AR.
RAILROAD

HB 512

Notes

Sec. 42.40.830. MEDIATION. If after a reasonable period of negotiation over the terms of a collective bargaining agreement, an impasse as approved by the railroad labor relations agency exists between the corporation and an organization, the railroad labor relations agency shall appoint ~~a mutually agreeable person~~ from a list of seven qualified mediator/arbitrators knowledgeable in railway labor agreements to act as mediator in ~~any~~ dispute, on its own initative or on the request of the parties to the dispute. It shall be the function of the mediator to bring the parties together under such favorable auspices as will tend to effectuate a settlement of the dispute, but neither the mediator nor the railroad labor relations agency has any power of compulsion in mediation proceedings.

Sec. 42.40.840 STRIKE (a) Following a decision by the mediator to end ~~the~~ mediation proceedings, ~~as proscribed in Sec. 42.40.830 of this Act,~~ employees of a collective bargaining unit may engage in a ~~limited~~ strike if a majority of the employees in that collective bargaining unit vote by secret ballot to do so. The limit of the strike is determined by the interest of the health, safety or welfare of the public. The corporation may apply to the superior court in the judicial district in which the strike is occuring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun or is about 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 an employee organization and the corporation have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit the dispute to binding arbitration. The arbitrator shall be the same person selected under Sec. 42.40.830, and shall fashion the award as he/she deems equitable.

(b) Notwithstanding the provisions of (a) of this section, the parties to the dispute may mutually agree to submit the dispute to binding arbitration, ~~after a strike vote has been taken.~~

Admin. wants strike vote prior to Arbitration

OK. 11:39. 3-22-84

Burton McKinney
Labor Atl
Southern Region

(Ed. of 8/1)

Sec. 10. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD CORPORATION AND EMPLOYEES. (a) As soon as practicable after establishment of the corporation and prior to transfer of the Alaska Railroad, the Alaska Railroad Corporation and its employees shall adopt collective bargaining agreements that continue the provisions of the agreements in effect between the Alaska Railroad and its employees immediately before transfer of the Alaska Railroad. The collective bargaining agreements between the corporation and its employees shall remain in effect consistent with 45 U.S.C. 1202-1214 (Alaska Railroad Transfer Act of 1982).

(b) Subject to the provisions of 45 USC 1206 (Alaska Railroad Transfer Act of 1982) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the renegotiation of collective bargaining agreements.

Sec. 42.40.540

(b) In any claim or other legal action against the corporation, including actions involving the expansion, extension and construction of the railroad, in which the corporation is the prevailing party, whether or not the action is considered to be a public interest case, it is not an abuse of discretion for a court to award full costs and attorney fees and for the losses to the corporation that are directly attributables to the maintenance of that action.

New subsection (b) for Sec. 42.40.850 Agreement:

The parties to an agreement under this section may agree to terms which specify an expiration date for the agreement. If a specific term is set for which an agreement will remain in effect, provisions shall be included prohibiting any strikes or lockouts during the term of the agreement and establishing a conflict resolution process for minor amendments to the agreement during the term of the agreement, which shall have binding arbitration as its final step.

PROPOSED WORDING FOR
ALASKA RAILROAD LEGISLATION

42.40.530

The corporation shall protect its assets, services and personnel by partially self-insuring its risks and by maintaining Excess Casualty, Property, Business Interruption, Marine, Boiler and Machinery, Pollution Liability, and Miscellaneous Insurances in amounts reasonably calculated to cover potential claims for bodily injury, death or disability, consequential and property damage that may arise or be related to its operations and activities, naming the State as an additional insured.

TO: SB 352 DRAFT BY COOK

Add a new section to read:

Sec. 42.40.090. MANAGEMENT BY THE BOARD. The board is responsible for the management of the corporation but shall delegate certain powers and duties to the chief executive officer in accordance with AS 42.40.110. In carrying out its responsibilities under this section the board shall, subject to AS 42.40.110,

(1) be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad;

(2) operate the Alaska Railroad as a common carrier subject to the jurisdiction of the United States Interstate Commerce Commission consistent with 45 U.S.C. 1207;

(3) manage the corporation on a self-sustaining basis;

(4) provide for the best possible combination of types and levels of safe, efficient, and economical transportation to meet the overall needs of the state;

(5) provide for the prudent operation of the Alaska Railroad according to sound business management practices;

(6) raise needed capital by issuing obligations of the corporation while insuring that borrowing by the corporation does not directly or indirectly endanger the state's own borrowing capacity.

February 10, 1984

Senator Pappy Moss, Chairman
Senate Transportation Committee
Pouch V
Juneau, AK 99811

Dear Senator Moss:

At the Joint Committee hearing, which you chaired, concerning the transfer of the Alaska Railroad to the State of Alaska, questions were raised concerning the application of the Staggers Rail Act of 1980 to the Alaska Railroad. As I indicated during the hearings, we have had TOTEM's counsel obtain a copy of both the Act and the Conference Committee report on the Act for your evaluation.

I have also had TOTEM's counsel prepare an analysis of the antitrust impact of the Staggers Act on the Alaska Railroad. While TOTEM is not an unbiased observer, I believe you will find our counsel's analysis even-handed.

In reviewing the testimony during the hearing, I do not find any testimony, including Mr. Walsh's (who represented the State Task Force) or Commonwealth North, who seriously argued that the Staggers Act did not contemplate antitrust regulation as a primary component of the "checks and balances" for railroads in the deregulation atmosphere created by the Staggers Act. Specifically,

1) Under the Staggers Act all railroads are to be subjected to the antitrust laws of the United States. Indeed, as our analysis shows, it has always been the intent of Congress to substitute the antitrust laws for deregulation by the Interstate Commerce Commission.

2) All testimony given at the hearing by Mr. Walsh, Commonwealth North, and others concerned with rail regulation, appeared to indicate that they would be "satisfied" if the Alaska Railroad is treated like "any other railroad". As a reading of the Staggers Act will indicate, all other railroads are subject to the antitrust law.

3) The attached legal analysis shows that antitrust regulation is one of the three critical legs which deregulation under the Staggers Act stands on. The others are the profit motive and some continued regulation by the I.C.C. where necessary. One of the key components, the profit motive, may not be present (depending upon how the

State elects to set up the railroad). Certainly the economics of the Alaska Railroad, vis-a-vis privately owned railroads, will be significantly different.

I hope the attached data will be of use to the Committee. TOTEM hopes we will be offered the opportunity to present our suggested amendments to the Committee during the mark-up session. Our sugested amendments contain no hard and fast verbage but are merely suggestions as to how we feel the legislation could address our concerns. For instance, any language which would require legislative approval prior to entry into the water or motor carrier business would satisfy TOTEM's concerns in this area.

Should you have any further questions, please feel free to contact me.

Very truly yours,

Totem Ocean Trailer Express, Inc.

Leonard Shapiro
Vice President, Pricing

PURPOSE OF RAILROAD DEREGULATION

When Congress deregulated the railroads in the Staggers Act, (Attachment A), it intended to replace government regulation of railroads with free market forces, including competition, the profit motive, and the antitrust laws. Congress believed that competition would keep rates from being too high; the profit motive would keep them from being too low; and the antitrust laws would keep rates from being discriminatory, unfair, or predatory. All three factors -- competition, the profit motive, and antitrust -- must exist if deregulation is to work as Congress intended.

A recent court case explains the importance of these factors, and particularly of the antitrust laws.

> "As a general matter, the cases show that the antitrust laws and the Interstate Commerce Act are certainly not repugnant to one another but are mutually compatible in their objectives. This is particularly the case since the passage of the Staggers Rail Act of 1980, which seeks to free rail carriers from regulatory restraint and to open up the industry to a greater degree of marketplace competition. In the preamble to that Act, Congress declared it to be national policy 'to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.' The Act further states that its provisions shall not be construed to make lawful 'a competitive practice that is unfair destructive, predatory, or otherwise undermines competition that is necessary in the public interest . . . ' One of its expressed goals is 'to prohibit predatory pricing and practices, to avoid undue concentration of market power and prohibit unlawful discrimination.' Among other changes intended to substitute marketplace forces for regulation, the Staggers Act stripped the ICC . . . of all jurisdiction to review railroad rates and charges except in

limited circumstances where they are above or below certain jurisdictional thresholds. In passing this law, Congress intended that railroads and other carriers would continue to be subject to the antitrust laws." 1/

The Staggers Act itself lists these three factors as key elements of National Rail Transportation Policy.

"In regulating the railroad industry, it is the policy of the United States government -

(1) To allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

. . . .

(10) To encourage honest and efficient management of railroads, and in particular, the elimination of noncompensatory rates for rail transportation;

. . . .

(13) To prohibit predatory pricing and practices, to avoid undue concentrations of market power and to prohibit unlawful discrimination . . . . " 2/

The Conference Report on the Staggers Act (Attachment B) explains Congress' purpose and intent in relying on these factors. Competition is important, the Conference Report explains, because Congress intended for competition, rather than the Interstate Commerce Commission to keep rates low.

"Whenever there is effective competition which will restrain rate increases by the railroads, such competition should continue to function as the regulator of the rate rather than the Commission."

. . . .

"The conferees believe that the best regulator is the marketplace, and the forces of competition will restrain railroad rates more effectively than federal regulation." 3/

One of Congress' most important assumptions about rate making by railroads was that railroads would set rates that were as profitable for them as the competition would allow. "Railroads should not be carrying traffic which is losing money . . . . " (Conference Report at 95.) Congress specifically designed the rate standards of the Staggers Act to minimize interference with "carriers (who are) pricing in a manner that meets rational economic standards." (Conference Report at 90.) If a railroad has no incentive to earn a profit, then Congress' assumption does not apply, and the policies of deregulation under the Staggers Act will not work as Congress intended.

Congress believed that it was unnecessary for the ICC to order the railroads to keep their rates high enough to, for example, perform maintenance needed to keep their operations safe, because the railroads' profit motive would take care of this. The ICC summarized Congress' intention as follows: "The [Conference] Report expresses a belief that 'a carrier has no reason to keep a rate below the most beneficial level, [so that] the conferees have no reason to believe rates will be held below the most beneficial level except by oversight.'" (Conference Report, as quoted in Cost Standards for Railroad Rates, 364 ICC 898, 904 (1981).) However, a railroad without the profit motive may not necessarily set rates high enough to earn enough revenue to remain in business and provide safe, efficient, economical service. A railroad which has no incentive to make profit, therefore, is simply not the type of railroad Congress had in mind when it deregulated the railroads in the Staggers Act.

The antitrust laws are one of the most important factors in deregulation. In exchange for freedom from ICC regulation of their rates, the railroads must, like every other business in America, obey the antitrust laws. Although the ICC no longer reviews every railroad rate, rates which are predatory or discriminatory or result from unfair concentrations of market power

are still illegal under the Staggers Act. The National Rail Transportation Policy specifically prohibits predatory pricing, undue concentrations of market power and unlawful discrimination. (49 U.S.C. §10101a(13).

In general, the Staggers Act was intended "to make clear that none of the provisions of Act modifies existing law to make lawful a rate or practice that was unlawful on the day prior to enactment. Also, the Conferees intend that this section allow water carriers to challenge practices that were unlawful as unfair, destructive, predatory, or otherwise undermined competition prior to enactment of this Act." (Conference Report at 142.) As Congress provided in conjunction with the similar law deregulating motor carriers, "the elimination of antitrust immunity for since-line rates is one of the most important aspects of the legislation." House Report 6418 [on Motor Carrier Act of 1980] at 28.

For example, the Staggers Act allows railroads to experiment with flexible contract rates. The Alaska Railroad has exercised this right in the past. However, in exchange for this new right to have contract rates (which railroads were not allowed to have under prior law) the railroads' contract rates are required to be subject to antitrust laws. The Conference Report specifically points out that "the existing Federal antitrust laws apply to this section [authorizing contract rates]." (Conference Report at 101.)

The Interstate Commerce Commission recently emphasized the importance of the antitrust laws when deregulating boxcar service. In response to claims that the Commission should continue to regulate boxcar service, the ICC answered that regulation was unnecessary because the antitrust laws were available.

> "It is also important to recognize that the antitrust laws provide a remedy against attempted monopolization by means of predatory pricing.

> We conclude the predatory pricing on boxcar traffic is highly unlikely to occur, and even in those few instances where it is a remote possibility, the antitrust laws exist to provide sufficient deterrent and remedy. Congress' instruction is that we regulate only in those instances where regulation is necessary to protect against market power abuse and other federal remedies are inadequate for the purpose." 4/

If the antitrust laws were not available, however, continued regulation would, as the Commission stated, be necessary to carry out the National Rail Transportation Policy of the Staggers Act to prevent predatory pricing, unlawful discrimination, and undue concentrations of market power.

In short, being subject to the antitrust laws is the price for deregulation. The ICC has consistently required that in exchange for freedom from ICC rate regulation, carriers must be subject to the antitrust laws.

> "Implicit in the granting of this exemption is the removal of antitrust immunity . . . . [R]emoval of antitrust immunity is the quid pro quo for the bestowal of freedom from regulation. Meaningful deregulation is more than a selective relaxation of the regulatory constraints most disliked by the industry. It fosters vigorous competition among the railroads themselves, as well as between the railroads and their rival modes of transportation. Removing antitrust immunity for collective ratemaking has been our uniform prerequisite in exempting other commodities and services from rate regulation." 5/

A railroad that is not subject to the antitrust laws therefore is not entitled to be deregulated.

Therefore, Congress only intended to deregulate railroads which (1) are motivated by the normal business incentive to earn a reasonable profit, so that they would earn enough revenue to maintain safe, efficient, economical service; (2) have sufficient competition to keep rates from being too high; and (3) which are subject to the antitrust laws so that customers,

suppliers, and competitors will have a right to go to court to seek relief from unfair railroad rates. If a railroad does not meet all three conditions, Congress did not intend for that railroad to be deregulated.

1/ Trans-Kentucky Transportation Railroad v. Louisville & N.R.Co., 1983-2 Trade Cases (CCH) P. 65,476 (E.D. Ky.1983) (emphasis added).

2/ 49 U.S.C. §10101a (Section 101 of the Staggers Act).

3/ Conference Report at p.89 and at p.93.

4/ Ex parte No. 346 (Sub-No.8) at 16 (May 2, 1983).

5/ Id. at 20 (emphasis added).

OK-Clause

ARTICLE 7. PERSONNEL AND LABOR RELATIONS.

Sec. 42.40.700 PERSONNEL. Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation except that the provisions of AS 39.50.010-39.50.200 shall apply to the members of the board and all appointed executive officers.

Sec. 42.40.710. COLLECTIVE BARGAINING RIGHTS. The provisions of the Public Employee Relations Act (AS 23.40.070-23.40.260) do not apply to the corporation or to its employees. However, employees of the corporation, except the chief executive officer and other executive officers appointed by the chief executive officer, 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.

Improve? Did a Mark for ARTA State law

Sec. 42.40.720. RAILROAD LABOR RELATIONS AGENCY. (a) There is established a railroad labor relations agency which consists of three members appointed by the governor. One member shall be a member of the state labor relations agency (AS23.40). Members serve at the pleasure of the governor.

(b) The railroad labor relations agency shall perform the functions described in AS 42.40.700-42.40.990 to carry out the provisions of this article.

(c) Members of the railroad labor relations agency receive no compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions.

Sec. 42.40.730. COLLECTIVE BARGAINING UNIT. The railroad labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS. 42.40.700-

42.40.990 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. 42.40.740. REPRESENTATIVES AND ELECTIONS. (a) The railroad labor relations agency 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 corporation as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

(2) by the corporation 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 railroad 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 railroad 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

railroad labor relations agency or an election in a bargaining unit agreed upon by the parties. The railroad 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 railroad 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 the corporation by mutual consent.

(3) No election may be directed by the railroad labor relations agency in a bargaining unit in which there is in force 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. 42.40.750. UNFAIR LABOR PRACTICES. (a) The corporation or its agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in AS 42.40.710;

(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 AS 42.40.010-42.40.990;

(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 article prohibits the corporation 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 30th 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 agency 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 AS 42.40.710 or

(B) the corporation 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 the corporation,

if it has been designated in accordance with the provision of AS 42.40.700-42.40.990 as the exclusive representative of employees in an appropriate unit.

Sec. 42.40.760. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 42.40.750 or a written accusation that a person subject to AS 42.40.700-42.40.990 has engaged in a prohibited practice, is filed with the railroad labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probably 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. 42.40.770. COMPLAINT AND ACCUSATION. If the railroad labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 42.40.700-42.40.990, or before it attempts conciliation, it may serve a copy of the complaint or accusation 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 42.40.780. ORDERS AND DECISIONS. If the railroad labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the railroad 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 AS 42.40.700-42.40.990. If the railroad 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 railroad labor

relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 42.40.790. ENFORCEMENT BY INJUNCTION. The railroad 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 railroad labor relations agency. Upon a showing by the railroad 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. 42.40.800. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which the railroad labor relations agency considers necessary to carry out the provisions of AS 42.40.700-42.40.990, the railroad labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The railroad 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 AS 42.40.700-42.40.990, the superior court in the district in which the person resides or is found may, upon application by the railroad labor relations agency, issue an order requiring him to comply with the subpoena

Sec. 42.40.810. REGULATIONS. The railroad labor relations agency shall adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of AS 42.40.700-42.40.990.

Sec. 42.40.820. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person who violates a provision of an order or decision of the railroad labor relations agency is guilty of a misdemeanor and is punishable by fine of not more than $500.

Sec. 42.40.830. MEDIATION. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between the corporation and an organization, the railroad labor relations agency shall appoint a competent, impartial, disinterested person to act as mediator in any dispute 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 railroad labor relations agency has any power of compulsion in mediation proceedings.

Sec. 42.40.840. STRIKES. Ninety days following the mediation process proscribed in Sec. 42.40.830 of this Act, employees of a collective bargaining unit may engage in a strike if a majority of the employees in ~~that~~ collective bargaining units vote by secret ballot to do so.

Sec. 42.40.850. AGREEMENT. (a) Upon the completion of negotiations between an organization and the corporation, if a settlement is reached, the corporation shall reduce it to writing in the form of an agreement. ~~The agreement shall include a term for which it will 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.

(b) The Department of Administration shall participate in labor negotiations between the corporation and an employee organization. The corporation

- Parties to the Dispute May jointly agree on a Method for resolution for a Dispute that is not resolved
- If the parties are unable to agree on a method of final resolution of Disputes, the RR labor relation Agency may impose

may shall seek advice of the Department of Administration prior to entering into a collective bargaining agreement concerning wages, hours, and other terms and conditions of employment. However, the final decision regarding collective bargaining agreements, shall be made by the board.

Sec. 42.40.860. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of a corporation employee within a bargaining unit, the corporation shall deduct from the payroll of the 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. 42.40.870. EXEMPTION FROM ARTICLE 7. Notwithstanding the provisions of AS 42.40.860, a collective bargaining settlement reached, or agreement entered into, under AS 42.40.850 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of 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 railroad 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 nonpayment 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 railroad labor relations agency.

Sec. 42.40.880. DEFINITIONS. In AS 42.40.700-AS 42.40.880,

(1) "railroad labor relations agency" means railroad employee labor relations agency with regard to the corporation and employees of the corporation.

(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 AS 42.40.700-42.40.990.

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

(4) "collective bargaining" means the performance of the mutual obligation of the corporation or its designated representatives and the representatives of the employees to meet at reasonable times, including meetings in advance of the budget making process and negotiating 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 obligations do not compel either party to agree to a proposal or require the making of a concession;

(5) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of the corporation.

Section 19. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE ALASKA RAILROAD CORPORATION AND EMPLOYEES. (a) As soon as practicable after transfer of the Alaska Railroad, the Alaska Railroad Corporation and its employees shall adopt collective bargaining agreements that continue the applicable provisions of the agreements in effect between the Alaska Railroad and its employees immediately before transfer of the Alaska Railroad. Subject to ARTA The collective bargaining agreements between the corporation and its employees shall expire two years from the date of transfer or, as permitted under the federal transfer legislation, they are renegotiated, subject to the approval of the Board of Directors of the Alaska Railroad corporation and the Commissioner of Administration.

(c) (b) Subject to the provisions of 45 USC ~~1206~~ 1202-1214 (Alaska Railroad Transfer Act of 1982) within 180 days of the first meeting of the board, the board and representatives of employee bargaining units shall implement ground rules for the renegotiation of collective bargaining agreements.

(2) The board shall by rule on or before the [first day] date of transfer (b) under the authority granted in Sec. 42.40.230(c) adopt personnel rules and other rules and regulations as necessary to prevent an interruption of services.

Check to See if under Rule

(4) The time specified shall be such as to allow reasonable opportunity to reach the conference site.

(5) The time for beginning the conference shall not exceed twenty days from the receipt of notice designating the place and date of such conference.

The foregoing requirements and procedure should be adhered to with the proper carrier representatives in each step of the case up to and including the highest officer designated by the carrier as having final authority for disposition of such matters.

Section 2, Seventh, is brief but clear and emphatic in establishing certain limitations. It states:

"No carrier, its officers, or agents shall change the rates of pay, rules or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

* "This is not to be confused with Section 6. which deals with procedures for changing existing agreements and writing new agreements."

Part 2
INITIAL HANDLING — NEW RULES OR RULES REVISIONS (SECTION 6, RLA)

The self-explanatory language of this clause precludes the carrier from unilaterally making any of the mentioned changes. The two avenues open to the carrier and to employees when either desires to terminate or change the agreement are through the methods provided in Section 6 of the Act or through the procedural rules stipulated in their own working agreement. The latter route is the one referred to in the Section 2, Seventh, phrase which states:

"... in the manner prescribed in such agreements ...." A typical implementing clause in a contract would read:

"All rates and rules herein shall remain in effect until thirty (30) days' notice of change is given in writing by the party desiring the change, or until changed under the provisions of the Railway Labor Act, as amended."

Section 6 is one of the most important sections of the Act concerning the actual progression of negotiations. It provides for either party to the contract to start the process of amending the contract by notifying the other party of the change sought. Section 6 also imposes time limits for subsequent conference on the matter to begin, and it provides for the National Mediation Board to enter the picture at either party's request or through the Board's self involvement.

During progression of a Section 6 Notice, the issue in the working agreement under notice remains in effect and cannot be altered by the carrier or the employees. In effect, the entire contract is precluded from being changed unilaterally.

The procedure for pursuing a contract change as set forth in Section 6 requires that:

(1) The party desiring the change must give at least thirty days' written notice to the other party, setting forth the exact change desired.

(2) Within ten days of the other party's receipt of the notice, the parties involved must have made arrangements for the time and place they will confer.

(3) Conference must begin not later than 30 days from the date of the initial notice at a place on the line of railroad unless otherwise mutually agreed.

EXAMPLE: A union desiring a change serves written notice upon the carrier, dating the notice August 31. The carrier receives the communication September 1. By no later than September 11, representatives of the union and of the carrier agree to meet in Chicago, Illinois, at 10:00 A.M., September 30 (the final day of the 30-day period following the date of the notice), unless it is mutually agreed to meet on another date.

Once negotiations are under way, the parties either come to an amicable solution which concludes matters at that point, or they reach an impasse. In the event the latter occurs, additional procedure involving the Mediation Board is provided under Section 6. At this point, either party can invoke the services of the Mediation Board, or the Board can proffer its services on its own if it finds a labor emergency exists. In either event, Section 5 of the Act, which describes the functions of the Board, assumes a direct and extremely important bearing in the negotiations.

As mentioned earlier, unilateral change of the contract is not permitted while a Section 6 Notice is in progress. Progression includes the period conference is under way, or while the issue is under the Mediation Board's jurisdiction, or until the Board has acted finally on the issue as required under Section 5 of the Act. If, however, ten days have elapsed after the termination of conferences with the

issue still unsettled and the services of the Board have NOT been requested or been proffered, the status quo position of the parties no longer exists.

This point in negotiations is a critical one because of the ten-day period following a termination of talks and because certain court rulings in this area have been indefinite. It is wise at this juncture for UTU representatives entrusted with handling such matters to note that it would be illogical and perhaps even foolhardy for them to disregard or by-pass the Mediation Board.

If a carrier-requested change in the agreement is not settled in negotiations in a manner satisfactory to the UTU representative, he should, by all means, invoke the services of the Board, and he should not permit ten days to lapse after conferences have concluded before doing so. In a situation such as that just described, the representative should notify the International immediately that negotiations failed to resolve the issue and conferences have been terminated. There should be included with his notice three copies of the Section 6 Notice and attachments, together with complete information concerning the issue so the International can determine the best course to pursue for further handling.

It is important to remember that requests for services of any Administrative Boards or Agencies under the various Federal Statutes must be made through the international president's office. The exceptions to this rule: (1) Submissions to the National Railroad Adjustment Board may be made directly to the particular board that has jurisdiction over the dispute. In the handling of disputes to the NRAB, care must be exercised because each of the Divisions of the Adjustment Board have their own rules or practices. Some of the boards, for example, require advance notice of intention to file a dispute. (2) Safety violations may be referred directly to the enforcement agency on a direct complaint or "information received" complaint basis in addition to the referral route through our National Legislative Director's office or a particular State Director's office. The international can counsel with you in making this determination, if there should be a question concerning the nature of the dispute.

Part 3
THE NATIONAL MEDIATION BOARD
(Section 5, RLA)

Once the National Mediation Board (NMB) becomes officially involved in stalemated negotiations, its primary objective is to induce the parties to settle their differences amicably. The Board's responsibility and function in this respect are outlined in Section 5 of the Act. Section 5 is quite lengthy in describing the step-by-step procedure the Board must follow. Simply stated, however, its job is:

united transportation union

ARTICLE 7. PERSONNEL AND LABOR RELATIONS

1. Sec. 42.40.840. STRIKES

1. Delet and Replace with the Following:

Sec. 42.40.840. BINDING ARBITRATION. 30 days after mediation if the dispute is not resolved, then the issue or issues shall be submitted to binding arbitration using the Federal Mediation Concilliation Service (F.M.C.S.) list of arbitrators.

2. Adopt Sec. 23.40.200. Classes of public employees; 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. Sec. 42.40.850. AGREEMENT. Delete (a) Not to exceed three years.and adopt the concept of the Railway Labor Act, Part 2, Sec. 6.

(b) The Department of Administration may participate in the negotiations between the corporation and an employee organization.

Delete the following: The corporation may not enter into a collective bargaining agreement concerning wages, hours, or other terms and conditions of employment unless the proposed contract terms are approved by the Department of Administration.

Gerald D. Valinske
Legislative Representative
Local 1626
Anchorage, Alaska

united transportation union

STRIKES: (a) Employees may engage in a strike if a majority of the employees in all collective bargaining units vote by secret ballot to do so.

(b) Employees may engage in a strike after mediation, subject to the voting requirements of (a) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The Alaska Railroad Corporation 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 The Alaska Railroad Corporation have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration.

(c) Notwithstanding provisions (a) (b) of this section the employees with the concurrence of the employer may agree in writing to submit a dispute of a collective bargaining agreement to arbitration.

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Legislative Representative
Local 1626
Anchorage, Alaska

Karen Hutton
Vice President
A.F.G.E., Local 183
Anchorage, Alaska

NOTES TO DECISIONS

Title and right to possession at time action brought is sufficient. — Title and right to possession at the time the action is brought is sufficient to sustain an action for claim and delivery of personal property. Hager v. Gordon, 12 Alaska 181, 171 F.2d 90 (9th Cir. 1948).

Effect of obtaining writ of attachment. — Plaintiff, by obtaining a writ of attachment instead of proceeding under this section and AS 09.40.270, did not waive its security interest in its motor vehicle or prejudice any rights of a mechanic's lienor. Decker v. Aurora Motors, Inc., Sup. Ct. Op. No. 314 (File No. 593), 409 P.2d 603 (1966).

Applied in Aleut Corp. v. Arctic Slope Regional Corp., 424 F. Supp. 397 (D. Alaska 1976).

Cited in West v. Whitney-Fidalgo Seafoods, Inc., Sup. Ct. Op. No. 2338 (File No. 4747), 628 P.2d 10 (1931).

Sec. 09.40.270. Undertaking. A peace officer shall not take personal property into custody until the plaintiff delivers to the peace officer the affidavit and undertaking of sufficient sureties to the effect that they are bound in double the value of the property for the prosecution of the action and the return of the property to the defendant, if return be adjudged, and for the payment to the defendant of any sum which may be recovered against the plaintiff. (§ 24.02 ch 101 SLA 1962)

NOTES TO DECISIONS

Quoted in West v. Whitney-Fidalgo Seafoods, Inc., Sup. Ct. Op. No. 2338 (File No. 4747), 628 P.2d 10 (1981).

Cited in Decker v. Aurora Motors, Inc., Sup. Ct. Op. No. 314 (File No. 593), 409 P.2d 603 (1966).

Sec. 09.40.280. Undertaking for return of property to defendant. The defendant, may, within the time set by the court, require the return of the property upon delivering to the peace officer having custody of the property a written undertaking approved by the clerk of the court and executed by sufficient sureties to the effect that they are bound in double the value of the property for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment to the plaintiff of such sum as may, for any cause, be recovered against the defendant. (§ 24.03 ch 101 SLA 1962)

Sec. 09.40.290. Property concealed in building or enclosure, demand and entry to effect seizure. If the property or any part of it is concealed in a building or enclosure, the peace officer shall publicly demand its delivery. If it is not delivered, the peace officer shall cause the building or enclosure to be broken open and take the property into possession. (§ 24.04 ch 101 SLA 1962)

Sec. 09.40.300. Custody of property seized. When the peace officer has taken the property into custody, the peace officer is responsible for it and shall keep it in a secure place and deliver it to the party entitled to it upon receiving the lawful fees for taking and the necessary expenses for keeping it. (§ 24.05 ch 101 SLA 1962)

Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in First Nat'l Bank v. Zawodny, Sup. Ct. Op. No. 1376 (File No. 4188), 602 P.2d 1254 (1979).

Chapter 43. Arbitration.

Article
1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), aff'd on other grounds, Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

And is demonstrated by adoption of this article. — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. Modern Constr., Inc. v. Barce, Inc., Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for the terms of arbitration they desire. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Collateral references. — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq.

6 C.J.S., Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. Trials, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 529.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 752.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs., Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); City of Fairbanks v. Rice, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); Masden v. University of Alaska, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an award. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Award of attorney's fees held proper. — See Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs., Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Chapter 40. Labor Organizations.

Article 1. Local Organizations and Ferry System Employees.

Section
46. Collective bargaining agreement

Sec. 23.40.040. Collective bargaining agreement. The commissioner of transportation and public facilities or an authorized representative, in accordance with AS 23.40.020 — 23.40.030, 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 is final without the concurrence of the commissioner of transportation and public facilities. The commissioner of transportation and public facilities may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration. (§ 1 ch 93 SLA 1962; am § 11 Executive Order No. 39 (1977))

Revisor's notes. — In 1983 this section was redrafted to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982.

Effect of amendments. — The 1977 amendment substituted references to the commissioner of transportation and public facilities for references to the commissioner of public works throughout the section.

Article 2. Public Employment Relations Act.

NOTES TO DECISIONS

When article may be rejected.

In accord with 1st paragraph in main pamphlet. See City of Sitka v. International Bhd. of Elec. Workers, Local 1547, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

Action not in reliance on rights under article. — Where municipality's electrical department employees had pursued unionization since the early 1960's, long before the enactment of this article, although all the electrical department employees signed union authorization cards sometime in 1972, there was no evidence of any organizational activities occurring between the effective date of this article, September 5, 1972, and the passage of the exemption ordinance in question, July 10, 1973; thus the employees were not acting in reliance on rights granted them by this article. City of Sitka v. International Bhd. of Elec. Workers, Local 1547, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

"Public employees" excludes teachers. — The legislature chose to define "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Cited in Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983); Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Sec. 23.40.070. Declaration of policy.

NOTES TO DECISIONS

Applied in Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Sec. 23.40.170. Regulations.

NOTES TO DECISIONS

Stated in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Sec. 23.40.200. Classes of public employees; arbitration.

NOTES TO DECISIONS

I. General Consideration.
II. Arbitration.

I. GENERAL CONSIDERATION.

Certain teachers not covered by section. — Teachers, who are not "public employees" for purposes of this article, are not covered by this section. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Strikes by teachers. — Issuance of injunction to end teachers' strike, without separate finding of irreparable harm was not error, since by making these strikes illegal, the legislature has decided that a teachers' strike would cause irreparable harm. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

II. ARBITRATION.

Not exclusive remedy. — The fact that an arbitrator cannot grant the relief afforded by a statute is an indication that holding arbitration to provide an exclusive remedy would conflict with the statutory purpose. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues arbitrable. — The duty to maintain fit premises under a collective bargaining agreement providing for bush housing is one for which a contract remedy is available and is thus arbitrable. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues not arbitrable. — The legality of a clearly expressed and plainly applicable contract formula was held not arbitrable under the terms of a contract clause providing for arbitration in disputes involving the meaning or application of the express terms of the contract. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Because of the explicit nonwaiver provisions of AS 34.03.040, the right to sue under the Uniform Residential Landlord and Tenant Act, AS 34.03, cannot be prospectively bargained away in a collective bargaining agreement which provides for arbitration. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Sec. 23.40.250. Definitions.

NOTES TO DECISIONS

Teachers, who are not "public employees" for purposes of this article, are not covered by this section. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

The legislature defined "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Quoted in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

American Federation of Government Employees
LOCAL 183
AFFILIATED WITH THE AFL-CIO WASHINGTON, D.C.

LOCAL 183
POST OF FICE BOX 35
ANCHORAGE, ALASKA 99510

TELEPHONE 272-8316

REFER TO FILE:

February 2, 1984

Following is a list of changes and additions we would like made to Senate Bill Number 352:

1. Page 3, line 26, change to read as follows: an employee of the corporation represented the bargaining units, appointed by the governor to represent the employees.

2. Page 26, line 11 through 14: delete

3. Page 26, line 9, insert the following:

d. Employees who are not part of an employees organization bargaining unit on the day before transfer, are not executive officials on the day after transfer, and are protected under the Federal Transfer Law for the two-year period shall become a subdivision of the existing white collar bargaining unit representing The Alaska Railroad Corporation for the purpose of collective bargaining.

People Not employed employees

e. Employees who are not protected under the transfer act for two years and are classified as temporary at the time of transfer will be protected based on their seniority date.

4. Page 27, line 22, insert the following:

(8) Executive officers are the employees occupying the following positions at The Alaska Railroad as of the day before the date of transfer: General Manager, Assistant General Manager, Assistant to the General Manager, Chief of Administration, and Chief Counsel.

(9) Collective bargaining is defined as negotiating with an employees organization, representing the employees of The Alaska Railroad Corporation on any matters pertaining to conditions of employment.

5. Alaska Statute Section 39.26.010, Prohibited Acts be adopted with the following modifications:

(a) The word "State" be replaced with "Alaska Railroad Corporation."

(b) Paragraph 5b. The heads of the administrative departments of the State may adopt internal management regulations for their respective departments, specifying exception to (a)(5) of this section. These regulations shall be submitted for approval to the personnel board provided for in AS 39.25.060. Replace as follows:

"The executive officials of The Alaska Railroad Corporation may adopt internal management regulations for their respective departments. These regulations shall be submitted for approval to the Board of Directors of The Alaska Railroad Corporation."

6. The State of Alaska's primary concern over including the current Alaska Railroad employees under PERS is over back year unfunded years. Why not modify the State statute for those employees of The Alaska Railroad who remain under the Civil Service Retirement to be eligible for coverage under the supplemental benefits system? at time of transfer.

Your consideration of the above request will be greatly appreciated. Also, we would appreciate receiving copies of any amendments that are issued to this bill. If you have any questions, please do not hesitate to contact us.

Sincerely yours,

Jack F. Burton
President

Karen Hutton
Vice President

united transportation union

LISTED BELOW ARE MAJOR CORPORATIONS THAT HAS APPOINTED LABOR TO THEIR BOARD OF DIRECTORS WITHOUT RESTRICTIONS:

	CORPORATION	BOARD MEMBERS REPRESENTED BY LABOR
1.	CHRYSLER MOTOR CORPORATION	(1) MEMBER
2.	EASTERN AIRLINES	(3) MEMBERS
3.	AMERICAN MOTORS CORPORATION	(1) MEMBER
4.	PAM AMERICAN AIRLINES	(1) MEMBER
5.	WESTERN AIRLINES	IN PROCESS OF NAMING (2-3) MEMBERS
6.	WIERTON STEEL CORPORATION	LABOR HAS PURCHASED THE CORPORATION

THIS IS A LIST OF JUST A FEW AMERICAN CORPORATIONS THAT HAS GAINED SUCCESS FROM APPOINTING LABOR TO THEIR BOARDS.

GERALD D. VALINSKE
LEGISLATIVE REPRESENTATIVE
LOCAL 1626
ANCHORAGE, ALASKA

TOTE Suggested Committee Report Language

It is the policy of the State that the Alaska Railroad should be operated in a business like manner so as to foster the development of a strong and financially sound system of Interstate Commerce. Accordingly, the Railroad should not use public resources or the benefits of its public status to compete unfairly with private carriers. Subsection (d)(1) makes the Alaska Railroad fully subject to the federal antitrust laws. The bill declines to invoke the so-called State action exemption, or any other exemption from the antitrust laws. Subsection (d)(3) also explicitly limits the Railroad to acting as a rail carrier and prohibits it from entering the water carrier or motor carrier business in competition with privately owned carriers.

Subsection (d)(2) prevents the Railroad from utilizing the public benefits of direct or indirect subsidy (such as ability to issue tax-exempt bonds and freedom from taxation and license and permit fees) to undercut rates established in the competitive marketplace. This provision allows the Railroad to meet any rate for comparable service set by any privately owned and operated carrier irrespective of whether or not the Railroad can earn a profit by doing so. This section only prohibits the Railroad from using its subsidy to undercut the rates of the private carriers for comparable service. If the Railroad can price below the privately owned carriers and still earn a profit, it is certainly permitted to do this.

TOTE Proposed Amendments to Senate Bill No. 352

1. Add a new Subsection (d) to Section 1, as follows:

(d) It is the policy of the State of Alaska that the Alaska Railroad:

(1) shall be subject to the antitrust laws of the State of Alaska, AS 45.50. 471 - 45.50. 596, and to the antitrust laws of the United States, as defined in 15 U.S.C. 12, to the same extent as privately owned and operated railroads;

(2) shall not use direct or indirect subsidy to compete unfairly with privately owned and operated carriers; and

(3) shall not offer motor or water transportation services in competition with services offered on the date of transfer by privately owned and operated motor or water carriers.

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LOCAL 183
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LOCAL 183
POST OFFICE BOX 35
ANCHORAGE, ALASKA 99510

TELEPHONE 272-8316

REFER TO FILE:

Official Time: (a) Any employee representing an Bargaining Unit in the negotiation of a Collective bargaining agreement shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this section shall not exceed the number of individuals designated as representing the employer for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

Gerald D. Valinske
Legislative Representative
Local 1626
United Transportation Union
Anchorage, Alaska

Karen Hutton
Vice President
Local 183