen's rights by mandating local control. Teachers and elected Boards have the responsibility to negotiate. Providing for binding arbitration or the right to strike will erode and eventually destroy that process.

We urge you to reject any proposals that provide for State laws which result in the abdication by local boards and teacher associations of their collective responsibility to negotiate.

Sincerely,

John E. Anttonen

John E. Anttonen
Superintendent

TESTIMONY OF LORI SEARS, NEA-ALASKA BEFORE THE JOINT MEETING OF THE HESS COMMITTEE - April 7, 1979

Working Conditions for Teachers

As a result of the narrow view School Boards are taking on items that are negotiable and the 1977 Supreme Court decision, we are seeking the inclusion of working conditions as negotiable items between teachers and their school boards.

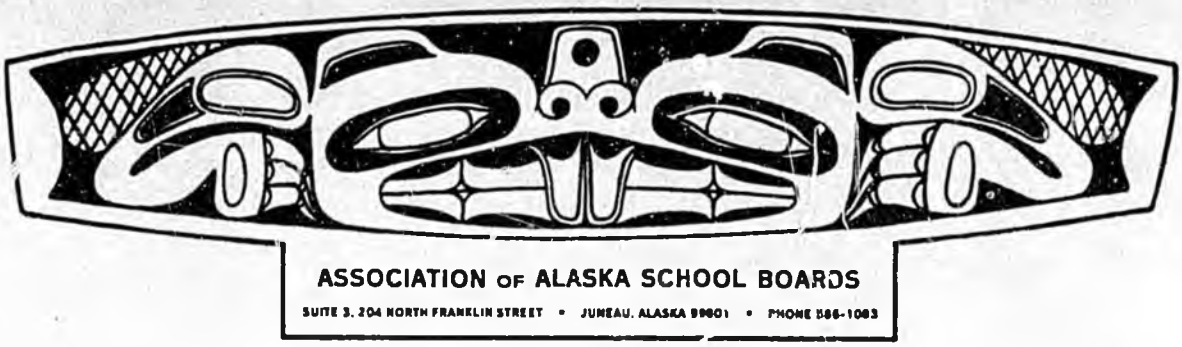
The recent DOE Task Force report on Regional High Schools cited the high teacher turnover, among other things, as an interruption in the educational process of rural children. We believe that that high turnover, in part, is due to teachers not being properly informed of the demands placed upon them that are beyond the normal duties of a classroom teacher.

Many accept a teaching position and then discover their duties include additional non-instructional duties that have not been spelled out in the teaching contract or the negotiated agreement. Some of the activities required of teachers by districts are:

- Repair and maintain the school's generators
- Be present at all Community School Committee meetings, Parent advisory meetings for: Indian Education, Johnson O'Malley, Title I and Special Ed
- Supervise and handle paperwork (tends to be massive) for: janitors, cooks, and aides
- Supervise lunch hours
- Provide/supervise community recreation and/or activities like: town movies, dances, PE activities in the gym
- Emergency repairs to schools (if the roof leaks, fix it)
- Haul freight to school from airport or river

In our urban areas, the greatest working condition is the number of students one is required to teach without regard for the type of student who is to be instructed. With mainstreaming of the exceptional child being an intregal part of our classrooms, teachers are finding classloads to be excessive when three or four severely handicapped youngsters are placed in already crowded classrooms. We support the education of all exceptional children in the least restrictive environment, but we do not feel proper attention has been given to the problems the classroom teacher faces when mainstreaming is done without regard to class size.

We feel that the negotiations table is a proper setting to discuss these duties and requirements placed upon teachers that have been narrowly construed to be policy matters rather than conditions pertaining to the fulfillment of our professional duties.



ASSOCIATION OF ALASKA SCHOOL BOARDS
SUITE 3, 204 NORTH FRANKLIN STREET • JUNEAU, ALASKA 99801 • PHONE 586-1083

FOUR BARGAINING PRINCIPLES

1. Collective bargaining is not a process whereby the general form, quantity or quality of publicservices are to be, or should be, determined. It is not a process for the management of public services.

2. Collective bargaining is not a device to determine public policy except as it may be used to determine the wages and economic benefits that are to be provided for public employees.

3. Collective bargaining is not, nor should it be, a substitute for the proper functioning of a representative government.

4. Collective bargaining should not be permitted to constrain the proper functioning of representative government.

THE RIGHTS OF PUBLIC EMPLOYEES TO STRIKE Vs. THE RIGHTS OF THE PUBLIC.

Because of the basic nature of public services wherein there is no real alternative choice to the established public service, special consideration must be afforded to the protection of both the interests of the general public and the interests of the public employees.

The interests of the general public dictate that any accommodation for collective bargaining and strikes in the public services... ..especially in the public schools... must carefully weigh, and balance, the desire of the employees to organize, bargain and strike against the rights of the public to expect the continued and uninterrupted provision of the public services that public policy has determined should exist. For example, permitting legalized strikes by public employees so upsets the process that the general public cannot withstand the imbalance of power that so results.

IOWA—

Personnel of the board shall be employed pursuant to the provisions of chapter 19A.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8.

Referred to in sec. 20.3(5)

20.6 General powers and duties of the board. The board shall:

1. Administer the provisions of this chapter.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Maintain, after consulting with employee organizations and public employers, a list of qualified persons representative of the public to be available to serve as mediators and arbitrators and establish their compensation rates.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing officers for the performance of its functions. The board may petition the district court at the seat of government or of the county wherein any hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter.

20.7 Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty and the right to:

1. Direct the work of its public employees.

2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.

3. Suspend or discharge public employees for proper cause.

4. Maintain the efficiency of governmental operations.

5. Relieve public employees from duties because of lack of work or for other legitimate reasons.

6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.

7. Take such actions as may be necessary to carry out the mission of the public employer.

8. Initiate, prepare, certify and administer its budget.

9. Exercise all powers and duties granted to the public employer by law.

20.8 Public employee rights. Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.

3. Engage in other concerted activites for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

Referred to in sec. 20.10

20.9 Scope of negotiations. The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reductions, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Nothing in this section shall diminish the authority and power of the merit employment department, board of regents' merit system, educational radio and television facility board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification, or appeal rights in the classified service of the public employer served.

All retirement systems shall be excluded from the scope of negotiations.

Referred to in secs. 20.10, 20.17

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.