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COMMITTEE REPORT

SENATE

1/19/82

FURTHER: ~~XXXXXXXXXXXXXXXXXXXX~~

Labor & Commerce

1/20/82 further-ref. to Finance

Date: 3-31-82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 668

resolution of impasses in public employee collective bargaining

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Article 2. Employment and Tenure.

<p>Section</p> <p>95. Right to comment and criticize not to be restricted</p> <p>97. Duty-free time</p> <p>100. Unlawful to require statement of religious or political affiliation</p> <p>110. Penalty for violation of § 100 of this chapter</p> <p>120. Statement of qualifications</p> <p>130. Employment of teachers and administrators</p> <p>140. Notification of nonretention</p> <p>145. Automatic re-employment</p> <p>147. Transfer of attendance area or federal agency school; absorption</p> <p>148. Intradistrict teacher reassignments</p>	<p>Section</p> <p>150. Acquisition of tenure rights</p> <p>155. Effect of tenure rights</p> <p>158. Continued contract provisions</p> <p>160. Loss of tenure rights</p> <p>165. Restoration of tenure rights</p> <p>170. Dismissal</p> <p>175. Nonretention</p> <p>180. Procedure and hearing upon notice of dismissal or nonretention</p> <p>185-200. [Repealed]</p> <p>205. Judicial review</p> <p>207. Definitions</p> <p>210. Authority of school board or department to adopt bylaws</p>
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Sec. 14.20.095. Right to comment and criticize not to be restricted. No bylaw or regulation of the commissioner of education, a school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, regarding school personnel, members of the governing body of any school or school district, any other public official, or any school employec, to the same extent that any private individual may exercise the right. (§ 1 ch 14 SLA 1965; am § 13 ch 98 SLA 1966)

Cross reference. — See note to AS 14.20.170.

This section cannot be given retrospective effect because there is no express declaration in the statute that it should have this effect. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

This section was not enacted to be retrospective. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969).

It applies to activities conducted outside school hours. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966); *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969).

And is directed at rules or regulations which would restrict criticism of school officials. — This section is directed at the rules or regulations that the commissioner of education, a local school board, or local administrator might promulgate which

would restrict or modify the right of a teacher to criticize public education officials outside school hours. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

This section is directed at the rules or regulations of a commissioner, a local school board, or a local administrator. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969).

Constructive criticism, even if extended to personal criticism of school officials, is clearly protected by the legislative policy in Alaska enacted in 1966 by the adoption of this section. *Husen v. Greater Juneau-Douglas School Bd.*, 5 Alas. L.J. No. 9, p. 16 (Sept., 1967).

But this section in no way condones circulation to the public of false criticism of public education officials. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Dismissed teachers had a constitutional right to compile, reproduce and distribute

an open letter, even though it contained false statements concerning the superintendent; but this did not mean that they could not be held appropriately accountable where their acts wrongfully damage their own and another's professional prestige, reflect detrimentally on the teaching profession as a whole, and result in a loss of respect by the public for themselves and the local school system. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Nor does it permit acts which cause public disgrace and undermine school system. — A person has a constitutional

right to freedom of discussion with other teachers, but he does not have a constitutional right to have his teaching contract renewed after soliciting teachers on school premises, during school hours, to support a private move to oust the superintendent, where the effect of these acts is to bring down public disgrace and disrespect on him and his profession and to undermine the morale and discipline of the local school system. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Sec. 14.20.097. Duty-free time. Each governing body shall allow its teachers in school facilities with four or more teachers a daily duty-free mealtime of at least 30 minutes between 11:00 a.m. and 1:00 p.m. (§ 1 ch 11 SLA 1969)

Sec. 14.20.100. Unlawful to require statement of religious or political affiliation. No school board, or member of a school board may require or compel a person applying for the position of teacher in the public schools of the state to state his religious or political affiliation. (§ 37-5-1 ACLA 1949)

ALR reference. — Discrimination of appointment, duties, compensation, etc., because of race, color, or creed in respect of school teachers, 130 ALR 1512.

Sec. 14.20.110. Penalty for violation of § 100 of this chapter. A person violating § 100 of this chapter is punishable by a fine of not more than \$100. (§ 37-5-2 ACLA 1949)

Sec. 14.20.120. Statement of qualifications. A statement of the qualifications of each teacher and superintendent employed by the state or a school district shall be filed with the commissioner. The statement shall contain the credits earned in college, normal school, or university, and the number of years of teaching experience both in the state and elsewhere in the form and manner prescribed by the commissioner. (§ 37-6-5 ACLA 1949; am § 5 ch 179 SLA 1957; am § 12 ch 46 SLA 1970)

Sec. 14.20.130. Employment of teachers and administrators. An employer may, after January 1, issue contracts for the following school year to employees regularly qualified in accordance with the regulations of the department. The contract for a superintendent may be for more than one school year but may not exceed three consecutive school years. (§ 1 ch 92 SLA 1960; am § 14 ch 98 SLA 1966)

Authority of school district to employ teachers. — A school district has no authority to employ teachers except as prescribed by statute and regulation.



NEA - ALASKA

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24 February '82

TO: Senator Parr, Chair
Senate HESS

FROM: NEA-Alaska, Inc.

RE: SENATE BILL 668

NEA-Alaska strongly urges the Senate HESS Committee to amend SB 668 to provide for inclusion of public school teachers in the Public Employee Relations Act, AS 23.40.070-23.40.260.

Such a change would require amendments to Sec. 23.40.200(b) to specifically include public school teachers, to Sec. 23.40.250(5) to again specifically include public school teachers, and to Sec. 23.40.250(6) to expand the definition of public employer to include public school district boards of education. Further, if passed and signed into law, this legislation could provide for the repeal of AS 14.20.550-14.20.610.

NEA-Alaska has long sought reforms to the current teacher bargaining law, especially in terms of its inadequacy in not providing for an equitable process to achieve finality or closure to collective bargaining.

By including teachers in the PERA, the Legislature effectively addresses other problems attendant to the current teacher bargaining law. The question of "scope" of negotiations and terms and conditions of employment has a better definition in the PERA. The right to bargain fair representation fees is clearly established in PERA. The PERA defines procedures for resolution of questions pertaining to the appropriateness of a bargaining unit and bargaining agent and does not leave them to be defined by one of the parties of interest, in this case the employer. And, the PERA defines and establishes procedures for resolutions of unfair labor practices, a process which teachers must now pursue in our already over-loaded court system. Finally, the PERA has an administrative agency, the Alaska State Labor Relations Agency. None exists for the current teacher bargaining law.

NEA-Alaska urges and encourages your support for the inclusion of public school teachers in the PERA.

Respectfully submitted,

Robert Manners

Robert Manners
Executive Secretary

RM/st

RESOLVING IMPASSES:

[15621] Handling Impasses.—The best way to handle impasses is to avoid them by making the negotiation process work. But if the parties are not able to reach agreement in the course of negotiations, what happens? Public sector strikes are generally illegal. So various strike alternatives have been tried and new techniques are constantly being developed to solve this high-voltage problem.

Solutions will probably not be found until there's consensus about the meaningful differences between public and private employment. To what degree are they great enough to make techniques used in the private sector inappropriate? Views about this haven't jelled. Until they do, diversity in methods for settling contract disputes will continue—mediation, factfinding, arbitration and legal and illegal strikes.

Mediation

[15625] What is it?—Mediation has been defined as "assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse" [Haw. § 11,102].

Mediation is generally either the required or authorized first step in an impasse procedure. Although other impasse techniques are often subject to legal attack, mediation is not. Since there is no element of compulsion, there are no problems of unlawful delegation of governmental powers.

A mediator's job is to find common grounds for compromise when the parties cannot, and through informal techniques, promote settlement of contract disputes. In the public sector, a mediator also participates in "preventive mediation" by serving as an educator for negotiators new to the collective bargaining process.

➤ **MEDIATOR'S FUNCTION** → The advice of the professional mediator is valuable. Experienced mediators have been through the mill. Their advice may seem unpalatable but it may contain a hidden clue to solving a seemingly insoluble dispute. Mediation isn't just a time-consuming process required before going into factfinding. It's a stage of negotiations that frequently results in a settlement.

[15626] Conciliation distinguished.—The terms mediation and conciliation are often used interchangeably. They are similar but not the same. The mediator comes up with solutions when efforts at conciliation fail. Conciliation essentially involves persuasion. The conciliator meets jointly or separately with the bargaining teams to try to convince them that it's in their own interest to settle. He/she will also stress the public interest.

Mediators don't stop at cajoling or persuasion. They make a determined effort to find a common ground for settlement. Failing that, they give professional advice and make suggestions and recommendations as to how the dispute can be settled. The charge placed upon mediators by the agency employing them is to resolve the dispute, hopefully, short of a strike.

➤ **FACTFINDING COMPARED** → Mediation differs from factfinding because it is an informal rather than formal procedure. The procedures are similar in that neither involves binding recommendations.

[15627] Obtaining the services of a mediator.—Labor relations agencies such as public employment relations boards generally act as clearing houses for mediators. In the federal sector, the Federal Mediation and Conciliation Service provides mediation services [See Fed. § 35,550].

The mediator may be a full-time professional or a college professor, an ex-labor relations director or ex-union representative serving on a panel of part-time ad hoc mediators provided by a state agency. He/she may be a neutral official of some other agency or a leading citizen with a reputation for getting things done and is therefore designated by the governor or the mayor to resolve the dispute.

Don't be overly concerned if a mediator has a trade union or management background. Mediators' experience as negotiators for either side helps them develop creative approaches to settlement. A battle-scarred veteran of bargaining may be much more realistic and effective in offering advice than someone who's chosen merely because of the point of view he or she represents.

[15628] The process.—In the first session, a mediator's usual technique is to have a free discussion in a joint session with both bargaining teams. Then he/she meets privately with the team that has the greater complaints.

What are their *real* concerns? What have they been advocating for trading purposes and what are the real "musts"? Are they willing to effect a compromise on any of their supposed "musts"? Are they aware of the chances they are taking in letting a dubious position go to factfinding?

After exploring issues in private conference, the mediator often urges resumption of direct negotiations. He/she may preside over several bargaining sessions before again separating the parties. He may urge one team or the other to state openly what it has said privately. Negotiators may find it advisable to comply but make their doing so contingent upon acceptance of a counter-proposal or upon the other side's willingness to modify or withdraw certain of its demands. A skillful mediator will explore every avenue in open session that might prove to be the catalyst leading to resolving the impasse.

The mediator may go further. If his or her advice has been rejected in part or in toto, the mediator still may present specific recommendations. These may stem from the neutral's own concept of what it would take to break a deadlock or from mere intuition as to what will be acceptable to the parties.

► **MEDIATOR IS NOT AN ARBITRATOR** → Remember that the mediator isn't an arbitrator with the authority to impose a settlement upon the parties. He or she recommends but cannot mandate. In some states, a mediator's recommendations, if rejected, cannot even be referred to or given any weight in factfinding proceedings.

[§5629] Mediator's techniques.—The mediator is generally free to adopt any technique that will help settle a dispute. One exception is that some jurisdictions do not permit the mediators to make his/her findings public—or even submit them to a factfinder.

The mediator analyzes the power structure, separates "musts" from other items and groups packages. He/she (1) also is a good listener and gets negotiators who've stopped talking to open up; (2) cools things down when necessary; (3) is also adept at finding face-saving solutions and other expedients to generate compromise. The mediator ordinarily tries to convince both negotiating teams that they should choose the known over the unknown. The big unknown in the impasse process is what sort of a factfinder might be assigned if the dispute isn't settled.

► **YOUR TECHNIQUES** → Don't put the mediator on the spot. He or she shouldn't be placed in the position of seeming to violate confidential disclosures. A mediator can't reveal to the other side what has been said in confidence. At the same time, you may want the mediator to intimate to the other side what you're willing to concede. Tell the mediator. But don't irrevocably commit your team to a proposition in a confidential discussion with the mediator. If you do, don't blame him or her for leaking it to your adversaries and urging its acceptance.

[§5630] Mediator's recommendations.—The mediator's recommendations should not be taken lightly. He/she usually has good reason to believe that one side or the other will find them generally acceptable or is convinced that what is proposed would be a fair solution of the issues in dispute. If he/she proposes a contract clause supporting the demand of the other side, this doesn't mean lack of impartiality. It does reflect considered judgment that the clause has merit.

At worst, the mediator's recommendations for proposed contract settlement show how far apart the parties are and set the stage for the next step. At best, they suggest possibilities for narrowing disputed issues or eliminating them altogether.

[§5631] Do you want to go to factfinding?—Before making a decision, consider the implications. They differ from state to state. In *New Jersey*, for example, the mediator's recommendations can't be presented to the factfinder [N.J. § 35,003,19: 12-3.5.]. Of course, if no law controls, the parties are free to decide what pre-conditions, if any, to set for admission of facts, arguments, conclusions or recommendations generated in the mediation proceedings.

► **DON'T BE TOO QUICK TO DROP A MEDIATOR** → Study your position before breaking off relations with the mediator. Which of his or her recommendations, if disclosed to the public, would gain widespread support? Which would strengthen the opposition's hand? Which could be accepted without forfeiting any essential right or prerogative? While the mediator doesn't always know best, his/her advice shouldn't be totally ignored. The mediator may not feel free to disclose any information about the ultimate position of the other side. Look for hints that are often more revealing than outright recommendations.

Also, consider the cost of preparing and presenting the case to the factfinder. Each issue must be researched and the more issues that remain unsettled, the higher the cost of preparation.

➤ **BUT IT MAY BE INEVITABLE** → If a truly important principle is involved, the party must go to factfinding regardless of costs.

Factfinding

[¶5635] **What is it?**—Factfinding is often the second step in the hierarchy of impasse techniques used in the public sector. If mediation fails, factfinding begins. Factfinding is the investigation of a public sector labor dispute by an individual, panel, or board that submits a report to the parties describing the issues involved. The report may contain recommendations for settlement and sometimes may be made public.

Factfinding, like mediation, is not usually attacked legally because factfinders' recommendations are not binding on parties. Many state laws authorize or require it. In addition, the parties may agree to submit disputes to factfinding in the absence of a legal requirement to do so.

Factfinding differs from mediation in that it is a formal proceeding. It is comparable to arbitration with one important difference. Factfinding leads to *recommendations* for settlement. Arbitration means a *prescribed* settlement.

➤ **ADVISORY ARBITRATION** → Factfinding is similar to advisory arbitration. When the process is used to settle grievance disputes, it's generally called advisory arbitration. When used to settle contract impasses, it's called factfinding.

[¶5636] **Who serves as factfinder?**—Factfinders are generally supplied by labor relations boards. They often are experienced private or public sector arbitrators.

➤ **CHECK THE PROPOSED FACTFINDER** → Assume you'll be assigned a competent factfinder but, if you have a choice under your state law, you can check the factfinder's background. Review recommendations made in comparable cases. They are frequently made public.

[¶5637] **Criteria.**—Factfinder's criteria may or may not be set out in the law authorizing the procedure. Generally, the laws do set out the procedure to be followed in detail but do not specify criteria. One exception is the *Indiana* collective bargaining law for teachers [Ind. ¶17,113].

The criteria generally relied on by factfinders are these:

- Comparisons of wages and other conditions of employment of the employees with those of others doing comparable work in the public or private sector at nearby locations.
- The employer's traditional rank when so compared.
- The employer's ability to pay
- Cost-of-living increases.
- The bargaining history of the parties.
- The public interest.

[¶5638] **What factfinders do.**—Factfinders analyze the relevancy of the facts and contentions presented to them. Then it's their job to come up with recommendations. The recommendations are hopefully palatable to both sides. If either side finds them otherwise, unless there's a further step in the impasse procedure, the impasse continues until the force of public opinion produces a change of position by one side or the other.

➤ **UNCERTAINTY OF FACTFINDING** → Factfinders, like arbitrators, needn't be consistent. They may stick to "precedents" established by previous arbitration or factfinding awards or they may not. They can also find any number of reasons for deviating from the principles of other cases. The circumstances, in their opinion, may differ or the value of one criterion as opposed to another may vary. For example, ability to pay may be a crucial factor in the current dispute even though in a prior case it was hardly considered.

Some state laws expressly authorize factfinders to use mediation techniques. When laws are silent or nonexistent, factfinders often confer on or off the record before making official recommendations.

➤ **FACTFINDERS NEED NOT MEDIATE** → Don't assume that the factfinder will try to mediate. The parties must fully prepare on each issue, regardless of time or cost. If the factfinder does try to mediate, such preparation doesn't hinder the process.

Factfinders perform their function as the law requires or, if there is no law, as their experience dictates. For example, private communications with a factfinder may be taboo. Generally, a factfinder can't even communicate in writing with one of the parties without giving notice to the other and an opportunity for both to comment on the subject discussed.

Acceptability to both parties is the chief object of professional factfinders.

[15639] The hearing.—Even though factfinders make nonbinding recommendations, they expect and merit professional presentation of the positions of both parties. This is no task for amateurs. The agency's legal counsel may qualify if well versed in the technique of handling grievance arbitrations. If the agency has a labor relations department, its director or a staff member should be qualified. *How* an agency's case is presented may be more important than *what* is presented!

➡ PUT YOUR BEST FOOT FORWARD → Don't assume that a factfinder is merely going to add two figures and then divide by two. Put forward your best proposals. Don't hold back anything you're willing to concede. How equitable a factfinder's recommendations are depends largely on how persuasively the case is presented.

After both parties have had all the time necessary to present their cases at the formal hearing, the factfinder prepares a report and recommendations on each issue submitted. Occasionally a specific issue will be remanded to the parties for further negotiation.

The factfinder's report is presented initially for private consideration by both parties. After a short period of perhaps a few days, the recommendations, if not accepted by both parties, may be made public. More often than not, direct negotiations are resumed. In some states another super-factfinding panel may hold further hearings.

[15640] A hypothetical factfinding case.—Assume factfinding is the result of mutual consent by an employer and an employee organization that are locked in impasse. The parties are a municipal government and a union representing the nonsupervisory employees of a public library. Assume that they've fixed no special rules, that no holds are barred. The sole issue, the parties agree, is the amount of the general salary increase in next year's agreement. The factfinder is a lawyer experienced as an arbitrator. After oral discussion of the one issue before him or her, the ground rules are set: (1) Only one spokesman for each side; any other participants can appear only as witnesses and must be sworn; (2) statistical or other exhibits may be introduced; (3) witnesses may testify as to their relevancy; (4) written briefs may be filed at the close of the hearings; (5) the parties will be given 10 days to comment on each other's briefs; (6) court rules of evidence will not be followed.

Argument for the librarians: The librarians are the moving party. Therefore, their spokesman goes first and asks for a 20% across-the-board increase. This increase, he argues, is merely a catch-up to keep the local library salary rates in line with those paid by other libraries in the area. It's obvious to the factfinder that the term "area" has been loosely defined. Information is presented that salary rates in effect in other libraries are much higher than those currently paid in the town. The geographical or other criteria used in making comparisons is a proper question to be considered by the factfinder.

But this isn't the union's only argument. In the broad metropolitan area where the library is located, the regional Consumer Price Index has advanced 9% since the last general wage increase. In addition, evidence shows that the average increase of municipal clerks and unionized employees, including specifically the municipalities' blue collar workers, has amounted to 15% as a result of a 2-year contract entered into in the prior year.

Argument for the city: The city claims its finances are in too rough a shape to permit more than a minimal increase, maybe 2% or 3%. The librarians have picked out the richest cities in the state with which to compare themselves. They even reached out to include an affluent town in an adjoining state. Some of the cities listed as comparable have a big tax base from industry whereas the city involved is rural. The city submits its own list of comparable cities.

In addition, the Consumer Price Index has no relevancy. Librarians are professionals. It is argued that the BLS Consumer Price Index can't be applied to professional and other highly-paid white collar employees. Even if the Index is a proper factor, the city lies outside of the metropolitan area cited. If used at all, it should be the national, not a regional, index.

Finally, librarians in this city are already being paid fairly. Their last increase put them on a par with the rates paid in other comparable cities. In addition, one indicator invariably used by unions to indicate low salaries and low morale is the turnover rate. However, the union hasn't used it inasmuch as the turnover of city librarians has been almost zero.

Outcome: The factfinder prepares a graduated list of the last three years' salary scales from both the city's and the union's lists of comparable libraries. He/she discovers that—on the combined list—the city ranked seventh for two of the three years. This year, however, it fell to ninth. The city's tax rate and base are compared with those of adjoining communities. The factfinder discovers that although the city's tax base is small, its rate is fairly low, so a tax increase isn't out of the question.

The factfinder recommends a two-year contract with an 8% boost in the first year. This increase will bring the city's libraries back into seventh place in salaries. He/she recommends that the increase be broken up into two parts—4% now and 4% in six months—in order to ease the boost's burden on the city. For the second year, a cost-of-living adjustment based on the regional Consumer Price Index is recommended to give the librarians an inflation hedge.

Arbitration

[§5645] What is it?—Impasse arbitration is a formal adversary hearing presided over by a neutral who determines with finality the terms and conditions of a collective bargaining agreement. The neutral—or arbitrator—may be an individual or the third member of a panel whose other members are partisans of each of the parties.

Arbitration of grievances (sometimes called "rights" disputes) has long been accepted in the private sector and its legality (at least when authorized by statute) and usefulness in the public sector is widely acknowledged. But arbitration of impasses (sometimes called "interest" disputes) is another matter. Its supporters say it's necessary to provide a means for final settlement of impasses where the strike alternative is not available. Others question its legality and object to forced settlements by a stranger to the collective bargaining process.

[§5646] Arbitration laws.—Some laws authorize the parties to agree voluntarily to impasse arbitration. They have not resulted in a stampede for the services of arbitrators. On the contrary, when arbitration is voluntary, it's rarely used. Other laws *require* arbitration. They usually apply to police and firefighting personnel since there's a special need for strike-substitutes for members of these groups.

Compulsory arbitration of the disputes of other public employees is not common. One notable exception is the City of New York. In an effort to reduce disruptions of public services that have at times approached crisis proportion, the city in 1972 adopted amendments to its bargaining law requiring final binding determination of bargaining impasses [N. Y. §25,030 et seq.]. Eugene, Ore. also has an ordinance requiring city employees to arbitrate impasse disputes [Ore. §25,021].

Criteria. In some cases arbitrators' criteria are imposed by statute. They are similar to factfinders' criteria. Generally speaking, the criteria require comparisons with employees doing similar work in public and private employment and consideration of the employer's ability to pay and cost-of-living data. They may also include the "interests and welfare of the public" and "such other factors normally taken into consideration in the determination of wages, hours and employment conditions in the public and private sector" [Mich. §19,509].

[§5647] Legality.—Compulsory arbitration laws have been attacked on the ground that they unlawfully delegate governmental decision-making powers to a nongovernmental authority. This is a reflection of the "sovereignty" doctrine, under which only the public employer can establish the terms and conditions of employment of government employees. In practice however, governments do relinquish their "sovereign" rights in many ways, including their participation in the collective bargaining process.

Courts tend to uphold compulsory arbitration laws if they set guidelines for, and impose limits on, the powers of the arbitrator. The Supreme Judicial Court of Massachusetts held that binding arbitration provisions for police and firefighters (Mass. §11,117) superseded a town's "Home Rule" decision-making powers under the state constitution. The bargaining law is a general law, the Court said, and applied to all cities and towns; in case of inconsistency or conflict, local laws must yield. The Court also ruled that the legislature may delegate to a panel of private individuals the authority to implement legislative policy, so long as proper safeguards are provided [Town of Arlington v. Bd. of Conciliation and Arbitration (Sup. Jud. Ct., 1976) 352 N.E. 2d 914].

The Washington State Supreme Court upheld the constitutionality of a binding arbitration provision (Wash. §13,133) that set guidelines for the arbitration panel and standards for court review as a

safeguard against arbitrary action [City of Spokane v. Spokane Police Guild (S. Ct., 1976) No. 43954, 553 P. 2d 1316]. The Court also pointed out that although a binding arbitration award could result in the need for a city to raise taxes, the arbitration law itself didn't unconstitutionally impose a tax on the city to meet the costs of an arbitration award. But the Supreme Court of Utah held the state couldn't withdraw the power of local elected officials to determine wages, hours and conditions of employment for firefighters and grant it to a panel of private citizens without providing for court review or any other safeguard to protect the public interest [Salt Lake City v. IAFF (Utah S. Ct.) No. 14689, 4-25-77].

The Colorado Supreme Court barred binding arbitration in public sector disputes as an unconstitutional delegation of authority, without considering the issue of safeguards [Greeley Police Union v. City Council of Greeley (S. Ct., 1976) No. 26992, 553 P. 2d 793].

➤ **POWER TO TAX** → Some laws meet the objection against giving an arbitrator power over the purse strings by providing that an award requiring legislative implementation is not final until that body acts (N.Y. § 25,043).

[§ 5648] **OTHER OBJECTIONS.**—The basic objection to binding arbitration, legal arguments aside, is that it undermines the collective bargaining process. Collective bargaining is a do-it-yourself technique. An imposed settlement is alien to it. Moreover, parties knowing that they won't have the final say tend to save their best shots for the arbitrator. It's realistic to expect them to hold off on compromises if they expect an arbitrator to split the difference.

Public employers also believe arbitration undermines their authority to run the show. This objection is at least partially answered by limits placed on the arbitrator whose authority is not wider than the scope of bargaining so his/her power may, as a practical matter, be no more than that enjoyed by a powerful union. Nevertheless, compulsory arbitration does mean that the employer is giving up to an outsider its right to say "no" on crucial issues of wages, salaries and conditions of employment. The arbitrator, in turn, doesn't have to live with the results of decisions and will not be called to account for them though court review may overturn them.

➤ **EMPLOYEES' VIEW** → Employee organizations find arbitration less objectionable than management. Deprived of the strike weapon, they tend to look with favor on any procedure that deprives management of some of its trump cards.

[§ 5649] **Possible solutions.**—Some localities are experimenting with various methods to soften objections to arbitration. These include final offer arbitration (on a total package or issue-by-issue basis) and "Med-Arb."

➤ **A DRAWBACK** → A drawback of the total package technique is that it completely ties the arbitrator's hands. What if the wage package of one of the parties is reasonable and its proposals on working conditions are out of line? While the total package technique does encourage negotiation and compromise, it can force the arbitrator into a difficult position and result in an unreasonable award.

The Wisconsin legislature has experimented with the total package, final offer technique for its law enforcement (except those in Milwaukee and small towns) and firefighting personnel [Wisc. § 13,124]. The law requires total package, final offer arbitration unless the parties agree to submit to traditional arbitration.

Final offer arbitration. With this method, the arbitrator is usually asked to choose the more reasonable *total package* final offer of one party. This, unlike conventional arbitration, encourages negotiation and compromise since a party is not likely to submit a package to an arbitrator if it sees a likelihood that the adversary's total package may be deemed more reasonable than its own. What happens, though, if both offers seem unreasonable to the arbitrator? Some final offer procedures have attempted to avoid such potential problems by allowing the arbitrator to select the better offer on individual *issues*, rather than the complete package. So the arbitrator may, as an example, find the employer's wage offer more reasonable and the union's proposed change in leave of absence provisions a fairer solution. In this way, both sides get a settlement that is a truer compromise. Final offer selection on an *issue-by-issue* basis is an alternative offered under New Jersey's compulsory arbitration law for police and firefighters [§ 19,505]. New Jersey and Massachusetts [§ 11,117] also permit a factfinder's recommendations as one of three total packages from which an arbitrator may choose (the other two being the final offers of the parties).

Med-Arb. A hybrid in the arsenal of public sector impasse techniques is called "Med-Arb." Under this technique the arbitrator takes on the dual role of an arbitrator and mediator. He/she attempts to encourage

settlement by finding common grounds of agreement, meeting privately with each of them and making recommendations. If mediation efforts fail, the neutral arbitrates the dispute, and all decisions are final and binding.

Authorities are divided on the value of this technique. Those objecting claim that taking off a mediator's hat and putting on an arbitrator's hat is easier said than done. They believe it is impossible for a neutral to participate as a mediator without undermining one's authority as an arbitrator. Both the New York City arbitration law [N. Y. §25,034] and the Eugene, Oregon, ordinance [Ore. §25,011] specifically authorize impasse panels to mediate.

Strikes

[§5651] What is a strike?—A strike is the concerted refusal of employees to perform all or part of their work as a pressure tactic for improving working conditions. It has been defined by law as "concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment" [Pa. §11,103].

Job actions. A definition such as the one used above could also cover job actions such as slow-downs. Authorized employee acts such as sick-calls and work-to-rule tactics could also be included. The employer's problem is one of proof. If firemen suddenly take advantage of their right to go off duty to have a physical checkup immediately after a fire, the city must show this was a pressure tactic and part of a concerted plan if it wants to prove it's a strike.

➤ **MASS RESIGNATIONS** → Mass resignations pose a special problem. If employees have resigned, they're no longer employees. Anti-strike laws apply to "employees." The problem for the employer is whether it *can* prove a job action was a strike and, more importantly, whether it *wants to*. Its basic objective is probably to get the "plant" running again under terms it can live with. Sometimes it needs court actions to accomplish this; other times negotiations will dispel the need to find out whether a particular job action was a strike.

[§5652] **Legality.**—Public sector employees do not have a constitutional right to strike [National Association of Letter Carriers v. Blount, 305 F. Supp. 546 (D.D.C. 1969); appeal dismissed 400 U.S. 801 (1971)]. The federal and state governments are therefore free to impose this restriction on their employees and they have freely done so. Strikes by federal employees are unlawful under federal law [5 U.S.C. §7311] and are an unfair practice under E.O. 11491 [Fed. §11,141], and many state laws are in accord. When laws are silent on the legality of strikes, courts have ruled public employee strikes are illegal [See Cal. & N.J. §10,100]. In both of these states, however, firefighter strikes are specifically prohibited by law. New Jersey law also prohibits police strikes [See N.J. §19,500 and Calif. §14,100].

➤ **PENALTIES** → Many laws impose penalties on strikers. Under federal law they are subject to \$1,000 fine and a year and a day imprisonment [18 U.S.C. §1918]. State laws also impose penalties. For example, under New York's Taylor Law an employee may be penalized two-days pay for each day on strike and may be placed on probation for a year. An employee organization loses its dues check off privilege [N.Y. §11,113]. Strikers may also be subject to fines or imprisonment for violating anti-strike injunctions.

Legal strikes.—Some states do permit *some* strikes. Laws in Alaska [§11,124], Hawaii [§11,125], Pennsylvania [§11,134] and Vermont [§13,110] permit strikes that do not endanger the public health and safety. Public sector nurses in Montana may also strike in some circumstances [Mont. §18,109].

The Alaska statute is unique in establishing different rules for different employee groups. Thus, police and fire protection employees, correctional employees and hospital employees are not permitted to strike. For these groups arbitration is the final step impasse procedure. Public utility, snow removal, sanitation and public school employees may strike after mediation. However, once the strike "has begun to threaten the health, safety or welfare of the public" a court may issue a back-to-work order. All other employees may strike if a majority of the employees in the bargaining unit vote to do so.

[§5653] Should public employee strikes be allowed?—For many years there was near total agreement that anti-strike laws were needed because the feeling was that acts against the "sovereign" are akin to

treason, government employment is a privilege and not a right, and strikes run counter to the public interest. There is still near total agreement that many strikes cannot be tolerated. Mass walk-outs by police and fire officers can have disastrous consequences. Extended walkouts by others such as sanitation workers can also seriously endanger the public health and welfare.

➤ **ON THE OTHER HAND** → There's a growing awareness that public employment isn't the sole factor in determining whether services are essential. For example, are strikes by public sector clerks and park attendants more serious than those of private sector utility workers? Or strikes by public sector bus drivers more disruptive than strikes by private sector bus drivers?

Reappraisals. These considerations have made a small but growing number of policy-makers conclude that blanket strike bans are not justified (permissive laws in Alaska, Hawaii, Pennsylvania, Vermont illustrate this). Moreover, they don't work. Public employees have not abandoned and are not likely to abandon a successful technique when the issues are big enough to make the risk worthwhile. Strike penalties are not a deterrent if they're not enforced and many strike settlements include an agreement for amnesty.

➤ **AN EXAMPLE** → The illegal postal strike of 1970 resulted in commitments for sizable wage and salary increases, the eventual resolution of inter-union rivalries and coverage of postal workers under the National Labor Relations Act. Moreover, no one went to jail.

From the employee view, the strike or the threat of it provides needed leverage. But the employer may also prefer a strike, in some instances, to the alternative of a settlement imposed by a third party such as an arbitrator. At least management retains its right to say "no."

ALASKA

There are two public employee bargaining statutes on the books in the State of Alaska. The Public Employment Relations Act requires employers to negotiate with recognized employee organizations on wages, hours, and fringes and gives limited strike rights to the state's public employees except police, fire, prison, and hospital employees. The other requires school boards to negotiate in good faith with teachers. Full text of the laws follows:

Public Employment Relations Act

Full text of Secs. 23.40.070 to 23.40.260 comprising the Public Employment Relations Act, as enacted by Ch. 113, L. 1972, as amended by Ch. 85, L. 1976, and as last amended by Ch. 143, L. 1978, effective July 13, 1977.

Ed. Note: Sec. 4 of Ch. 113, L. 1972, effective September 5, 1972, states that the "Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply."

In *State of Alaska v. City of Petersburg* (89 LRRM 3095, July 24, 1975), the state Supreme Court ruled that City of Petersburg could not validly reject application of the Act more than six months after it became effective, and after members of City Council had learned of substantial organizational activity of City's power plant employees.

For related rulings, see LR ▶ 42.10.

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

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

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

Ed. Note: The Public Employment Relations Act does not cover noncertified school district employees and does not impose on independent school districts, created to replace the centralized Alaska State Operated School System (ASOS), a duty to bargain with union that had represented noncertified ASOS employees in contract negotiations with the state, the state supreme court held. Finding that the independent school districts have no statutory duty to bargain with a bargaining representative, the court also held that the PERA does not bind ASOS to the collective bargaining agreements negotiated between state and union representing statewide bargaining unit of ASOS noncertified employees. (*Educational Attendance Area v. Local 71, 102 LRRM 2312, Alaska Sup Ct, March 16, 1979*)

For related rulings, see LR ▶ 54.10, 54.62.

(3) maintaining merit system principles among public employees.

Sec. 23.40.080. Rights of public employees. — Public employees may self organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 23.40.090. Collective bargaining unit. — The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided.

Sec. 23.40.100. Representatives and elections. — (a) The labor relations agen-

cy shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit, or

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

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the labor relations agency or an election in a bargaining unit agreed upon by the parties. The labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the

election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

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

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by a public agency by mutual consent.

(e) No election may be directed by the labor relations agency in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement, if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

Sec. 23.40.110. Unfair labor practices.

— (a) A public employer or his agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter;

(2) dominate or interfere with the formation, existence or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organization which represents the unit on or after the 90th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining

agent for the expense of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter, or

(B) a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter as the exclusive representative of employees in an appropriate unit.

Sec. 23.40.120. Investigation and conciliation of complaints. — If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by Sec. 110 [Sec. 23.40.110] of this chapter, or a written accusation that a person subject to Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

Sec. 23.40.130. Complaint and accusation. — If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusations upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

Sec. 23.40.140. Orders and decisions. — If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter. If

the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 23.40.150. Enforcement by injunction. — The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond.

Sec. 23.40.160. Power to investigate and compel testimony. — (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The labor relations agency may administer oaths, examine witnesses, and receive evidence.

(c) The attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing.

(d) If a person refuses to obey a subpoena issued under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring him to comply with the subpoena.

Sec. 23.40.170. Regulations. — The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter.

Sec. 23.40.180. Penalty for violation of order or decision. — A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500.

Sec. 23.40.190. Mediation. — If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public

employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings.

Sec. 23.40.200. Arbitration. — (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

(1) those services which may not be given up for even the shortest period of time;

(2) those services which may be interrupted for a limited period but not for an indefinite period of time; and

(3) those services in which work stoppages may be sustained for extended periods without serious effects on the public.

(b) The class in (a)(1) of this section is composed of police and fire protection employees, jail, prison and other correctional institution employees, and hospital employees. Employees in this class may not engage in strikes. Upon a showing by a public employer or the labor relations agency that employees in this class are engaging or about to engage in a strike, an injunction, restraining order, or other order which may be appropriate shall be granted by the superior court in the judicial district in which the strike is occurring or is about to occur. If an impasse or deadlock is reached in collective bargaining between the public employer and employees in this class, and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the

judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organization and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

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

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference.

Sec. 23.40.210. Agreement. — Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of the effective date of this Act, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agree-

ment has a right of action to enforce the agreement by petition to the labor relations agency. (As amended by Ch. 62, L. 1977)

Sec. 23.40.212. Agreement with the board of regents. — (a) The board of regents of the University of Alaska may delegate to the department of administration its authority under Secs. 23.40.070 to 23.40.260 to negotiate with an organization for an agreement.

(b) The department of administration shall participate in the negotiations between the board of regents and an organization. An agreement between the board and an organization requires the approval of the department. (As added by Ch. 148, L. 1978)

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

Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization. — Upon written authorization of a public employee within a bargaining unit, the employer shall deduct from the payroll of the public employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative.

Sec. 23.40.225. Exemption from public employment relations act. — Notwithstanding the provisions of Sec. 220 of this chapter, a collective bargaining settlement reached, or agreement entered into, under Sec. 210 of this chapter that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights and nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were non-payment of dues. The receiving union or association

shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor or employee organization. The union or association shall submit proof of contribution to the labor relations agency. (As added by Ch. 85, L. 1976)

Sec. 23.40.230. Assistance by department of labor. — When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conducting elections and investigating unfair labor practices.

Sec. 23.40.240. Effect on existing units, representatives and agreement. — Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargain representative, or collective bargaining agreement if the unit, recognition or agreement is in effect at the time this Act becomes effective.

Sec. 23.40.245. Postsecondary student involvement in collective bargaining. — (a) When a bargaining unit includes members of the faculty or other employees of a public institution of post secondary education, the public employer and the representative of the bargaining unit shall permit student representatives of that institution to (1) attend and observe all meetings between the public employer and the representative of the bargaining unit which are involved with collective bargaining; (2) have access to all documents pertaining to collective bargaining exchanged by the employer and the representative of the bargaining unit, including copies of transcripts of the meetings.

(b) Student representatives may not disclose information concerning the substance of collective bargaining obtained in the course of their activities under (a) of this section, unless that information is released by the employer of the representative of the bargaining unit.

(c) For the purpose of this section, the students of the institution involved in negotiations shall select their representatives from the institution directly involved in negotiations.

(d) When the institutions are negotiating with bargaining units representing

more than one major geographic area of the state, the student representatives shall be from those areas. No more than three student representatives may attend meetings at any time. (As added by Ch. 148, L. 1978)

Sec. 23.40.250. Definitions. — In Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, unless the context otherwise requires,

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

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in Sec. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter;

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

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

(5) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or teachers or non-certificated employees of school districts;

EN NOTE Employees of the state division of marine transportation are covered by the Public

Employee Relations Act even though there is another state statute (Sec. 23.40.040, above) governing collective bargaining for those ferry system employees, the state Supreme Court ruled. According to the court, Sec. 23.40.040 "is a subset of the broader PERA coverage and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions." The court added that both acts "can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting PERA." (*Hasting v. Inlandboatmen's Union*, 99 LRRM 3060 Alaska Sup Ct. October - 6, 1978)

For other rulings, see LR ▶ 100.2

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

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

EN NOTE Group life and health insurance benefits are part of employees' economic interests and are legitimate items for collective bargaining under Sec. 23.40.250(7), above, according to the state's attorney general. Retirement benefits, however, are not negotiable, the attorney general said, since all state employees are required to join and contribute to the Public Employees Retirement System as a condition of employment and changes in retirement benefits are public policy (Attorney General Opinion No J-61-414-78, issued January 21, 1978)

Sec. 23.40.260. Short title. — Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter may be cited as the Public Employment Relations Act.

Teachers:

Full text of Secs. 14.20.550 to 14.20.610, Ch. 20 of Title 14, extending organization, representation and bargaining rights to certificated employees of public schools, as enacted by Ch. 16, L. 1970, as amended by Chs. 43 and 71, Ls. 1971, and as last amended by Chs. 124 and 201, Ls. 1975.

Sec. 14.20.550. Negotiation With Certified 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 added by Ch. 124, L. 1975)

Sec. 14.20.555. Optional Coordinated Employee Negotiations. (a) Negotiations between the certificated employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the certificated employees, one team representing all the certificated administrative personnel if they have joined together to negotiate independently as provided in Sec. 560(f) of this chapter, and one team representing all the participating regional school boards.

(b) Each team may consist of as many members as there are regional school boards. Each board is entitled to one member on the team. However, each negotiating team shall consist of not less than five members.

(c) A regional educational attendance area board may by resolution choose to conduct its own negotiations in accordance with Sec. 550 of this chapter. (Sec. 14.20.555(a) to (c), as added by Ch. 124, L. 1975)

Sec. 14.20.560. Teachers' Bargaining Groups.(a) When a majority of the certificated employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certificated staff, except superintendents of schools. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska.

(b) The organization representing a majority of the certificated employees of a school district shall, upon the request of the school board, submit an affidavit verifying that it does represent a majority of the certificated employees. Recognition of the employee bargaining agency by a school board is valid for one year or a term agreed upon by the two parties to an agreement, unless a majority of certified staff votes to request the termination of recognition of the employee bargaining agency. The school board is entitled to an affidavit bargaining agency case each year.

(c) Upon the request of 25 per cent of the certificated employees in a district, the school board shall hold, within 20 days, an election by secret ballot of all the certificated employees in order to determine their choice of a bargaining agency. The results of this election are binding for one year.

(d) A school board shall, upon the written request of the employee bargaining organization, meet with the representative of the organization within 20 days of the request at a time and place to be mutually agreed upon. In the same manner, representatives of an employee bargaining organization are required to meet with a school board or its representatives within 20 days after receiving a written request. The school board and the employee organization may not select more than five representatives each to negotiate for them.

(e) The negotiating meeting may be held in executive session upon mutual agreement of both parties, but all final agreements shall be made at a public meeting of the school board.

(f) Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other certificated personnel if they choose to do so as the result of a secret ballot. (Added by Ch. 43, L. 1971)

Sec. 14.20.570. Mediation Board. (a) Upon the written request for mediation by an employee bargaining agency or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have terminated in an impasse, the following occurs:

(1) Within seven days of the certification the requesting party shall ask the U.S. Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute.

(2) The mediator shall chair mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) Within 30 days of the initial meeting of the parties to the dispute the mediator shall have reduced all the agreed terms, conditions and other items to a written contract. If mutually agreed the period for reporting the contract to both parties may be extended.

(4) Each party to the dispute may select a team of not more than five persons to present the evidence, thinking and position of the group they represent, to the mediator.

(b) If the mediation meetings are held during the school day, teachers representing an employee bargaining agency shall be released from classroom or other assigned duties without penalty or loss of pay. (As amended by Ch. 201, L. 1975)

Sec. 14.20.580. The Mediation Report. (a) Within 10 days each party to the dispute shall accept or reject in total the mediation report.

(b) If rejected by either party, the mediator shall have an additional five days to review the objections and prepare a final report.

(c) If the final report is rejected by either side, the governor may appoint an advisory arbitrator to review the issues and make recommendations for solution. (As amended by Ch. 201, L. 1975)

Sec. 14.20.590. Grievance Procedures. Negotiations agreements executed after the effective date of this Act shall define "grievances" and provide for grievance procedures for the certificated staff. The grievance procedures shall provide that the final step in the procedure shall be binding arbitration. The negotiations agreement shall provide a method for the selection of an arbitrator. (As amended by Ch. 201, L. 1975)

Sec. 14.20.600. Individual Cases. Nothing in Secs. 550-590 of this chapter prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases.

Sec. 14.20.610. Legal Responsibilities of Boards. Nothing in the foregoing provisions shall be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the School Board including the right to make final decisions on policies.