SB

154

#3

SUMMARY: AMENDMENTS TO SB 154

1) Submitted by Greg Oczkus, General Counsel, IBEW

"Any municipality, borough or political subdivision within the state having opted-out of the provisions of the Public Employees Relations Act shall within 180 days adopt local ordinances which guarantee their employees those rights and privileges granted under P.E.R.A. Such ordinances must, at minimum, guarantee the local employees the right to certify as a bargaining unit, to bargain collectively, to enter into working agreements, to be represented by labor organizations and to adopt methods of impasse resolution and redress of grievances. Such ordinances shall provide rights and privileges equal to P.E.R.A. but may be administered at a local level."

Note: "Adopt methods of impasse resolution" is open-ended. Possibly the phrase could include "adopt methods of impasse resolution which are consistent to those outlined under P.E.R.A. "Enter into the working agreements" needs to be explained further. No fiscal impact.

2) Submitted by John Alexander, Manager, Labor Relations, City of Anchorage

"Section 23.40.075 Applicability. This chapter applies to all public employers including organized boroughs or political subdivisions that have rejected by ordinance or resolution having the provisions of AS 23.40.070 - 23.40.260 apply but who also have not passed local labor relations ordinances to address such employee concerns as wages, hours, working conditions, as well as grievance, dispute and impasse resolutions. These entities shall have 180 days from the date this amendment takes effect to either adopt their own local labor relations act or have the provisions of PERA apply. Those entities that elect to pass their own labor ordinances must include provisions for bargaining over wages, hours, working conditions, plus a procedure for handling grievances as well as dispute and impasse resolutions. Those entities that do not act within the 180 day time frame will be deemed automatically designated as electing to adhere to PERA."

"Section 2, Section 4, chapter 113 SLA 1972 is repealed."

Note: More flexible areas of bargaining could be achieved by adding to provisions for bargaining over wages, hours, and other terms and conditions of employment (Anchorage Employee Relations ordinance).

The amendment should recognize the employee right to organize and to be represented by a labor organization(s).

The same argument against "impasse resolution". Wording to include strike categories, mediation/arbitration should be included. (See Anchorage Employee Relations ordinance) or ordinances shall be consistent with P.E.R.A. No fiscal impact.

3) Submitted by Dept. of Labor

(See attached proposed Committee Substitute.)

Note: The Dept. of Labor's proposed substitute doesn't address the issue of recognizing bargaining units, grievance procedure, or impasse resolution.

Exempts second-class cities.

No fiscal impact.

(7) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer. (§ 2 ch 113 SLA 1972)

Cross references. — As to applicability of this article to ferry personnel, see note following article 2 analysis.

Opinions of attorney general. — AS 23.40.070(2) and paragraph (7) of this section, standing alone, clearly would make both group life and health insurance benefits and retirement benefits subject to collective bargaining since they both are "fringe benefits." January 23, 1978, Op. Att'y Gen.

Because health insurance deals with the economic interests of employees and does not deal with fundamental policy; because AS 39.30.090, the group insurance statute, authorizes the Department of Administration to obtain "a policy or policies"; and because AS 39.30.090 does not specify what levels of coverage or benefits must be included in the policy (or policies) obtained, the issue of group life and health insurance benefits is negotiable under the Public Employment Relations Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

Given AS 39.35.120(b) and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35.010 — 39.35.690) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees and benefits under the public employees retirement system may not be negotiated under the Public Employment Retirement Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

NOTES TO DECISIONS

Ferry personnel are public employees of a public employer and are not included within any of the itemized exceptions of paragraph (5). Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Since paragraph (3) of this section defines "labor relations agency," which supervises and enforces this article, as the state personnel board for state employees and the Department of Labor with regard to all other public employees, the state personnel board would be the applicable regulatory agency with regard to ferry personnel. Therefore, there is no inconsistency in the ferry crew exemption from the state personnel system and its inclusion with this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Noncertificated school employees are not among those within the ambit of this article. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n, Sup. Ct. Op. No. 1802 (File No. 3600), 590 P.2d 437 (1979).

Nor are noncertificated employees of regional educational attendance areas. — This article does not apply to the noncertificated employees of the regional educational attendance areas. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Since such attendance areas appear to be school districts. — Regional educational attendance areas appear to be school districts within the meaning of paragraph (5), defining "public employees" for the purposes of this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Thus, such attendance areas have no statutory duty to bargain with noncertificated employees. — This article exempts noncertificated employees of the regional educational attendance areas from its coverage. The regional educational attendance areas therefore have no statutory duty to bargain with a bargaining representative of the noncertificated employees. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

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Summary - Amendments for SB154

1) Submitted by Greg Oczkus, General Counsel, IBEW

Any municipality, borough or policital subdivision within the state having opted-out of the provisions of the Public Employees Relations Act shall within 180 days adopt local ordinances which guarantee their employees those rights and privileges granted under P.E.R.A. Such ordinances must, at minimum, guarantee the local employees the right to certify as a bargaining unit, to bargain collectively, to enter into working agreements, to be represented by labor organizations and to adopt methods of impasse resolution and redress of grievances. Such ordinances shall provide rights and privileges equal to P.E.R.A. but may be administered at a local level.

"adopt methods of impasse resolution" is open-ended. Possibly the phrase could include "adopt methods of impasse resolution which are consistent to those outlined under P.E.R.A. "Enter into working agreements" needs to be explained further.

2) Submitted by John Alexander, Manager, Labor Relations City of Anchorage

Section 2. 40.075 Applicability. This chapter applies to all public employers including organized boroughs or political subdivisions that have rejected by ordinance or resolution having the provisions of AS 23.40.070 - 23.40.260 apply but who also have not passed local labor relations ordinances to address such employee concerns as wages, hours, working conditions, as well as grievance, dispute and impasse resolutions. These entities shall have 180 days from the date this amendment takes effect to either adopt their own local labor relations act or have the provisions of PERA apply. Those entities that elect to pass their own labor ordinances must include provisions for bargaining over wages, hours, working conditions, plus a procedure for handling grievances as well as dispute and impasse resolutions. Those entities that do not act within the 180 day time frame will be deemed automatically designated as electing to adhere to PERA.

Section 2, Section 4, chapter 113 SLA 1972 is repealed.

More flexible areas of bargaining could be achieved by adding to provisions for bargaining over wages, hours, and other terms and conditions of employment (Anchorage Employee Relations ordinances)

The amendment should recognize the employee right to organize + to be represented by a labor organization(s).

The same argument against "impasse resolution". Wording to include strike categories, mediation/arbitration should be included. (See Anchorage Employee Relations ordinance) or ordinances shall be consistent to P.E.R.A.

3. Submitted by Dept. of Labor

It doesn't address issue of recognizing bargaining units, grievance procedure, or impasse resolution

Exempts second-class ~~W~~ cities - I'm not sure of merit.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M April 15, 1983

SUBJECT: Municipal exemption option (CSSB 154 (L&C))

TO: Senator Richard I. Eliason
Chairman, Senate Labor and Commerce Committee

FROM: Thomas A. Sofo TAS
Legislative Counsel

I have provided your office with the requested CSSB 154 (L&C) in two versions. The legal effect of both versions is equivalent. Version No. 1 only differs from Version No. 2 in as much as it enacts into permanent law the municipal exemption option which is currently in our special and temporary laws, at sec. 4, Chapter 113, SLA 1972. The original placement of that section seems to be in error since it is a section which has continuing effect and validity. At the present time, unless one is careful to read the editor's notes under AS 23.40, one can easily be unaware of the existence of the municipal exemption option. For that reason, this office would recommend different placement of that language by including it in the text to AS 23.40. That has been done in Version No. 1 by including it as subsection (a) to AS 23.40.227 which is contained in Sec. 1 of the bill draft.

Version No. 2 is merely the same bill without relocation of the subject matter contained in sec. 4, Chapter 113, SLA 1972. You will notice that subsection (b) of AS 23.-40.227 of Version No. 1 is the same as the single section added by AS 23.40.227 in Version No. 2 of the Act.

In this memo, I would also like to raise an additional point which is related to this bill. I have been shown a draft which apparently has come from the Department of Labor which does not include a list of the specific rights under the Public Employment Relations Act which are to apply to municipalities exercising the exemption option. The term of art

which the Department of Labor has chosen to use is "substantially comparable" procedures and privileges. That term is loaded with ambiguity and we would strongly advise against the inclusion of that terminology in a bill of this nature. If, upon reflection, you desire to have that approach used instead of the one currently in the attached versions of this committee substitute, we will revise the bill at that time to comply with your wishes.

TAS:ljb

Enclosures
15/002

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

April 12, 1983

The Honorable Richard I. Eliason
Chairman, Labor and Commerce Committee
Alaska Senate
Pouch V
Juneau, AK 99811

Dear Senator Eliason:

In the Senate Labor and Commerce hearing for Senate Bill 154, you requested further clarification of the Administration's position. The enclosed committee substitute addresses the Administration's policy as to supporting collective bargaining for municipal employees. However, the Administration does not necessarily believe that all municipal employees should be covered by AS 23.40, the Public Employment Relations Act.

The proposed committee substitute does maintain responsibility for labor relations at the local level but will also address many of the concerns and inequities which exist and have been presented to the committee.

The fiscal impact of this proposal is zero and a fiscal note can be prepared if the committee wishes to adopt the suggested committee substitute.

My apologies for the delay in responding to your request.

Sincerely,

Jim Pobison
Commissioner

Enclosure

cc: Senator Bettye Fahrenkamp

07-G9LH

International Brotherhood of Electrical Workers

TELEPHONE
(907) 272-6571
TELEX 25-250

VERN C. (Bud) GARRISON
BUSINESS MANAGER • FINANCIAL SECRETARY

2702 DENALI STREET
ANCHORAGE, ALASKA 99503

GEORGE A. ROBERTS
PRESIDENT

Local 1547

March 22, 1983

Senator Richar[illegible]on
Pouch V
Juneau, Alaska

Dear Mr. Eliason,

Thank you for the opportunity to testify on March 14, 1983 regarding Senate Bill 154. I am General Counsel for IBEW Local 1547 and am experienced in negotiating agreements and representing public sector employees in Fairbanks, Anchorage, Sitka, Petersburg and Ketchikan. If SB 154 is passed without amendment it would place too great a burden on the state and disrupt various municipality and borough administrations.

I see the problem as an abuse of the opt-out provision. Some political sub-divisions which have exercised their right under the Kozlosky Amendment have not passed local ordinances which assure their employees' rights and privileges similar to those under the Public Employees Relations Act.

I would suggest the following amendment to cure the problems, while at the same time avoiding a fiscal note to the bill:

> Any municipality, borough or policital subdivision within the state having opted-out of the provisions of the Public Employees Relations Act shall within 180 days adopt local ordinances which guarantee their employees those rights and privileges granted under P.E.R.A. Such ordinances must, at minimum, guarantee the local employees the right to certify as a bargaining unit, to bargain collectively, to enter into working agreements, to be represented by labor organizations and to adopt methods of impasse resolution and redress of grievances. Such ordinances shall provide rights and privileges equal to P.E.R.A. but may be administered at a local level.

Such an amendment would permit local control of labor relations matters, would redress the employee concerns you heard in the public testimony and would avoid increasing the administrative costs of the Department of Labor.

Thank you,

Greg Oczkus

Greg Oczkus
General Counsel, IBEW

GO:jln

cc: Patrick M. Rodey
Walt Furnace
Bettye Fahrenkamp

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4111

TONY KNOWLES, MAYOR

DEPARTMENT OF HUMAN RESOURCES

March 23, 1983

Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Eliason:

As promised, enclosed you will find two pieces of information regarding Senate Bill 154, the Municipal "opt out" legislation, as it is referred to.

You will remember that I testified against Senate Bill 154 on behalf of the Municipality of Anchorage. Let it be reiterated here that to pass it in its present form would be to create chaos and confusion for those entities that do have labor ordinances of long standing and who do attempt to bargain fairly with our employees. Accordingly, we wish to suggest language that we feel would address the concerns of those who advocate passage of Senate Bill 154. We enclose a copy of an amendment that we offer for your consideration. This or very similar wording in an amendment should satisfy the concerns of those who wish change while at the same time allaying and soothing the fears of those who have viable labor relations programs.

The other documents relate to the cost figure that I mentioned in my testimony. I stated that the cost was some 2 million dollars, but as you can see, that amount would be closer to 3 million dollars or a little over with all things included. To switch to PERA from our local labor ordinance would likely cause us to incur a very s milar debt. Although the above mentioned costs were the result of the unification process that Anchorage went through, we would undergo a very similar set of circumstances if Senate Bill 154 were to pass. In this era of shrinking revenues, we feel that the disruption and chaos the switch would cause, is a luxury we cannot afford.

I mentioned in my suggested language for an amendment the mandatory inclusion in local labor ordinances of language covering bargaining over wages, hours, working conditions, grievance procedure, and dispute and impasse resolutions. At the hearing held in Anchorage on March 19, 1983, it seemed that most of the complaints fell within those areas. It seemed as though the perception, at least, was that even though some of the areas had passed ordinances, there is a certain amount of circumvention in active practice. Again, perhaps this suggested language or similar language could serve to remedy that situation.

On behalf of the Municipality of Anchorage, I wish to thank you for the opportunity to provide you with this information. I would hope that it will help you arrive at a conclusion that will be fair not only to the State of Alaska, but to the municipalities and the employees concerned.

Sincerely,

John L. Alexander

John L. Alexander
Manager, Labor Relations

JLA:bak

Enclosures

AN ACT REGARDING THE MUNICIPAL EXEMPTION OPTION TO THE PUBLIC EMPLOYEES RELATIONS ACT.

Section 23.40.075 Applicability. This chapter applies to all public employers including organized boroughs or political subdivisions that have rejected by ordinance or resolution having the provisions of AS 23.40.070 - 23.40.260 apply but who also have not passed local labor relations ordinances to address such employee concerns as wages, hours, working conditions, as well as grievance, dispute and impasse resolutions. These entities shall have 180 days from the date this amendment takes effect to either adopt their own local labor relations act or have the provisions of PERA apply. Those entities that elect to pass their own labor ordinances must include provisions for bargaining over wages, hours, working conditions, plus a procedure for handling grievances as well as dispute and impasse resolutions. Those entities that do not act within the 180 day time frame will be deemed automatically designated as electing to adhere to PERA.

Section 2, Section 4, chapter 113 SLA 1972 is repealed.

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Chapter 3.70

EMPLOYEE RELATIONS

Sections:

3.70.010 Definitions.

As used in this chapter:

A "Agreement" means the result of the exchange of mutual promises between the mayor of the municipality and the employee organization, which becomes a binding contract for the period of time set forth therein. Collective bargaining agreements must be approved finally by employee organizations and by the assembly.

B. "Bargaining representative" means the organization, association or labor union recognized through certification by the board as the proper party to represent the bargaining unit in collective bargaining and processing of grievances with the municipality.

C. "Bargaining unit" means the collective group of employees to be represented in collective bargaining and processing of grievances by one bargaining representative.

D. "Board" means the Municipality of Anchorage Employee Relations Board.

E. "Classification plan" means a system of job titles and job descriptions corresponding to designated pay ranges and includes an orderly arrangement into classes of employees and a list of class titles, class codes and ranges assigned to each class.

F. "Collective bargaining" means the performance of the mutual obligations of the municipality and the employee organization to meet at reasonable times and negotiate in good faith with respect to wages, hours and other terms and conditions of employment and the execution of a written contract incorporating an agreement reached. These obligations do not compel either party to agree to a proposal or require the making of a concession.

G. "Dues checkoff" means the obligation or practice of the government of deduction from the salary of a public employee at his written authorization of an amount for the payment of his membership dues in an employee organization, and the obligation of the municipality to transmit the sums so deducted to the employee organization.

H. "Election" means a proceeding conducted and supervised by the Employee Relations Board in which employees in a collective bargaining unit cast secret written ballots for the purpose of determining a collective bargaining representative or for any other purpose specified in this chapter.

I. "Electrical generation" means all employees as determined by the board whose services are necessary or integrally related to the generation and transmission of electrical power to the community.

J. "Emergency medical services" means all employees in the section of Emergency Medical Services.

K. "Employee" means any person holding a position in the administrative service of the municipality. Such term

does not include members of citizen commissions or advisory groups appointed under authority of Article V of the Charter. The term "employee" shall not include supervisory employees as defined herein.

L. "Employee organization" means an organization of employees of any kind, having as its purpose the improvement of terms and conditions of employment of public employees through collective bargaining, grievance and arbitration, or any other procedure where permitted under this chapter.

M. "Employer" means the Municipality of Anchorage, Alaska. Such term does not include the numerous citizen advisory boards and commissions which exist under the authority of Article V of the Charter.

N. "Fact-finding" means investigation of a dispute by a duly appointed individual, panel or board with the fact finder submitting a report to the parties or the public describing the issues and reporting the facts relating thereto and the recommendations of the fact finder or fact finders.

O. "Fire protection" means all employees within the Division of Fire Services.

P. "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding terms and conditions of employment between representatives of the employer and the exclusive bargaining representative through interpretation, suggestion and advice.

Q. "Municipality" means the Municipality of Anchorage, Alaska.

R. "Personal staff" means the aides, secretaries and clerks working directly for an official or supervisory employee.

S. "Police" means all employees within the Police Department.

T. "Port operation" means all employees as determined by the board whose services are necessary or integrally related to the maintenance of port facilities or the transshipment of any commodity through the Port of Anchorage.

U. "Sewer treatment" means all those employees as determined by the board whose services are necessary or integrally related to the operation and maintenance of the sewer treatment facilities.

V. "Staff" means all employees within the department, division, section or office affected.

W. "Supervisory employee" means an individual having substantial responsibility on behalf of the municipality regularly to participate in the performance of all or most of the following functions: employment, promotion, transfer, suspension, discharge or adjudication of grievances of other employees, if, in connection with the foregoing, the exercise of such responsibility is not of a merely routine nature but requires the exercise of independent judgment.

X. "Water treatment" means all employees as determined by the board whose services are necessary or integrally related to the maintenance of an adequate water supply to the community. (AO 69-75, am AO 77-376).

3.70.020 Declaration of policy.

The municipality declares that it is its policy to promote harmonious and cooperative relations between the municipality and its employees and to protect the public by assuring orderly and effective operations of government. These policies are to be effectuated by recognizing the right of employees to organize for the purpose of collective bargaining; by negotiating with and entering into written agreements with employee organizations on matters of wages, hours and other terms and conditions of employment; and by maintaining merit system principles among municipal employees. (AO 69-75).

3.70.030 Rights of municipal employees.

Employees shall have the right to organize and to be represented by employee organizations for the purpose of collective bargaining with the municipality in order to determine the terms and conditions of their employment for the purpose of the administration of grievances arising under collective bargaining agreements, both as provided herein. (AO 69-75).

3.70.040 Management rights.

It is the right of the municipality acting through its agencies to:

A. Determine the standards of service to be offered by its agencies;

B. Determine the standards of selection for employment;

C. Direct its employees;

D. Take disciplinary action;

E. Relieve its employees from duty because of lack of work or for other legitimate reasons;

F. Maintain the efficiency of governmental operations;

G. Determine the methods, means and personnel by which government operations are to be conducted;

H. Adopt and amend a classification plan and allocate and reallocate employees to positions within the plan;

I. Take all necessary actions to carry out its mission in emergencies; and

J. Exercise complete control and discretion over its organization and the technology of performing its work.

The municipality declares that there is nothing incompatible with the maintenance of these rights and collective bargaining as to the method of application of these rights on matters of wages, hours and other terms and conditions of employment. In exercising management rights, the municipality shall ensure that where matters of wages, hours and other terms and conditions of employment are involved, all written agreements are observed. Units appropriate for collective bargaining shall be determined by the Assembly. (AO 69-75, am AO 77-376).

3.70.050 Employee Relations Board.

There is established the Municipality of Anchorage Employee Relations Board. The board is made up of three regular members appointed by the mayor and confirmed by the Assembly.

A. None of the members of the board shall be employed by the municipality or by the groups covered by this chapter. Members of the board shall be paid $35.00 per day or portion thereof when sitting as the board.

B. All staff costs for the board shall be borne by the municipality. For purposes of this section, "staff costs" are those costs necessary to pay the salaries of those municipal employees who normally serve as staff to the board, and to provide those employees with day-to-day office supplies. The municipality shall assume all costs incurred in connection with mediation, fact-finding and representation elections.

C. The board shall administer the policies established by this chapter. Its duties shall include, but are not limited to:

1. recommending to the Assembly in each case the unit appropriate for the purposes of collective bargaining;

2. conduct of representation elections;

3. certification or decertification of employee organizations as exclusive representatives;

4. resolution of disputes, including mediation, fact-finding and arbitration activities;

5. determination of the occurrence of and remedy for unfair labor practices;

6. designation, in accordance with the provisions of this chapter, of those personnel within the supervisory categories;

7. provision of statistical data relating to salaries, wages, benefits and employment practices to the negotiating parties, mediators, fact finders and arbitrators;

8. conduct of such hearings and inquiries as are necessary to carry out the functions of the board;

9. exercise of the power to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel by the issuance of subpoenas the attendance of witnesses and the production of relevant documents. The board may delegate such powers to any member of the board or any person appointed by the board for the performance of its function, as authorized by this section.

D. The board shall conduct hearings, issue cease and desist orders, conduct elections and take affirmative action to effectuate the policies of this chapter.

E. The board shall promulgate rules and regulations necessary to effectuate the purposes of this chapter. (AO 69-75).

3.70.060 Collective bargaining unit.

A. The Assembly shall decide in each case the unit appropriate for the purpose 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 reasonable, and unnecessary fragmenting shall be avoided.

B. Municipal school district employees' bargaining units shall be as determined by the School Board and all responsibility for collective bargaining shall be that of the School Board.

C. The following employees shall be exempt from collective bargaining:

1. all appointed department heads; the operations managers of civil defense; the executive manager for public services; the executive manager for public utilities; and the public safety commissioner;

2. all supervisory employees as designated by the board upon petition of the municipality;

3. the Office of the Mayor;

4. the personal staff of the manager;

5. the staff of the municipal attorney;

6. the staff of the internal auditor;

7. the staffs of the treasurer; Data and Distributive Information Processing Division; and the Department of Program Planning and Budgeting; the staff of the Equal Opportunity Agency;

8. the ombudsman; the staff of the Office of the Ombudsman; the municipal clerk and the staff of the municipal clerk; the staff of the Equal Rights Commission;

9. the staff of the Department of Human Resources;

10. confidential employees who in the normal course of their duties have access to or assist in the preparation of labor relations data used in negotiations, arbitrations, grievances and board hearings. (AO 69-75, AO 77-94 and AO 247-76, am AO 78-82, AO 78-113, AO 78-166, AO 79-27, AO 81-82, AO 82-39).

3.70.070 Recognition and certification of employee organizations.

A. The municipality shall recognize and shall bargain with certified bargaining representatives selected according to the procedures set out herein.

B. Certification by the board shall conclusively establish that the certified organization is the proper bargaining representative for the bargaining unit. The municipality shall bargain with certified bargaining representatives and shall enter into written agreements with such certified bargaining representatives with respect to wages, hours and other terms and conditions of employment, as provided herein.

C. In the event that a change of certification occurs before the expiration of a current bargaining agreement, the municipality shall bargain with the newly certified bargaining representative for purposes of bargaining for a new agreement. (AO 69-75).

3.70.080 Certification of bargaining representative.

The board shall determine the bargaining representative according to the procedures set out in this section. Upon such determination, the board shall certify the bargaining representative. As a condition of certification, the bargaining representative shall represent all employees within the unit without regard to membership in the organization. No closed shop shall be allowed. Nothing in this section bars inclusion in a collective bargaining agreement of a requirement that all members of the unit affiliate with the bargaining representative within 30 days after the date of their employment.

A. Representation election for certification. Bargaining representatives shall be determined by election of employees within the bargaining unit by secret written ballot or by consent of the parties and approval by the board. An election on representation may be initiated by presentation to the board of authorization cards containing the signatures of at least 30% of the employees within the bargaining unit requesting that the applicant be certified to represent the members of the bargaining unit. No petition shall be entertained by the board if there has been an election in the unit during the preceding 12 months. No election may be directed by the Employee Relations Board in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 180-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.

B. Time for petition. A petition based on authorization cards must be presented to the board not more than 180 days or not less than 150 days before the expiration of the current agreement.

C. Verification of petition. Upon timely receipt of authorization cards requesting a representation election, the board shall examine the cards to ensure that the signatures contained thereon are genuine and that they represent signatures of members of the bargaining unit entitled to vote. Upon verification, the board shall post immediate notice that authorization cards have been received requesting a representation election and that other prospective bargaining representatives desiring their names be placed upon the ballot have an additional period of 15 days in which to present authorization cards reflecting the desires of 10% of the employees within the bargaining unit that such prospective bargaining representative be certified as the bargaining representative. If the board finds the same signatures on more than one authorization card, it shall reject all cards on which the signature appears.

D. Pre-election hearing. No election may be held without first conducting a pre-election hearing to determine the validity of all requests for certification, the time and procedure for the election, and the contents of the ballot. The pre-election hearing shall be conducted within one week after the expiration of time for submission of authorization cards for certification. All parties which have petitioned for certification, as well as the employer, shall have the opportunity to appear and participate at pre-election hearings.

E. Ballot. The ballot shall contain the name of each proposed bargaining representative which has been presented to the board in accordance with this subsection, as well as the name of the currently certified bargaining representative. The ballot shall also contain a choice for any employee to designate that he does not desire to be represented by any bargaining representative.

F. Notice of election. Upon conclusion of the pre-election hearing, the board shall notify all employees within the bargaining unit of an election to be held on the question of representation within the bargaining unit. Notice shall be given to each employee at least seven days prior to the election. Additionally, notice shall be posted on municipal bulletin boards in the areas in which employees of the bargaining unit work. The notification shall specify each of the choices contained on the ballot, that the ballot is to be a secret ballot, and the time, date and place of the election. Defects of notice shall not invalidate an election so long as there has been substantial compliance with the requirements of this subsection.

G. Date of election. Representation elections shall be conducted so that employees have reasonable opportunities to vote during normal working hours. The election shall be held at least 120 days prior to the expiration of the current bargaining agreement.

H. Supervision of elections. All representation elections shall be supervised by the board. An observer from each prospective bargaining representative appearing on the ballot may be present at each polling place. The board shall establish the time, date and place for the election.

I. Result of elections. Certification shall require a majority of the ballots cast. Where more than one organization is on the ballot and none of the three or more choices receives a majority vote of the valid ballots cast, a runoff election shall be held. The runoff ballot shall contain the two choices which received the largest and second largest number of valid ballots cast. The runoff election shall be conducted within 14 days of the initial election. Notice and posting for the runoff election shall be the same as for the regular election.

J. Consent recognition. The employer and a prospective bargaining representative may consent to recognition of the bargaining representative in the case of a bargaining unit which is not currently represented. In such case, the parties shall petition the board for certification. The petition shall include authorization cards having the signatures of at least 50% of the members of the proposed bargaining unit. The board shall hold a hearing to determine whether the prospective bargaining representative represents a majority of the employees within the bargaining unit. If the board determines that the bargaining unit is appropriate and the bargaining representative represents a majority of the employees within the bargaining unit, the board shall certify the prospective bargaining representative as the certified bargaining representative for purposes of collective bargaining. If the board determines that the applicant does not represent a majority of the employees within the bargaining unit, an election shall be held in the manner provided in subsection A above, if the election provisions of this chapter have been met. (AO 69-75).

3.70.090 Collective bargaining.

A. After determination of the appropriate bargaining unit and bargaining representative in accordance with the provisions of this chapter, the mayor and/or his authorized representative shall enter into negotiations with the bargaining representative of the employee unit in a timely fashion, not to exceed 30 days after unit determination, concerning the wages, hours and other terms and conditions of employment.

B. Negotiations shall be confidential. Except as specifically provided in this chapter, no member of the Assembly shall negotiate or bargain between the parties to collective bargaining during any time in which a collective bargaining agreement is open for negotiations.

C. Time for bargaining. Collective bargaining shall commence at least 90 days prior to the contract expiration date. If neither party initiates collective bargaining prior to that time, the current contract shall be extended for an additional year.

D. The mayor shall keep the Assembly apprised of the course of the negotiations. (AO 69-75).

3.70.100 Mediation and fact-finding.

A. If, 60 days prior to the contract expiration date, the parties have not agreed to a collective bargaining agreement, the board shall select and assign a neutral mediator who shall mediate all further negotiation sessions between the parties until directed otherwise by the board. The board may assign a mediator to assist the parties sooner at the request of both parties. A mediator's function shall be to bring the parties together under such circumstances as will tend to effectuate settlement of the dispute, but neither the mediator nor the board has any power of compulsion in mediation proceedings. The cost of mediation shall be borne by the municipality.

B. If, on the 30th day prior to the contract expiration date, a collective bargaining agreement has not been executed between the parties, the board shall on that day appoint a fact finder to conduct a hearing and return findings of fact and recommendations concerning the specific issue which the board directs the fact finder to address. The board may appoint a fact finder sooner if the board determines that reasonable prospects for agreement through mediated negotiations have been exhausted. The fact finder shall have the power to determine the relevant facts and make recommendations for resolution of the dispute in accordance with the directions given to the fact finder by the board. The cost of the fact finder shall be borne by the municipality. The fact finder shall within seven days of appointment conduct

informal hearings and return his findings and recommendations to the employer and bargaining representative. If, within seven days after transmission of the findings of fact to the parties, an agreement has not been reached, the fact finder shall transmit his findings and recommendations immediately to the board. The board shall make public the findings and recommendations. (AO 69-75).

3.70.110 Impasse resolutions.

A. For purposes of this section, employees perform services in one of the following three classes:

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

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

3. services in which, absent extraordinary circumstances, work stoppages may be sustained for extended periods without serious effects on the public.

B. The class in A.1 of this section is composed of police, fire protection and emergency medical services. The class in A.2 is composed of sewer and water treatment, electrical generation and port operation. Employees in this class for a limited time may engage in a strike after mediation and fact-finding. The limit is determined by the interests of the health, safety and welfare of the public. The board may apply to the superior court 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 the strike on the public but also the extent to which employee organizations and public employers have met their obligations under this chapter. All other employees fall within category A.3. If there are extraordinary circumstances under which the health, safety or welfare of the public is threatened, the board may also apply to the superior court for an order enjoining a strike by this class.

C. Arbitration.

1. For bargaining units or portions of bargaining units within category A.1, after the fact finder's findings have been made public, and if the parties have not reached agreement 14 days prior to expiration of the contract, the issue in dispute shall be submitted to arbitration. The board shall request the American Arbitration Association to furnish to the parties the names of five qualified labor arbitrators.

2. For bargaining units or portions of bargaining units within categories A.2 or A.3 that have a strike enjoined by the superior court, the issues in dispute shall immediately be submitted to arbitration.

3. The parties may continue collective bargaining and reach an agreement at any time prior to the issuance of the arbitrator's award.

4. Time for arbitration. Arbitration between the parties concerning the terms of the contract in dispute shall be conducted as soon as possible after selection of an arbitrator. In any event, the hearings shall be concluded and the arbitrator shall forward his decision to the board and both parties not later than 30 days after the expiration date of the collective bargaining agreement.

5. Selection of arbitrator. The arbitrator shall be selected from a list of nine names (at least three of which shall be from the Alaska panel) submitted by the American Arbitration Association unless mutually agreed to by the parties. Each party shall exercise its pre-emptory challenge in turn until only one arbitrator remains. A flip of a coin shall determine who is to exercise first challenge.

6. Arbitration procedure. The arbitrator shall conduct the arbitration according to the rules of Voluntary Rules of Labor Arbitration published by the American Arbitration Association, as may be modified by agreement between the parties at the first day of hearing.

7. Scope of arbitrator's authority. The arbitrator appointed by the board shall be limited in his authority to:

   a. selection on an article-by-article basis of either party's last best offer submitted to him by each of the parties to the collective bargaining process; or

   b. when authorized in advance by the board, select on an article-by-article basis from the fact-finder's recommendations on each article. This option, when so authorized, shall be available to the arbitrator in addition to the option described in subsection (a) above.

   c. In exercising his discretion under either option, the arbitrator shall base his decisions solely on the following criteria: the party's bargaining history, relevant market comparisons in the public sector and relevant market comparisons in the private sector.

8. Costs of the arbitrator shall be borne equally by both parties.

9. Arbitrator's decision. The decision of the arbitrator shall be reduced to writing by the arbitrator and shall be final and binding upon the parties. The collective bargaining agreement, in compliance with the arbitrator's decision, shall be prepared and executed by the parties. (AO 69-75, am AO 81-70).

3.70.120 Strike.

A. No employee, employee organization bargaining representative, labor union, association or officer thereof shall engage in, cause, instigate, encourage or condone a strike, slowdown, walkout or other form of collective work action against the municipality regarding any service specified in Section 3.70.110A.1 above. Neither shall such person or organization take such action with respect to Section 3.70.110A.2 above prior to mediation and fact-finding, or thereafter, if the court determines that such action has begun to threaten the health, safety or welfare of the public.

   The municipality shall not engage in a lockout or other procedure designed to prevent willing employees from working.

B. No person exercising on behalf of the municipality any authority, supervision or direction over an employee may authorize, approve, condone or consent to a strike by employees.

C. Board determination. At any time that the board is notified of an illegal strike, the board shall convene as soon as possible to determine the existence of such strike. The board shall give notice to the employer and the bargaining representative for the bargaining unit of their right to appear and be heard in the course of the board's determination. If the board determines that a strike in violation of Section 3.70.110A.1 is in course, or that a strike of employees within categories under Section 3.70.110A.2 and/or A.3 endangers the public health or safety, the board may apply to the superior court for an order enjoining the strike. 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 organizations and public employers have met their obligations under this chapter.

D. Violations. An employee who violates the prohibition against strikes contained herein shall be subject to appropriate disciplinary action, which may include immediate discharge from employment.

E. Loss of pay. No compensation shall be paid by the municipality to any employee with respect to any day or part thereof when such employee was engaged in a strike or other work action prohibited under this chapter. (AO 69-75).

3.70.130 Agreement.

Upon completion of negotiations between the municipality and the bargaining representative, all of the terms and conditions shall be reduced to writing in a single agreement. The agreement shall then be presented to the appropriate employee unit for ratification and to the Assembly for ratification in the same manner as a municipal ordinance. (AO 69-75).

3.70.140 Unfair labor practices.

A. The municipality or its agents may not:

1. interfere, restrain or coerce an employee in the exercise of his rights guaranteed under this chapter;

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

3. discriminate in regard to hire, tenure, employment or a term or condition of employment for the purpose of encouraging or discouraging 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 the provisions of this chapter;

5. refuse to bargain collectively in good faith over wages, hours and other terms and conditions with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussion of grievances with the exclusive representative.

B. An employee organization or bargaining representative or its agents or employees may not:

1. restrain or coerce:

a. an employee in the exercise of the rights guaranteed under this chapter;

b. the municipality in the selection of its representative for the purpose of collective bargaining or the adjustment of grievances;

2. refuse to bargain collectively in good faith over wages, hours and other terms and conditions with the public employer if the bargaining representative has been designated in accordance with the provisions of this chapter as the exclusive representative of employees in the bargaining unit;

3. authorize or engage in a strike prohibited under this chapter;

4. hinder or prevent, by threats, intimidations, force or coercion of any kind the pursuit of any lawful work or employment of the municipality;

5. engage in a secondary boycott or hinder or prevent by threat, intimidation, force, coercion or sabotage the obtaining, use or disposition of materials, supplies, equipment or services;

6. engage in any illegal effort to interfere with productions, functions or services of the public employer.

C. Complaints of unfair labor practices. If the municipality or an employee or prospective or current bargaining representative believes that an unfair labor practice has been committed, it may, within 30 days from occurrence of the alleged unfair labor practice, file with the Employee Relations Board a verified written complaint stating the nature of the violation and requesting that the board investigate the complaint. The board shall, upon receipt of such a complaint, conduct a preliminary investigation to determine whether probable cause exists in support of the complaint or accusation. If the board determines, after an informal investigation that probable cause exists to support the complaint, it shall try to eliminate the unfair labor practice by informal methods of conference, conciliation and persuasion. Nothing said or done during such settlement attempts may be used as evidence in subsequent proceedings. If, after its formal inquiry, the board concludes that the complaint is unfounded, the board shall dismiss the complaint forthwith.

D. Hearing. If the board fails to eliminate a prohibited unfair labor practice through informal conciliation and conference attempts, the board shall, within two weeks of receipt of complaint, serve formal notice of the complaint upon the respondent. Within two weeks after service of notice, a hearing shall be conducted to determine the validity of the complaint in accordance with administrative procedures adopted by the board. The parties and the public shall have reasonable notice of the time, date and place of the hearing. Each party shall have the opportunity to be heard and to cross-examine all witnesses. Testimony shall be taken under oath and recorded electronically.

E. Board order. If, upon completion of the formal hearing on a complaint of unfair labor practice, a majority of the board determines that the person or party named in the written complaint has engaged in a prohibited practice, the board shall issue and serve on the person an order or decision requiring that party to cease and desist from the prohibited practice and to take affirmative action

which will carry out the provisions of this chapter. If the board finds that the complaint is not supported, the board shall state its findings of fact and issue an order dismissing the complaint or accusation.

F. Enforcement by injunction. The board may apply to the superior court for an order enjoining the prohibited acts specified in its order or decision.

G. Other relief. In addition to the above-mentioned forms of relief for an unfair labor practice, the board may order: reinstatement of public employees, payment of back pay, or other appropriate action as will effectuate the policies and purposes of this chapter. Where the board finds a purposeful and flagrant unfair labor practice, it may petition the superior court to decertify the exclusive bargaining representative.

H. Intervention. The board may, at its discretion, permit intervention in unfair labor practice hearings by other interested parties upon a showing by such parties that they are directly affected by the proceeding. Once the board has permitted intervention, such party may appear, present evidence and cross-examine witnesses at the hearing.

I. Costs. All costs associated with unfair labor practice hearings shall be borne by the party against which the board rules. In the event the board takes no specific action or makes no decision, the costs shall be shared equally.

J. Evidence. The board shall not be bound by the technical rules of evidence in its conduct of the hearing but shall conduct all such hearings in a manner that comports with due process.

K. Board decisions final. No decision of the board may be appealed to the Assembly.

L. Other remedies. Pendency of an unfair labor proceeding or other proceeding before the board shall not ban pursuit of judicial relief otherwise available to either party. (AO 69-75).

3.70.150 Dues checkoff.

Upon written authorization of an employee within a bargaining unit, the municipality may deduct monthly from the payroll of the employee the amount of dues and other fees as certified by the secertary of the exclusive bargaining representative and authorized by the employee, and deliver that amount to the chief fiscal officer of the exclusive bargaining representative.

Dues checkoff may be revoked upon failure by the certified bargaining representative to pay, within a reasonable time specified by the board, cost allocations arising out of any proceeding conducted by the board in accordance with this chapter. (AO 69-75).

3.70.160 Arbitration.

Binding arbitration of disputes which arise under the collective bargaining agreement during the term of any collective bargaining agreement will be permitted in the event the parties have agreed to that procedure for dispute resolution and have included within the agreement a clause providing for that procedure. (AO 69-75).

3.70.170 Personnel Regulations.

Each collective bargaining agreement made after the effective date of this chapter shall incorporate by reference the then current Personnel Regulations of Anchorage. The provisions of the Personnel Regulations may be substituted by negotiated agreements. Any changes made to the Personnel Regulations during the term of any collective bargaining agreement shall not be applicable to that agreement.

Any provisions of this section notwithstanding, an employee who believes that he consistently performs work of a higher order than stated in his job description may, after exhaustion of administrative remedies, seek reallocation within the classification plan as provided by applicable grievance procedures. (AO 69-75, am AO 77-376, AO 82-56).

3.70.180 Transition and application.

This chapter applies to negotiations in progress on the effective date of this chapter and to negotiations commenced thereafter less than 120 days prior to expiration of the current contract between the parties, or where there is no current contract between the parties. With respect to such negotiations, the effective date of this chapter, or the date of commencement of negotiations, whichever is later, shall be deemed the 120th day prior to contract expiration for purposes of mediation, fact-finding and arbitration as provided in this chapter. (AO 69-75).