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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C
JUNEAU, ALASKA 99811

465-2200

March 11, 1981


Mr. Michael Thill
Senate Labor and Commerce
Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Thill:

At your request, we offer the following information concerning Senate Bill 114.

There are approximately ninety partially exempt division directors; fifty deputy directors and assistant directors and possibly an additional 100 to 150 employees with a similar level of authority. The division directors are currently not represented for the purposes of collective bargaining.

Respectfully,

A handwritten signature in cursive script, appearing to read "W. R. Hudson", with a flourish at the end.

W. R. Hudson
Commissioner

WRH/mjc

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149
JUNEAU, ALASKA 99811

Ph: 465-2700

February 23, 1981

Mr. Mike Thill
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Mike:

Per your request, attached is a position paper on Senate Bill 114,
"An Act relating to the scope of collective bargaining under the
Public Employment Relations Act."

If you have any questions, please advise.

Sincerely,

Judy

Judy Knight
Special Assistant

Bill No. Senate Bill No. 114

Date February 23, 1981

Title "An Act relating to the scope of collective bargaining under the Public Employment Act."

Contact: Judy Knight *JK*
Ph: 465-2700

The Department of Labor has in its employ personnel classified at the deputy director and assistant director levels, and supports the proposed change in this bill which would exclude personnel in these classifications from the scope of collective bargaining. These employees are key management officials essential to departmental operation, particularly in the event of a strike of State employees.

The bill does not appear to have any effect on the departments' role as a labor relation agency for public employees, who are not State employees.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99801

SB 114:

The definition of "Public Employee" is ammended to exclude deputy or assistant directors, or persons with similar levels of autnority under coverage of PERA for collective bargaining. The intent of this legislation is to insure that State government remain able to function in the event of a strike of State Employees.

Sec. 2 of the bill is actually redundant in that the terms and conditions of employment, as it relates to collective bargaining, are already defined, and the new section: nor does it include retirement benefits, social security, except as otherwise specifically provided by law., only repeats the on going premiss.

Sec 3 Repeals the Commissioner of Public Works as the negotiator (collective bargaining) for the Division of Marine Transportation, replacing that function with the Division of Labor Relations under the Commissioner of Administration.

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C

JUNEAU, ALASKA 99811

465-2200

March 12, 1981

Honorable Bob Mulcahy
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

Re: SB 60, 61, 62, 63, 114

As requested by your office, the following information is provided pertaining to the bills listed above.

SENATE BILL 60: If this bill becomes law, the State's contributions to PERS and TRS will more than triple. Those systems are the most lucrative in the nation. The necessity of further enhancing retirement benefits that are already the highest in the nation by placing a monetary burden on the State for distribution of public funds to a disproportionately small group of its population is highly questionable. It is suggested that the large benefits that our retirees now enjoy or our existing employees can look forward to are in actuality a form of hedge against inflation.

SENATE BILL 61: If this bill passes, the cost to the State in FY 82 will be \$15.8 million, and it will cost our political subdivisions \$13.5 million. We project this cost to increase by at least 10 percent for each year thereafter. We question the need to increase benefits that are already the highest in the nation and the disproportionate distribution of public funds.

SENATE BILL 62: The minimal increase in retirement benefits that a small number of employees will receive as a result of credit for unused medical leave is outweighed by the cost to implement and maintain such a program. Only 30 percent of PERS employees will actually retire; and of that number, a small percentage will actually take advantage of such a provision. In most cases, their actual increase in benefits would be minuscule. Cost aside, as a matter of public policy we object to any proposal to credit unused sick leave for retirement purposes. Such a provision will not realistically serve as an inducement to not take sick leave. It would serve to "reward" those employees who are already quite properly not using sick leave unless it is actually necessary. We do not believe it will resolve any problem that may now exist with unwarranted absences.

March 12, 1981

SENATE BILL 63: The stated purpose of the Public Employees' Retirement System per AS 39.35.010 is ". . . to encourage qualified personnel to enter and remain in the service of the State or a political subdivision or public organization of the State. . . ." This bill would offer a means for employees to retire earlier than what is now allowed under the law, which certainly is contrary to the stated purpose of the system. Therefore, we are opposed.

SENATE BILL 114: This bill creates a level of management personnel within the merit system but outside collective bargaining. The result is to lessen the opportunity for conflicts of interest resulting from managers and subordinates belonging to the same bargaining unit. Another advantage is to remove the potential for strikes against the State by managers. The Department supports this bill.

I hope this provides the information you need. If you have further questions, please call me or Judy Crondahl at 465-2277.

Respectfully,



W. R. Hudson
Commissioner

WRH/mjc

cc: Judy Crondahl, Director
Division of Administrative
Services

Paul B. Arnoldt, Director
Division of Retirement and
Benefits

Sandra Withers, Director
Division of Labor Relations

solely according to the Uniform Arbitration Act (AS 09.40) if that Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972)

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 shall remain in effect not to exceed three years. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972)

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. (§ 2 ch 113 SLA 1972)

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 public 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. (§ 2 ch 113 SLA 1972)

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. (§ 2 ch 113 SLA 1972)

Sec. 23.40.240. Effect on certain units, representatives and agreements. Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining agreement if the unit, recognition, or agreement is in effect on September 5, 1972. (§ 2 ch 113 SLA 1972)

Sec. 23.40.250. Definitions. In §§ 23.40.210—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 bargaining making process and negotiate in good faith with respect to

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and other terms and conditions of employment, or the nego
tiation 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 obliga
tions 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 rela
tions 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 §§ 70—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
of 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 con
ditions of employment;

Section (5) "public employee" means any employee of a public employer,
whether or not in the classified service of the public employer, ex
cept elected or appointed officials or teachers or noncertificated em
ployees of school districts;

(6) "public employer" means the state or a political subdivision
of the state, including without limitation, a town, city, borough, dis
trict, board of regents, public and quasi-public corporation, housing
authority or other authority established by law, and a person
delegated 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 em
ployer's personnel policies affecting the working conditions of the
employees; but does not mean the general policies describing the
mission and purposes of a public employer. (§ 2 ch 113 SLA 1972)

Sec. 23.40.260. Short title. Sections 70—260 of this chapter may
be cited as the Public Employment Relations Act. (§ 2 ch 113 SLA
1972)

Title 24
Legislature

Publications

Chapter 40. Labor Organizations.

Article

- 1. Local Organizations and Ferry System Employees (§§ 23.40.010—23.40.030)
- 2. Public Employment Relations Act (§§ 23.40.070—23.40.260)

Article 1. Local Organizations and Ferry System Employees.

Section

- 10. [Repealed]
- 20. Enforcement of certain contracts only if union registers

Section

- 30. Definition of labor organization
- 40. Collective bargaining agreements
- 45—60. [Repealed]

Sec. 23.40.010. Union contracts with state and political subdivisions.

Repealed by § 5 ch 113 SLA 1972.

Editor's note.—The repealed section derived from § 1, ch. 108, SLA 1959; § 25, ch. 71, SLA 1972.

Section 4, ch. 113, SLA 1972, provides: "This 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 the provisions apply."

Legislative committee report on report on ch. 71, SLA 1972 (H.R. 383 am H), see 1972 House Journal p. 898.

Sec. 23.40.020. Enforcement of certain contracts only if union registers. No labor contract executed in this state by a labor organization which has no local in this state or which contracts not to be executed by one or more of its locals in this state may be enforced in the courts of this state unless the labor organization has registered with the department and complied with all regulations made by it. (§ 4 ch 108 SLA 1959)

Sec. 23.40.030. Definition of labor organization. For the purposes of this chapter "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees. (§ 1 ch 108 SLA 1959)

Sec. 23.40.040. Collective bargaining agreement. The commissioner of public works or his authorized representative, in accordance with §§ 10—20 of this chapter, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions, and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. No collective bargaining agreement shall be made without the concurrence of the commissioner of public works.

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§ 23.40.045

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organizations.

Commissioner of public works may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration. (§ 1 ch 93 SLA 1962)

employees (§§ 23.40.045-23.40.060)

Sec. 23.40.045. Records.

and Ferry

Repealed by § 55 ch 69 SLA 1970.

Editor's note. — The repealed section was derived from § 1, ch. 231, SLA 1967.

Local 302, 393 U.S. 405, 59 S. Ct. 684, 21 L. Ed. 2d 633 (1969).

condition of labor organization collective bargaining agreement [Repealed]

Legislative committee report.—For House Journal Supplement 1970, p. 247.

The Local Autonomy Act operates in an area preempted by Congress, and is therefore unconstitutional under the supremacy clause of the Constitution of the United States. Tyree v. Edwards, 287 F. Supp. 589 (D. Alaska, 1968), aff'd sub nom. Alaska v. International Union of Operating Eng'rs, Local 302, 393 U.S. 405, 89 S. Ct. 684, 21 L. Ed. 2d 633 (1969).

state and political subdivisions

Constitutionality. — The statutes purporting to apply the Local Autonomy Act, and regulations relating thereto, which invade a field preempted by Congress. Impermissibly, the act interferes with the full freedom of labor to choose a bargaining agent and to exercise the collective bargaining process. Because of conflict with federal labor policy, both actual and potential, the act, as amended, is hereby unconstitutional under the supremacy clause. Tyree v. Edwards, 287 F. Supp. 589 (D. Alaska, 1968), aff'd sub nom. Alaska v. International Union of Operating Eng'rs, 393 U.S. 405, 89 S. Ct. 684, 21 L. Ed. 2d 633 (1969).

Enforcement enjoined.—All officers, agents, or employees of the State of Alaska are permanently enjoined from enforcing AS 23.40.045—23.40.060, and the regulations promulgated thereunder, or from initiating or prosecuting any proceeding under purported authority of the same. Tyree v. Edwards, 287 F. Supp. 589 (D. Alaska, 1968), aff'd sub nom. Alaska v. International Union of Operating Eng'rs, Local 302, 393 U.S. 405, 89 S. Ct. 684, 21 L. Ed. 2d 633 (1969).

political subdivision, by resolution, rejects the act to apply."

Legislative committee report, ch. 71, SLA 1972 (HB 554), see 1972 House Journal Supplement, p. 247.

Sec. 23.40.050. Local labor organizations.

Repealed by § 55 ch 69 SLA 1970.

Editor's note.—The repealed section was derived from § 1, ch. 8, SLA 1967.

contracts only if made in this state by a labor organization or which contract is made in this state and the labor organization has complied with all requirements of this act.

Sec. 23.40.052. Interference in chartering prohibited.

Repealed by § 55 ch 69 SLA 1970.

Editor's note.—The repealed section was derived from § 2, ch. 231, SLA 1968.

organization. For the purpose of this act, an organization that does not actively or deal with political subdivisions, or that does not employ or otherwise deal with employees. (§ 1 ch 69 SLA 1970)

Sec. 23.40.054. Civil enforcement.

Repealed by § 55 ch 69 SLA 1970.

Editor's note.—The repealed section was derived from § 2, ch. 231, SLA 1968.

agreement. The act does not apply to an organization that does not actively or deal with political subdivisions, or that does not employ or otherwise deal with employees. (§ 1 ch 69 SLA 1970)

Sec. 23.40.056. Exemptions.

Repealed by § 55 ch 69 SLA 1970.

Editor's note.—The repealed section was derived from § 2, ch. 231, SLA 1968.

Sec. 23.40.060. Penalties.

Repealed by § 55 ch 69 SLA 1970.

Editor's note. — The repealed section was derived from § 1, ch. 8, SLA 1967, and § 231, SLA 1968.

Title 24
Legislature

Marital and Domestic
Relations

Effect of amendment. — The 1973 amendment inserted "of §§ 20 — 40" near the beginning of the section.

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 352), see House Journal, pp. 793, 885.

Sec. 23.40.040. Collective bargaining agreement.

This section was not repealed by implication by the enactment of the Public Employment Relations Act, AS 23.40.070, et seq. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an exception to that act. — This section cannot be read as an implied exception to the Public Employment Relations Act, AS 23.40.070, et seq. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The Public Employment Relations Act, AS 23.40.070 et seq., was intended to incorporate existing collective bargaining agreements rather than exempt them. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Construed in pari materia. — Since this section cannot be treated as an implied exception to the Public Employment Relations Act, AS 23.40.070 et seq., and since the Public Employment Relations Act did not repeal this section by implication, the statutes are construed in pari materia. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This section and Public Employment Relations Act can be harmonized. — The Public Employment Relations Act, AS 23.40.070, et seq., and this section 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 the Public Employment Relations Act. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Any possible conflict between this section and the Public Employment Relations Act is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of this section and saw no inconsistency in enacting the Public Employment Relations Act, AS 23.40.070 et seq., to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the authorization of collective bargaining under this section. Rather, it gives it additional content. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This section was comprehensive when it was enacted. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

But it was further defined by the Public Employment Relations Act, AS 23.40.070, et seq. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The Public Employment Relations Act, AS 23.40.070, et seq., contains far more detailed provisions than this section. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Public Employment Relations Act, AS 23.40.070 et seq., applies to employees of the state division of marine transportation. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

If there is no implied exemption for ferry personnel under the Public Employment Relations Act, AS 23.40.070, et seq., it cannot be said that the two acts do not cover the same people. This section is a subset of the broader Public Employment Relations Act 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. *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Article 2. P

Section

- 210. Agreement
- 212. Agreement with the Regents
- 225. Exemption from Public

Cross reference.

nonapplicability of this noncertificated employees (educational attendance area AS 23.40.250)

Right of public employee to bargain collectively was this article. Alaska Pub. Em. v. Municipality of Anchorage No. 1328 (File No. 3045), 5 (1976).

This article confers employees the right to bargain collectively with the and requires public employer collective bargaining units pursuant to this article. North Regional Educ. Attendance Area Pub. Serv. Employees, Local Op. No. 1811 (File Nos. 336 P.2d 1292 (1979)).

This article allows subdivisions of the state provisions for conduct relations and to substitute provisions. Alaska Pub. Em. v. Municipality of Anchorage No. 1328 (File No. 3045), 5 (1976).

Applicability of article is Under the present statute, and this article is the rule, ex-exception. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 23-263 (1975)).

This article is expressly applicable to municipalities, and thus municipalities are impliedly prohibited from negotiating with organization-employees unless the exemption enacted. State v. Petersburg, Sup. Ct. Op. No. 12341, 585 P.2d 263 (1975).

Applying a liberal construction of the powers of local government to override the express duty policy made a part of this coupled with considerations of the repeal of AS 23.40.