HB

248

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 248

Revision Date:
Title: Local exemption from PERA
Sponsor: Representative Vezey
Requestor: House Community & Regional Affairs

Department Affected: Labor
BRU: Office of the Commissioner
Component: Alaska Labor Relations Agency
COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
CHANGE IN REVENUE FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: $ None

ANALYSIS: (Attach a separate page if necessary)
HB 248 would exclude political subdivisions from coverage under the Public Employment Relations Act (PERA) unless the political subdivision, after election among voters, opts to be covered. The bill would also permit the rejection of PERA by election of the voters. The bill would remove a number of employers from the jurisdiction of the Alaska Labor Relations Agency (ALRA). This change should ultimately reduce the workload of ALRA, however the transition and initial disruptions will delay the decrease long past the effective date of the law.

Prepared by: Jan Hart DeYoung
Phone: 269-4895
Division: Alaska Labor Relations Agency
Date: 3/17/95

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor
Date: 3/17/95

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House of Representatives

Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

March 14, 1995

SPONSOR STATEMENT

The intent of HB-248, "An Act relating to application of the Public Employment Relations Act to municipalities and other political subdivisions", is to allow municipalities the option of removing themselves from PERA. Under this proposed legislation, a municipality could make such a decision with the approval of the voters of the municipality.

It was the intend of the 1972 legislation to allow municipalities to opt out of PERA. As the law currently exists, a municipality under PERA for all practical purposes, cannot remove themselves. This determination has been brought about by decisions of the court. This condition has resulted in diminished control over local self determination.

Existing legislation as interpreted by the courts has put local governing bodies in a position where one governing body can obligate all future governing bodies. This bill is intended to correct what the legislature has inadvertently allowed the court to mandate on local governments by placing the decision making process back into the hands of local governing officials and the people.

Alaska State Legislature

House of Representatives

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State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

MEMORANDUM

March 14, 1995

TO: **Rep Ivan Ivan, Chairman, House Community and Regional Affairs Committee**

FROM: **Rep. Al Vezey**

SUBJECT: **Scheduling of HB-248 for hearing.**

Please schedule HB-248 for hearing at your earliest convenience.

Your help in this matter is appreciated.

ALASKA MUNICIPAL LEAGUE
217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

March 20, 1995

TO: Representative Ivan Ivan, Chairman
and Members
House Committee on Community and Regional Affairs

FROM: Kevin C. Ritchie
Executive Director

RE: HB 248 - Local exemption from PERA

HB 248 would allow municipalities to choose, by vote of the people, to withdraw from coverage under the Public Employees Relations Act (PERA), which mandates collective bargaining. The bill is consistent with AML's overall philosophy of allowing maximum local control over the operation of municipal government, however, the AML Policy supports a choice by the elected body by ordinance consistent with the original PERA provisions.

The Alaska Municipal League 1995 Policy Statement (Part VII - Local Government Powers) includes the following statement:

"The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. **The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time by action of the governing body.** The scope of decisions as to local government finance and labor policies is best left to the local governing body." (emphasis added)

While we would prefer that local governing bodies be allowed the maximum authority to address this issue, AML supports HB 248 as a move in the right direction.

JK/LEG/HB248.ltr

Legislative Research Agency

Alaska State Legislature

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

March 1[illegible] 1995

MEMORANDUM

TO: Representative Al Vezey

FROM: Carol R. Vandor
Legislative Analyst

RE: **Public Employment Relations Act (PERA)**
Research Request 95.161

You asked about the number of state political subdivisions covered by the Public Employment Relations Act (PERA). Title 23, chapter 40 of the Alaska statutes governs PERA. There is no requirement for a political subdivision to report its status under PERA; therefore, the only way of knowing whether a political subdivision is covered under PERA or has opted-out is if a hearing has been held by the Alaska Labor Relations Agency or a suit has been filed in the courts. Below is a brief discussion of PERA and the Alaska Labor Relations Agency followed by a list of the 16 political subdivisions that are known to be covered by PERA and the 13 that have opted-out of PERA.

Public Employment Relations Act

In June 1972 the State of Alaska enacted the Public Employment Relations Act (PERA). The PERA confers upon public employees the right to organize and to bargain collectively with their employers (AS 23.40.080). The Declaration of Policy, set forth in AS 23.40.070, states in part:

> . . . The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by (1) recognizing the right of public employees to organize for the purpose of collective bargaining; (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment; (3) maintaining merit-system principles among public employees.

Alaska Statute 23.40.250 defines public employer and public employee as used in the Declaration of Policy as follows:

> "public employer" means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees.
>
> "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or superintendents of schools.

An appointed official, defined in 8 AAC 97.990, includes persons who exercise significant responsibilities for the public employer in the area of collective bargaining policy formulation and implementation.

The interpretation of PERA as it applies to political subdivisions has been litigated on several occasions since PERA was enacted. A recent decision, *Kodiak Island Borough v State of Alaska,* 853 P.2d 1111 (Alaska 1993) addressed the issue of the right of public employees to organize for the purpose of collective bargaining under PERA, and the right of a political subdivision to exempt itself. In this case, the borough had adopted an opt-out resolution in 1980 after it became aware of substantial organizational activities by its employees. The court ruled that a political subdivision may not opt out of PERA after becoming aware of organizational activity by employees.

Alaska Labor Relations Agency

For many public employees in Alaska, the Alaska Labor Relations Agency provides enforcement of PERA. The agency is comprised of six members appointed by the governor and confirmed by the legislature. It serves as the labor relations agency under the Public Employment Relations Act and carries out the functions specified in that act. Under Title 23, the agency has the authority to enter into labor management matters when certain situations exist. The agency has several responsibilities, one of which is the investigation and resolution by conciliation of unfair labor practices committed by either employers or employees. The decisions can be enforced by an injunction to cause the prohibited practice to cease and desist. The agency also decides the unit appropriate for the purpose of collective bargaining and schedules representation elections and settles issues regarding clarifications of the appropriate unit.

PERA Status

According to the Alaska Labor Relations Agency, employees of 16 political subdivisions are known to be covered under PERA and 13 political subdivisions have opted-out. These are listed below.

Covered	Opted-Out
Bristol Bay Borough	City and Borough of Juneau
Fairbanks North Star Borough	Mat-Su Borough
Haines Borough	North Slope Borough
Ketchikan Gateway Borough	Municipality of Anchorage
Kodiak Island Borough	City of Haines
City of Bethel	City of Homer
City of Cordova	City of Ketchikan
City of Dillingham	City of Kodiak
City of Fairbanks	City of Kotzebue
City of Hoonah	North Pole
Nome	Seward
Petersburg	Sitka
City of Seldovia	Wrangell
Unalaska	
City of Whittier	
Thomas Bay Power Authority	

I hope this information is useful to you. If we may be of further assistance, please contact this office.

Greater Fairbanks Chamber of Commerce

709 Second Avenue (907) 452-1105
Fairbanks, Alaska 99701 FAX. (907) 456-6968

RESOLUTION 94-0425

A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE IN SUPPORT OF HB 255 - PERA

WHEREAS, it is the mission of the Greater Fairbanks Chamber of Commerce to improve the economic base of Interior Alaska by promoting a climate in which business thrives and Fairbanks remains a dynamic and attractive place to live, and

WHEREAS, residents of the City have expressed a perception that class one city workers are paid disproportionately high wages compared to private sector workers, and

WHEREAS, studies indicate that class one city workers are paid disproportionately high wages compared to other class one workers in communities similar to Fairbanks, and

WHEREAS, city managers and councils have repeatedly been unable, through collective bargaining, to bring class one city workers wages in line with the private sector's wages or the city's ability to pay for city services, and

WHEREAS, it is believed that collective bargaining fails because mandatory binding arbitration is in place, and

WHEREAS, based on the public's perception that class one city workers unfairly benefit from mandatory arbitration, the City of Fairbanks has been unable to raise voter approved taxes to pay for city services that improve the economic base of Interior Alaska and promote a climate in which businesses thrive, and

WHEREAS, no reasonable solution has been offered to voters except to opt out of those portions of collective bargaining which require mandatory arbitration with class one city workers, and

NOW, THEREFORE, BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce supports HB 255 which would allow the voters to elect to opt out of those portions of the Public Employees Relations Act which requires mandatory arbitration with class one city workers.

Dated this 25th Day of April, 1994.

By Margo Goodhew
Margo Goodhew
President/CEO

By Keith D. Burke
Keith D. Burke
Chairman of the Board

P E R A

Public Employment Relations Act

Copies of public documents and opinions pertaining to PERA

Compiled by

Anne M. Smith
1903 Capitol Avenue
Fairbanks, AK 99709-4123

January 24, 1991

Opinion Paper relating to the application of PERA in the operation of City of Fairbanks.

A group of concerned Fairbanks citizens gathered and studied the documents in this compilation pertaining to the Public Employment Relations Act (PERA) and arrived at similar opinions as set forth in this paper.

1. Study of compilation documents:

a. HB 683 am S, Chapter 113, dated 1972 located at Tab 10 was furnished by LAO, Fairbanks in January 1991 and verified as being still in effect. There is no reference in this document to a specific date for opting in or out of PERA.

b. City of Fairbanks Memo at Tab 2 gives light to the fact that, in order for the PERA legislation to become law, an amendment known as the"Koslosky amendment" had to be included that would allow a political subdivision the opportunity to reject having the provisions of the act apply; therefore, it appears that the "original intent" of this legislation was to provide this escape mechanism. Common sense dictates that "nothing is forever" as suggested in second paragraph of the Tab 1 memo.

c. Memo at Tab 2 also brings to light that the action taken by the city council in 1983 to opt into PERA may have been the result of what appears to be a political ploy, an act of coercion so to speak involving a proposed SB 154, the history of which is located at Tab 3.

d. It appears that the problem is not in the collective bargaining process for public employees, but in the method employed in the binding arbitration process which has proved to be oppressive and dictatorial in nature. This point is well made in the correspondence found at Tab 5. Included at Tab 5 is an ordinance enacted by Soldotna which provides for an alternative method of binding arbitration.

(PERA Opinion Paper dated January 24, 1991)

2. Other concerns:

There are areas of concern to citizens of Fairbanks and questions as to the legality of the labor contracts now in existence between the City of Fairbanks and some bargaining units:

a. Are persons, other than the City Manager (or Deputy CM in the absence of CM) who conduct negotiations of labor agreements in violation of Sec. 2.505(4) of Fairbanks City Code? Example would be the City of Fairbanks/FPDEA (Police) contract that was negotiated for the city by a member of the police department whose salary was directly affected by the outcome of the resulting contract.

b. As required by Fairbanks City Code, Sec. 2.505(4)(a), was the acceptance of resulting negotiations by council effected by issuance of an ordinance, which would required advancement and an opportunity for citizens' input?

c. It was the understanding of the group that a contract should reflect EQUAL CONSIDERATION for involved parties. The examination of various labor contract copies brought up several areas that fall short of equal consideration:

(1) The results of possibly unauthorized, or at best unskilled negotiation attempts leave few city government options, resulting in a "takeover" by bargaining units of city management rights pertaing to the departments involved.

(2) In addition, there is no "sunset" for any of the present contracts since termination dates do not exist, making it impossible to close out these oppressive document in order to begin fresh negotiations.

3. It was the general concensus of the group that PERA, in it's present form, does not reflect the will of the people, but rather reflects the lobbying by organized labor which resulted in an oppressive piece of legislation which literally has local communities held in bondage.

May 20, 1993

Opinion Paper #2
Justification for the City of Fairbanks to take action to exempt itself from PERA and conjunctively passing its own collective bargaining ordinance, in keeping with the intent of PERA as set forth in Article 2, Sec. 23.40.070 of the Act.

1. Numerous documents relating to PERA have been thoroughly studied by a group of concerned citizens of Fairbanks and the general concensus is set forth in this opinion paper:

a. Chapter 113 SLA 1972 titled "AN ACT" sets forth the PUBLIC EMPLOYMENT RELATIONS ACT as Sec. 2 of the Act. Also contained in the Act as Sec. 4 is the results of the "Kosloski amendment" which states:

> This Act is applicabale to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

b. Nowhere in this Act is there a time limit stated regarding the exercising of this rejection step.

c. In a case considering sec. 4, State v. City of Petersburg, 538 P.2d 263 (Alaska 1975) the supreme court reversed a decision by a superior court judge who upheld the city's rejection. Three out of five supreme court judges, in rendering their opinion "read in" the time frame as it applied to the Petersburg case, and reversed the superior court decision because the rights of the government employees to organize for the purpose of having collective bargaining would have been denied by the rejection of the Act. The other two judges had dissenting opinions that express our findings:

(1) If the legislature had intended that municipalities should act within some definite time, it would have been a simple matter to insert such a time limitation in the text of the statute.

(2) Article X. Section 11 of the Constitution of the State of Alaska provides: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter. Further, Article X Section 1 requires that the courts give a liberal construction to the powers of local government units.

(3) There is nothing in the language of the Public Employment Relations Act, or its legislative history, that justified the implied limitiation suggested by the majority opinion.

d. In a Memorandum issued by a Legislative Counsel of the State Legislative Affairs Agency, Febrary 3, 1988, a reference is made to a later case, City & Bor. of Sitka v. International Brotherhood of Electrical Workers, 653 P. 2d 332 (Alaska 1982), Sitka's exemption from PERA under Sec. 4 was allowed to stand but required Sitka to abide by the terms of its charter and recognize employee organizations.

2. Following is Sec. 23.40.070 DECLARATION OF POLICY, which in our opinion has not been met in crucial areas which will be noted later:

> "The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by
>
> (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
>
> (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit system principles among public employees."

3. We agree with the intentions of the policy set forth above. However, in our opinion the results of being under PERA have been extremely negative in the following crucial areas:

a. Employees <u>should</u> have a voice in determining working conditions etc., but within reason.

(1) Since the City of Fairbanks came under PERA, management's control of the city's operations has been whittled away, at the dictates of the bargaining units using the threat of ding arbitration.

(2) Unprecedented high wage levels, verified by a wage study conducted by a professional firm, have continued to skyrocket to the detriment of the local community, as a result of binding arbitration decisions, slanted heavily in favor of bargaining units which were made without regard for the economic conditions of this community.

b. The merit principle has been weakened by an internal promotion practice which has taken place within the public safety department, that has tainted the political and social environment reflected in public disapproval of such actions.

c. The "public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assur ng effective and orderly operations of government," has failed miserably as a result of PERA dictates. A war has been raging between union representatives and disenchanted local citizens, who have gone through several years of recession and are being saddled with the burden of covering the unreasonable demands put in place because of decisions made by "outside" arbitrators.

4. We contend that binding arbitration requirements of PERA divests our local governing body of its publicly entrusted spending power and delegates it to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens. This divesture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain.

5. By enacting a local labor relation ordinance similar to Soldatna's collective bargaining ordinance, binding arbitration can still be effected if an impasse in negotiations should result, by putting last and final offers by both parties to a vote of the people, who then become the arbitrators.

PERA Basics
RE: Wage & Benefit Reductions

City of Fairbanks

MEMORANDUM

TO: Brian Phillips, City Manager

FROM: Jim Mullen, Depury City Attorney JM

RE: PERA basics

DATE: October 16, 1987

Prior to 1983 the City of Fairbanks had no obligation to recognize or negotiate with any employee union although it did so voluntarily with some. In the 1970's the city had successfully demonstrated that it had legally opted out of coverage of the Alaska Public Employee Relations Act (PERA).

However, in 1983 the city council gave up this exemption and decided to be bound by and to PERA. Under current state law once in PERA the city cannot get out. So, absent a change in the law, the City of Fairbanks is forever bound by PERA.

PERA was modeled to a certain degree on the National Labor Relations Act (NLRA) and other states' public employee laws. It states essentially that city workers (currently including management, professionals and supervisory employees) can organize into unions and the city, if the union is validly formed according to state laws and regulations, must recognize the union. As a result, the city has an obligation to bargain in good faith over terms and conditions of employment. AS 23.40.070. This would include wages, hours, working conditions and other fringe benefits.

Being under PERA also subjects the city to the jurisdiction of the Alaska Department of Labor, Labor Relations Agency (SLRA), which is the state administrative body charged with implementing and enforcing PERA. The SLRA decides disputes regarding union formation, elections, strikes and allegations of unfair labor practices against either party. The city has an obligation to avoid interfering with the public employees' rights to organize or with their relationship with their unions once organized.

PERA divides employees into three classes. Essentially, Class I are public safety type workers, Class II are quasi-essential public employees and Class III are those generally nonessential to public safety.

Class I employees do not have the right to legally strike, slowdown or sickout, ever, under any circumstances. In exchange for losing this right they are assured of binding arbitration to resolve any possible dispute impasse that may arise regarding mandatory bargaining items in contract negotiations. Thus, if the city and the union cannot decide how much pay a Class I employee should get, the matter would be submitted to binding interest arbitration and the arbitrator would decide what the wage will be. In arbitration there are very few rules or guidelines that can be relied on so the results are usually very unpredictable.

Class II employees can legally strike but the city can have them ordered back if it becomes critical. However, if they are ordered back the city commits itself to binding arbitration as if they were Class I employees.

Class III employees can strike indefinitely and cannot be ordered back except if the strike was illegal or an unfair labor practice in some manner.

Before any public employee union can legally strike, a secret ballot strike vote must be conducted by the SLRA. Thus, the city would have short notice that a strike may be imminent. The city has the right to lockout Class II or III employees if true impasse has occurred in negotiations and mediation has been tried and failed.

If a contract is agreed upon it becomes the working agreement between the city and the employees covered, although certain provisions of the personnel code may also apply in limited cases. Once the contract is made it cannot be unilaterally altered by either party. Thus, if the city desires a wage reduction for some or all employees under a particular contract, it can ask the union to negotiate the matter but the union has absolutely no obligation to do so, and vice versa should the union want a wage increase. Thus, the contract is binding.

However, sometimes the contract itself calls for a "reopener" or a time when, before the contract expires, certain items (or all, if so specified) can be renegotiated. Thus, both sides are free to make proposals that must be negotiated in good faith.

This is a basic outline of what PERA is and how it is structured. Because it is a relatively new law, many issues that arise are of first impression to the SLRA and Alaska courts, so predicting the outcome is at this time difficult. However, the SLRA is by state regulation obligated to seriously consider the decisions of the National Labor Relations Agency and federal courts in deciding issues that arise within the state and municipalities.

bj

PERA

City of Fairbanks

File

MEMORANDUM

TO: Brian Phillips, City Manager

FROM: Herb Kuss, City Attorney

RE: Koslosky amendment

DATE: December 3, 1987

The information provided by Representative Boyer with respect to the Koslosky amendment to the Public Employees Relations Act is erroneous and confuses the Koslosky amendment with a bill introduced in 1983 by Senator Fahrenkamp with I believe the assistance of Mr. Boyer, who was an assistant to the senator at that time.

The Public Employee Relations Act (PERA) was signed into law on June 7, 1972, with an effective date of September 5, 1972. During the legislative session that year the two houses apparently struggled to get the act passed. In an effort to resolve the problem at a joint conference Representative Koslosky became a key vote and speaker for a coalition of votes which could dictate passage or failure of this legislation. In the course of negotiations, Rep. Koslosky agreed to support the act provided that an express amendment be made to exempt political subdivisions throughout the state. This led to the addition of subsection (4) of SLA Chapter 113 as follows:

> This act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions applied.

and, of course, came to be known as the "Koslosky amendment." As you can see, this amendment creates a legal right for political subdivisions

in the state to opt out of the act. Although the amendment itself does not state so, subsequent judicial decisions interpreting this provision set time limits within which a political subdivision could properly opt out which depended largely on whether employees of a political subdivision had organized in reliance to the act. In August of 1972 the City of Fairbanks, by resolution, opted out of the act.

In 1983 the city reached a bargaining impasse with the employees of the Fairbanks police department and their respective representatives. As a result, representatives of that union urged Senator Fahrenkamp to introduce legislation which would effectively strike the Koslosky amendment and place all political subdivisions under the act's jurisdiction. Senator Fahrenkamp's bill gave political subdivisions basically two choices, namely: (1) subject themselves directly to the provisions of PERA, or (2) enact their own mini-PERA legislation which would grant municipal employees similar rights and privileges and leave the question of enforcement to local authority instead of the state department of labor.

Representative Boyer's comments seem to refer to the essential aspects and consequences of Senator Fahrenkamp's bill rather than the Koslosky amendment. However, even under Senator Fahrenkamp's bill there was no real option to reject binding arbitration.

Following the 1983 legislative session it appeared to all those close to the legislative scene that Senator Fahrenkamp's bill had enough support for passage in the 1984 session. Given what appeared to be no alternative under Senator Fahrenkamp's bill, the city council passed an ordinance opting into the Public Employee Relations Act. One of the

items discussed when opting in was whether the city should adopt a local scheme as required by Senator Fahrenkamp's legislation or to simply opt into PERA and let the state regulate all matters arising under PERA. Setting up a local bureaucracy to handle our own mini-PERA was viewed as a costly proposition and so allowing the state to enforce its provisio seemed a more cost effective means of operating under PERA.

The council has been unfairly criticized for opting into PERA when it appeared that under Senator Fahrenkamp's bill it had little other real choice. Facing the inevitability of the passage of Senator Fahrenkamp's bill, the council for its own reasons, decided to adopt the ordinance and opt in. There is no question but that Senator Fahrenkamp's bill was aimed directly at the City of Fairbanks. This became evident when Senator Fahrenkamp dropped her intense and keen interest in seeing her legislation pass in the 1984 session and let the bill die in committee.

bj

SB 154 AN ACT RELATING TO THE MUNICIPAL EXEMPTION OPTION TO THE PUBLIC EMPLOYMENT RELATIONS ACT

AMENDED TITLE: CSM(RLS)AM

PRIME SPONSORS: FAI.RENKAMP

CO-SPONSORS: MOSS

JAN 2 1 1988

DATE	SEQ. NO.	JOURNAL PAGE	SENATE ACTION
02/28/83	01	0282	FIRST READING -- COMMITTEE REPORTS
04/25/83	02	0798	L&C -- CS02, NR03
04/25/83	03	0798	MOVED FROM FIN TO RLS BY UNAN CONSENT
06/02/83	04	1180	RLS -- CS04, OTHER04 TAKEN UP IMMEDIATELY
06/02/83	05	1186	POSTPONED UNTIL 06/06/83 BY UNAN CONSENT RULES
06/06/83	06	1215	SECOND READING
06/06/83	07	1215	POSTPONED UNTIL 06/07/83 BY UNAN CONSENT
06/07/83	08	1223	POSTPONED UNTIL 06/08/83 BY UNAN CONSENT
06/08/83	09	0000	POSTPONED UNTIL 06/09/83 BY UNAN CONSENT
06/09/83	10	1252	SECOND READING
06/09/83	11	1252	RLS CS ADOPTED BY UNAN CONSENT
06/09/83	12	1253	AM01 ADOPTED BY DIV 10-08-02
06/09/83	13	1253	ADVANCED TO 3RD READING BY UNAN CONSENT
06/09/83	14	1253	THIRD READING
06/09/83	15	1253	POSTPONED UNTIL 06/10/83 BY UNAN CONSENT
06/10/83	16	1261	POSTPONED UNTIL 06/13/83 BY UNAN CONSENT
NH 06/13/83	17	1281	RECOMMITTED TO RLS BY UNAN CONSENT

DATE	SEQ. NO.	JOURNAL PAGE	HOUSE ACTION

AS 26.15.040(b); (8) [deleted] and (9) the guaranteed portion of Small Business Administration loans. No more than 25 per cent of the surplus may be invested in mortgage securities of the Department of Commerce, and the state shall appropriate sufficient money from the general fund to reimburse the teachers' retirement system for any losses incurred as a result of failure of the obligors to pay on the notes. No more than $400,000 of the surplus may be invested annually in the mortgage securities of the Department of Natural Resources, and the state shall appropriate sufficient money from the general fund to reimburse the teachers' retirement system for any losses incurred as a result of failure of the obligors to pay on the notes.

* Sec. 2. AS 39.35.110(a) is amended by adding a new paragraph to read:

(9) the guaranteed portion of Small Business Administration loans.

* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Approved by governor: June 7, 1972
Actual effective date: June 8, 1972

LAWS OF ALASKA

1972

Source: HB 683 am S

Chapter No. 113

AN ACT

Relating to wages, hours and working arrangements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.10.140 is amended to read:

Sec. 23.10.140. PENALTY. An employer who violates a provision of secs. 50 - 150 of this chapter, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than $100 nor more than $2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense.

* Sec. 2. AS 23.40 is amended by adding new sections to read:

ARTICLE 2. PUBLIC EMPLOYMENT RELATIONS ACT.

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

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;

(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 secs. 70 - 260 of this chapter;

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

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

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

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

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

Sec. 23.40.260. SHORT TITLE. Secs. 70 - 260 of this chapter may be cited as the Public Employment Relations Act.

* Sec. 3. AS 09.43.010 is amended to read:

Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF CHAPTER. 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 inequity for the revocation of a contract. However, this chapter does not apply to a labor-management contract unless it is incorporated into the contract by reference or its application provided for by statute.

* Sec. 4. This Act is applicable to organized boroughs and

political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

* Sec. 5. AS 23.40.010 is repealed.

Approved by governor: June 7, 1972
Actual effective date: September 5, 1972

e American Arbitration Association Panel of Labo
and Conciliation Service. In selecting the arbitrator
irators who have knowledge of and recent experienc
district, regional educational attendance area, or s
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purpose of striking names and selecting the arbitra
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is section, the monetary terms of an agreement entered
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e.
o read:
e" means any employee of a public employer, whether
public employer, except elected or appointed of
EACHERS OR NONCERTIFICATED EMPLOYEES
d to read:
oyer" means the state or a political subdivision of the
municipality (TOWN, CITY, BOROUGH, district
ttendance area, board of regents, public and quasi-public
ner authority established by law, and a person designated
terest in dealing with public employees;
d by adding a new paragraph to read:
educational attendance area" means an educational service
: may or may not include a military reservation, and
of grade levels K - 12 or any portion of those grade levels
nagement and control of a single regional school board
terminates or modifies a collective bargaining unit
e, or collective bargaining agreement if the unit
ive date of this Act
4.20.555, 14.20.560, 14.20.570, 14.20.580, 14.20.
0, are repealed.

* Sec. 11. Notwithstanding sec. 4, ch. 113, SLA 1972, a municipal school district or regional educational attendance area may not reject application of AS 23.40.070 - 23.40.260 to employment relations with public school employees.

* Sec. 12. This Act takes effect immediately under AS 01.10.070(c).

duced by: Council Member Cleworth
May 20, 1991

RESOLUTION NO. 3261, As Amended

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO ENACT AN EXEMPTION BY POPULAR ELECTION PROVISION TO THE STATE PUBLIC EMPLOYMENT RELATIONS ACT.

WHEREAS, by resolution the City of Fairbanks exercised its exemption following the adoption of PERA, but in 1984 waived the exemption by ordinance, thus becoming the first major municipality in Alaska to fall under PERA's jurisdiction; and

WHEREAS, among its many provisions PERA provides for mandatory binding arbitration concerning wages, hours and terms and conditions of employment for Class I public employees; and

WHEREAS, binding arbitration divests a local governing body of its publicly entrusted spending power and delegates the same to an individual not elected by the people and with no fiduciary duty of loyalty and responsibility to local citizens; and

WHEREAS, this divestiture effectively removes the voice of the people over how their tax dollars are to be spent in the public domain; and

WHEREAS, the cost of local government must be controlled by those who pay for it; and

WHEREAS, an exemption by popular election amendment to PERA can restore to local citizens their constitutional entitlement of maximum local self government and the assurance that all local government powers will remain vested in those charged with the public trust.

ALASKA STATUTES

Binder 5

TITLE 21 TO TITLE 25

1992 Cumulative Supplement

OCTOBER 1992

Effective Date of Statutes

See Alaska Constitution, art. II, § 18

Annotated through Sup. Ct. Op. No. 3852. For complete scope of annotations, see scope page in front of supplement to first binder. For detailed information on the use of the Alaska Statutes, see User's Guide published following the scope page.

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Chapter 40. Labor Organizations.

Article
2. Public Employment Relations Act (§§ 23.40.200, 23.40.205, 23.40.215, 23.40.250)

Article 2. Public Employment Relations Act.

Section
200. Classes of public employees; arbitration
205. Family leave
215. Funding and legislative approval
250. Definitions

Cross references. — For inability of municipal school districts or regional educational attendance areas to reject application of this article, see § 11, ch. 1, SLA 1992 in the Temporary and Special Acts.

Sec. 23.40.070. Declaration of policy.

NOTES TO DECISIONS

Job classification plan. — A job classification plan is an integral part of the very foundation of the merit principle in state employment. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 3625 (File Nos. S-3582, S-3622), P.2d (1992).

Assignment of salary ranges to job classes. — The assignment of salary ranges to job classes is not a mandatory subject of collective bargaining between the state and its employees' collective bargaining representatives. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 3825 (File Nos. S-3582, S-3622), P.2d (1992).

Negotiability. — For discussion of negotiable and nonnegotiable items under former AS 14.20.550 — 14.20.610 in negotiations between school boards and teachers, see Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Educ. Ass'n, 572 P.2d 416 (Alaska 1977).

Sec. 23.40.090. Collective bargaining unit.

NOTES TO DECISIONS

Cited in McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991).

Sec. 23.40.110. Unfair labor practices.

NOTES TO DECISIONS

Cited in International Bhd. of Elec. Workers v. City of Ketchikan, 805 P.2d 340 (Alaska 1991).

Sec. 23.40.170. Regulations.

NOTES TO DECISIONS

Cited in McGrath v. University of Alaska, 813 P.2d 1370 (Alaska 1991).

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

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

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

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or the state boarding school. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so. However, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or the state boarding school and its employees, the parties shall submit to advisory arbitration before the employees may engage in a strike. The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association Panel of Labor Arbitrators or the Federal Mediation and Conciliation Service. In selecting the arbitrator, the parties shall request a list of arbitrators who have knowledge of and recent experience in the local conditions in the school district, regional educational attendance area, or state boarding school. A list containing at least five nominees who meet the qualifications of this subsection is a complete list for the purpose of striking names and selecting the arbitrator.

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

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972; am §§ 3, 4 ch 1 SLA 1992)

Cross references. — Section 9, ch. 1, SLA 1992, provides that the amendments to (c) and (d) of this section made by §§ 3 and 4, ch. 1, SLA 1993 do not terminate or modify a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining unit, "if the unit, recognition, or agreement is in effect on March 26, 1992."

Effect of amendments. — The 1992 amendment, effective March 26, 1992, in subsection (c), deleted "public school and other" preceding "educational institution" and added "other than employees of a school district, a regional educational attendance area, or the state boarding school" in the first sentence, and, in subsection (d), added the last four sentences.

NOTES TO DECISIONS

II. Arbitration.

II. ARBITRATION.

Applicability of Uniform Arbitration Act. — Even though this section does provide that interest arbitration shall be conducted under AS 09.43.030, the section of the Uniform Arbitration Act (UAA) providing for appointment of arbitrators by agreement of the parties, or, in the absence of an agreement, by the superior court, the entire UAA is not applicable to this section. State v. Public Safety Employees Ass'n, 798 P.2d 1281 (Alaska 1990).

Matter for courts. — Arbitrability is a question for the courts unless the parties clearly and unmistakably provide other-

wise. State v. Public Safety Employees Ass'n, 798 P.2d 1281 (Alaska 1990).

Standard of review. — Appellate courts should apply the arbitrary and capricious standard when reviewing awards in compulsory interest arbitrations; in voluntary interest arbitrations, the standard of review is gross error. State v. Public Safety Employees Ass'n, 798 P.2d 1281 (Alaska 1990).

Sec. 23.40.205. Family leave. Notwithstanding any provision of AS 23.40.070 — 23.40.260 to the contrary, an agreement between the employer subject to AS 23.10.500 — 23.10.550 and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 23.10.500 — 23.10.550 shall be considered to contain the benefit provisions of those statutes. (§ 7 ch 96 SLA 1992)

Revisor's notes. — Enacted as AS 23.40.200(g). Renumbered in 1992.

Cross references. — For transitional provisions related to the effect of this section on bargaining agreements in effect on September 16, 1992, see § 11, ch. 96, SLA 1992 in the Temporary and Special Acts.

Effective dates. — Section 7, ch. 96, SLA 1992, which enacted this section, took effect on September 16, 1992.

Sec. 23.40.210. Agreement.

NOTES TO DECISIONS

Agency assumption of jurisdiction over pending grievance procedures. — The agency may exercise jurisdiction over unfair labor practice claims which are the subject of pending grievance procedures not yet exhausted where it appears that pursuing the grievance procedures would be futile. Public Safety Employees Ass'n v. State, 799 P.2d 315 (Alaska 1990).

Availability of statutory remedies. — The availability of arbitration does not preclude statutory remedies. Public Safety Employees Ass'n v. State, 799 P.2d 315 (Alaska 1990).

Sec. 23.40.215. Funding and legislative approval. (a) The monetary terms of any agreement entered into under AS 23.40.070 — 23.40.260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

(c) Notwithstanding (b) of this section, the monetary terms of an agreement entered into between a school district or regional educa-

tional attendance area and its employees are not subject to approval by the legislature. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984; am § 5 ch 1 SLA 1992)

Effect of amendments. — The 1992 amendment, effective March 26, 1992, added subsection (c).

Sec. 23.40.250. Definitions. In AS 23.40.070 — 23.40.260, unless the context otherwise requires,

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

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.070 — 23.40.260;

(3) "labor relations agency" means the Alaska labor relations agency established in AS 23.05.360;

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees;

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

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials or superintendents of schools;

(7) "public employer" means the state or a political subdivision of the state, including without limitation, a municipality, district, school district, regional educational attendance area, board of regents, public and quasi-public corporation, housing authority, or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(8) "regional educational attendance area" means an educational service area in the unorganized borough that may or may not include a military reservation, and that contains one or more public schools of grade levels K — 12 or any portion of those grade levels that are to be operated under the management and control of a single regional school board;

(9) "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; am § 2 ch 10 SLA 1984; am E.O. No. 77 § 3 (1990); am §§ 6 — 8 ch 1 SLA 1992)

Revisor's notes. — Paragraph (8) was enacted as (9) and renumbered in 1992, at which time former paragraph (8) was renumbered as (9).

Effect of amendments. — The 1992 amendment, effective March 26, 1992, in paragraph (6), substituted "superintendents of schools" for "teachers or noncertificated employees of school districts"; in paragraph (7), substituted "a municipality, district, school district, regional educational attendance area," for "a town, city, borough,"; and added paragraph (8).

NOTES TO DECISIONS

The assignment of salary ranges to job classes is not a mandatory subject of collective bargaining between the state and its employees' collective bargaining representatives. Alaska Pub. Employees Ass'n v. State, Sup. Ct. Op. No. 3825 (File Nos. S-3562, S-3622), P.2d (1992).

ALASKA STATUTES

Title 23
Labor and Workers' Compensation

OCTOBER 1990

But it was further defined by the Public Employment Relations Act, AS 23.40.070, et seq. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

The Public Employment Relations Act, AS 23.40.070, et seq., contains far more detailed provisions than this section. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Public Employment Relations Act, AS 23.40.070 et seq., applies to employees of the state division of marine transportation. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

If there is no implied exemption for ferry personnel under the Public Employment Relations Act, AS 23.40.070, et seq., it cannot be said that the two acts do not cover the same people. This section is a subset of the broader Public Employment Relations Act coverage and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764-1775, 1787-1999.

51 C.J.S., Labor Relations, §§ 148-216; 56 C.J.S., Master and Servant, §§ 28(20)-28(42).

Validity of union procedures for fixing and reviewing agency fees of nonunion employees under public employees representation contract — post-Hudson cases. 92 ALR Fed. 893.

Secs. 23.40.045 -- 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties. [Repealed, § 55 ch 69 SLA 1970.]

Article 2. Public Employment Relations Act.

Section
70. Declaration of policy
75. Items not subject to bargaining
80. Rights of public employees
90. Collective bargaining unit
100. Representatives and elections
110. Unfair labor practices
120. Investigation and conciliation of complaints
130. Complaint and accusation
140. Orders and decisions
150. Enforcement by injunction
160. Power to investigate and compel testimony
170. Regulations
180. Penalty for violation of order or decision
190. Mediation
200. Classes of public employees; arbitration
210. Agreement
212. Agreement with the Board of Regents
215. Funding and legislative approval
220. Labor or employee organization dues and employee benefits, deduction and authorization
225. Exemption from Public Employment Relations Act
240. Effect on certain units, representatives, and agreements
245. Postsecondary student involvement in collective bargaining
250. Definitions
260. Short title

Cross references. — For applicability of article to political subdivisions unless rejected by them, see § 4, ch. 113, SLA 1972 in the Temporary and Special Acts; for provisions relating to collective bargaining for teachers, see AS 14.20.550 — 14.20.610.

NOTES TO DECISIONS

Right of public employees in Alaska to bargain collectively was created by this article. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, 555 P.2d 552 (Alaska 1976).

This article confers upon public employees the right to organize and bargain collectively with their employers and requires public employers to recognize collective bargaining units designated pursuant to this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

This article allows political subdivisions of the state to reject its provisions for conduct of labor relations and to substitute their own provisions. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, 555 P.2d 552 (Alaska 1976).

Applicability of article is the rule. — Under the present statute, applicability of this article is the rule, exemption the exception. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

This article is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of this article when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, § 4, ch. 113, SLA 1972. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Article applicable unless state political subdivisions reject it. — The legislature provided for this article to be applicable to all political subdivisions of the state unless they rejected it rather than making the article inapplicable unless affirmative steps are taken by these same subdivisions to adopt the act (see § 4, ch. 113, SLA 1972). State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Section 4, ch. 113, SLA 1972, not temporary. — Had the legislature wanted § 4, ch. 113, SLA 1972, to be of temporary duration, it would have so indicated. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

When article may be rejected. — This article may be rejected when all evidence indicates that municipal governments exempted themselves solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980); City of Sitka v. International Bhd. of Elec. Workers, Local 1547, 653 P.2d 332 (Alaska 1982).

Rejection of this article in order to gain an undue advantage in a labor dispute or the negotiation of a new collective bargaining agreement constitutes a deliberate interference with the right of employees to organize and bargain collectively in derogation of the act's express declaration of policy. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

Rejection must be prior to substantial organizational activity by public employees. — It is evidence from the wording of the exemption provision that the legislature intended to limit the freedom of the political subdivision to consider whether it wishes this article to apply to it by adopting the position that the article must be rejected prior to substantial organizational activity by public employees. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Prior to becoming aware of substantial organizational activity, the city could have exempted itself from the applicability of this article without interfering with the right of the employees to organize. Rejection of this article after becoming aware of such activity constitues a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

This article was intended to recognize the right of employees to organize for the purpose of collective bargaining and to require public employers to negotiate and enter into labor contracts with employee organizations. It is apparent that this purpose would be substantially frustrated if a

city would wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of this article if that union was not favored by the city. In effect, this would give the city the right to control the organization to be selected by the employees. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

A city council cannot validly reject application of this article more than six months after it becomes effective, and after the members of the council have learned of the organizational activity of the city's power plant employees. State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

The right and power of a city to reject this article becomes subordinated to the rights of the employees granted by the same legislation once the public employer becomes aware of substantial organizational activity on the part of its employees. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

Freedom to develop varying scheme of collective bargaining. — Local governments which have validly rejected this article are free to develop a local scheme of collective bargaining which varies from the state scheme as provided in this article. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

The legislature has expressly declared that the state policy of promoting harmonious and cooperative relations in public employment relations can best be effectuated by requiring public employers to bargain collectively with their employees. It is, therefore, most difficult to conceive of this article to prohibit local governments which effectively rejected the article from engaging in collective bargaining under their own local ordinances. It is far more likely that § 4, ch. 113, SLA 1972, was added to give political subdivisions of the state the freedom to fashion their own labor ordinances and systems of collective bargaining. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

Determining timely rejection. — Whether a local government has exercised its option to reject this article in a sufficiently timely fashion is best determined by looking at the circumstances of the individual case rather than setting an inflexible deadline. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980).

Forfeiture of exemption from article. — A city did not forfeit its exemption from coverage by this article, by continuing to recognize and negotiate with unions subsequent to its exemption. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, 623 P.2d 321 (Alaska 1981).

There is nothing in the language of the Public Employment Relations Act, AS 23.40.070 — 23.40.260, or its legislative history to suggest that the legislature intended to preclude local governments which have validly exempted themselves from coverage under the act from thereafter voluntarily engaging in collective bargaining with employee organizations. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, 623 P.2d 321 (Alaska 1981).

The city did not waive its exemption under § 4, ch. 113, SLA 1972, by negotiating with the union, and thus did not forfeit the authority to enact its own personnel guidelines. City of Fairbanks v. Fairbanks Firefighters Union, 623 P.2d 339 (Alaska 1981).

Effect of elimination of state from exemption authorization. — See State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

AS 23.40.040, relating to collective bargaining agreements, was not repealed by implication by the enactment of this article. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Nor is it an implied exception to article. — AS 23.40.040 cannot be read as an implied exception to this article. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

This article was intended to incorporate existing collective bargaining agreements rather than exempt them. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Construed in pari materia. — Since AS 23.40.040 cannot be treated as an implied exception to this article, and since this article did not repeal AS 23.40.040 by implication, the statutes are construed in pari materia. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

This article and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting this article. Hafling v. Inland-

boatmen's Union, 585 P.2d 870 (Alaska 1978).

Any possible conflict between AS 23.40.040 and this article is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of AS 23.40.040 and saw no inconsistency in enacting this article to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the AS 23.40.040 authorization of collective bargaining. Rather, it gives it additional content. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

This article contains far more detailed provisions than AS 23.40.040. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

And further defines AS 23.40.040. — AS 23.40.040 was comprehensive when it was enacted, but it was further defined by this article. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

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, 653 P.2d 332 (Alaska 1982).

This article applies to employees of the state division of marine transportation. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

If there is no implied exemption for ferry personnel under this article, it cannot be said that the two acts do not cover the same people. AS 23.40.040 is a subset of the broader coverage under this article and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

"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., 648 P.2d 993 (Alaska 1982).

Employees covered by this article are free to join a national as well as a local union. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n, 590 P.2d 437 (Alaska 1979).

As to procedural safeguards which local labor ordinances must afford concerning representation elections, see Alaska Pub. Employees Ass'n v. Municipality of Anchorage, 555 P.2d 552 (Alaska 1976).

Cited in Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Public Safety Employees Ass'n v. State, 658 P.2d 769 (Alaska 1983); Carter v. Alaska Pub. Employees Ass'n, 663 P.2d 916 (Alaska 1983).

Collateral references. — 48A Am. Jur. 2d. Labor and Labor Relations, §§ 1764-1775.

51 C.J.S., Labor Relations, §§ 52, 148; 51A C.J.S., Labor Relations, § 306.

Validity of union procedures for fixing and reviewing agency fees of nonunion employees under public employees representation contract — post-Hudson cases. 92 ALR Fed. 893.

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

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

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

(3) maintaining merit-system principles among public employees. (§ 2 ch 113 SLA 1972)

Opinions of attorney general. — Paragraph (2) of this section and AS 23.40.250(8), 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

Applied in State v. City of Petersburg, 538 P.2d 263 (Alaska 1975); Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978); Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980); Anchorage Educ. Ass'n v. Anchorage School Dist., 648 P.2d 993 (Alaska 1982).

Quoted in City of Fairbanks v. Alaska Dep't of Labor, 763 P.2d 976 (Alaska 1988).

Stated in Alaska Pub. Employees Ass'n v. State, Dep't of Admin., 776 P.2d 1030 (Alaska 1989).

Cited in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 660 P.2d 1299 (Alaska 1983); Walt v. State, 751 P.2d 1345 (Alaska 1988).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764-1775.

51 C.J.S., Labor Relations, §§ 20-22, 33.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Sec. 23.40.075. Items not subject to bargaining. The parties may not negotiate terms contrary to

(1) the reemployment rights for injured state employees under AS 39.25.158; or

(2) the reemployment rights of the organized militia under AS 26.05.075. (§ 1 ch 86 SLA 1988; am § 2 ch 77 SLA 1990)

Effect of amendments. — The 1990 amendment added the paragraph (1) designation, added paragraph (2), and made a related grammatical change.

Sec. 23.40.080. Rights of public employees. Public employees may self-organize and form, join, or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979).

Quoted in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 569 P.2d 1299 (Alaska 1983).

Cited in Kollodge v. State, 757 P.2d 1028 (Alaska 1988); City of Fairbanks v. Alaska Dep't of Labor, 763 P.2d 976 (Alaska 1988).

Collateral references. — Right of public employees to strike or engage in work stoppage. 37 ALR3d 1147.

Right of public employees to form or join a labor organization affiliated with a federation of trade unions or which includes private employees. 40 ALR3d 728.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees. 68 ALR3d 385.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees. 22 ALR4th 1103.

Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 — 23.40.260, 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. (§ 2 ch 113 SLA 1972)

Sec. 23.40.100. Representatives and elections. (a) The 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 public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

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

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

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

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

(e) An election may not be directed by the 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, a collective bargaining agreement may not 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. (§ 2 ch 113 SLA 1972)

Opinions of attorney general. — The Department of Administration may comply with an order received from the labor relations agency directing the state, in its capacity as a public employer, to provide lists of all employees eligible to vote in a representation election held pursuant to AS 23.40.100. July 1, 1968, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.110. Unfair labor practices. (a) A public employer or an agent of a public employer may not

(1) interfere with, restrain, or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;

(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 the employee has signed or filed an affidavit, petition, or complaint or given testimony under AS 23.40.070 — 23.40.260;

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

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

(1) membership in the organization which represents the unit on or after the 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 agent for the expense of representing the members of the bargaining unit.

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

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in AS 23.40.080, or

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

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 — 23.40.260 as the exclusive representative of employees in an appropriate unit. (§ 2 ch 113 SLA 1972)

Revisor's notes. — In 1990 the word "with" was inserted after "interfere" in (a)(1) of this section to correct a manifest error of omission in ch. 113, SLA 1972.

NOTES TO DECISIONS

Similarity to federal act. — Paragraphs (a)(1) and (a)(3) are substantially similar to § 8(a)(1) and (a)(3) of the Labor Management Relations Act, 29 U.S.C. § 158(a)(1) and (a)(3). Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

For establishment of violation of 29 U.S.C. 158(a)(3), see Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Derivative violation of (a)(1) from violation of (a)(3). — A violation of paragraph (a)(3) derivatively results in a violation of (a)(1) as well since employer discrimination in hiring, firing or working conditions also coerces or restrains employees in their rights to organize, bargain collectively and engage in other concerted activities. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Refusal to ratify tentative agreement. — It is permissible for an employer to refuse to ratify a tentative collective bargaining agreement in accordance with an agreed upon ground rule, so long as the employer's failure to ratify does not appear to have resulted from the employer's intent to string out negotiations and avoid reaching agreement. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Work rule changes. — Since employers are free to make unilateral changes on matters which fall outside mandatory subjects of bargaining, the labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Burden on union. — A union is required to demonstrate that an applicant was denied employment because of some antiunion motive on the part of the employer. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

The union did not establish the presence of an antiunion motive on the part of the university where there was testimony that the applicant was not hired because more qualified applicants were available and ultimately because a lack of student interest caused the class to be cancelled and where although the union presented correspondence which demonstrated that the university considered the applicant's unavailability (because of his position as a negotiator) in determining his qualifica-

tion, there was unequivocal testimony that it was the mere fact of the applicant's unavailability, not the reason therefor, which was considered in this regard. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Quoted in State v. City of Petersburg, 538 P.2d 263 (Alaska 1975).

Cited in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), rev'd, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Collateral references. — What constitutes unfair labor practice under state public employee relations acts. 9 ALR4th 20.

Sec. 23.40.120. Investigation and conciliation of complaints. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 23.40.110, or a written accusation that a person subject to AS 23.40.070 — 23.40.260 has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.130. Complaint and accusation. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 23.40.070 — 23.40.260, 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). (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.140. Orders and decisions. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring the person to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of AS 23.40.070

— 23.40.260. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Distinction between mandatory and permissive bargaining subjects. — This section requires the labor relations agency to distinguish between mandatory and permissive bargaining subjects in its remedial orders. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

While this section authorizes the agency to issue cease and desist orders barring prohibited practices, and to order affirmative action which will carry out the provisions of the Public Employment Relations Act, it does not require employers to bring to the bargaining table subjects other than wages, hours, and other terms and conditions of employment. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

The labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, 669 P.2d 1299 (Alaska 1983).

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.150. Enforcement by injunction. The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.160. Power to investigate and compel testimony. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of AS 23.40.070 — 23.40.260, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under AS 23.40.070 — 23.40.260, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring the person to comply with the subpoena. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.170. Regulations. The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of AS 23.40.070 — 23.40.260. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Stated in Carter v. Alaska Pub. Employees Ass'n, 663 P.2d 916 (Alaska 1983).

Sec. 23.40.180. Penalty for violation of order or decision. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than $500. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.190. Mediation. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings. (§ 2 ch 113 SLA 1972)

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

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

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

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation, and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety, or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety, or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

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

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

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorpo-

Sec. 23.40.210. Agreement. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of August 26, 1977, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972; am § 1 ch 62 SLA 1977)

NOTES TO DECISIONS

Constitutionality. — This section's cost-of-living wage differentials do not violate the federal constitution's commerce clause since Alaska acted as a "market participant" rather than as a "market regulator." International Org. of Masters v. Andrews, 626 F. Supp. 1271 (D. Alaska 1986), aff'd, 831 F.2d 843 (9th Cir. 1987), cert. denied, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

Because the existence and amount of the wage differentials imposed under this section reasonably further a legitimate state purpose, the wage differentials do not violate the equal protection clause of the fourteenth amendment. International Org. of Masters v. Andrews, 626 F. Supp. 1271 (D. Alaska 1986), aff'd, 831 F.2d 843 (9th Cir. 1987), cert. denied, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

Imposing wage differentials according to Alaska Marine Highway System (AMHS) employee's states of residence did not infringe on their "right to travel" guaranteed by the fourteenth amendment since the wage adjustments do not penalize AMHS employees for migrating to or emigrating from Alaska. International Org. of Masters v. Andrews, 626 F. Supp. 1271 (D. Alaska 1986), aff'd, 831 F.2d 843 (9th Cir. 1987), cert. denied, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

This section's wage differentials do not violate the privileges and immunities clause because the interest "burdened" by this section's wage differentials is not "fundamental" in nature, and even if this interest were fundamental for purposes of privileges and immunities analysis, Alaska has a substantial interest in eliminating disincentives that discourage Alaska Marine Highway System employees from residing in the state, and its wage differentials bear a "substantial relationship" to its objective of eliminating, or at least minimizing, these disincentives. International Org. of Masters v. Andrews, 626 F. Supp. 1271 (D. Alaska 1986), aff'd, 831 F.2d 843 (9th Cir. 1987), cert. denied, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

This section, granting cost of living wage adjustments to resident, but not nonresident employees of the Alaska Marine Highway System, does not violate the Privileges and Immunities Clause or the right to travel as embodied in the fourteenth amendment. International Org. of Masters v. Andrews, 831 F.2d 843 (9th Cir. 1987), cert. denied, 485 U.S. 962, 108 S. Ct. 1228, 99 L. Ed. 2d 428 (1988).

Statutory violations. — Exclusion of grievances involving involuntary transfers from binding arbitration in a provision of the collective bargaining agreement between the state and a union, the Public Safety Employees Association, violates this section. Hemmen v. State, Dep't of Pub. Safety, 710 P.2d 1001 (Alaska Ct. App. 1985).

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.212. Agreement with the Board of Regents. (a) The Board of Regents of the University of Alaska may delegate to the Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

(b) The Department of Administration shall participate in the negotiations between the Board of Regents and an organization. An agreement between the board and an organization requires the approval of the department. (§ 1 ch 148 SLA 1978)

Sec. 23.40.215. Funding and legislative approval. (a) The monetary terms of any agreement entered into under AS 23.40.070 — 23.40.260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984)

Opinions of attorney general. — To the extent the cost of negotiated group life and health insurance coverage exceeds what the State would have paid under its employer-sponsored plan, the negotiated coverage is subject to legislative approval under this section. January 23, 1978, Op. Att'y Gen.

NOTES TO DECISIONS

Monetary terms of agreement are not effective until funds are appropriated by legislature. Each year the monetary terms of a collective bargaining agreement are subject to independent legislative approval. Public Employees' Local 71 v. State, 775 P.2d 1062 (Alaska 1989).

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Cited in Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976).

Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization. Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees, and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative. (§ 2 ch 113 SLA 1972)

Sec. 23.40.225. Exemption from Public Employment Relations Act. Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 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 a n employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were 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 labor relations agency. (§ 1 ch 85 SLA 1976)

Editor's notes. — Section 2, ch. 85, SLA 1976 provides: "If any portion of AS 23.40.225 is declared unconstitutional or void by a court of competent jurisdiction, then that entire section is void."

Opinions of attorney general. — This section does not supplant 18.80.220(a), a general provision against religious discrimination, nor does it violate the "establishment clause" of the Alaska Constitution where the non-associational rights of all public employees are secured by AS 18.80.220(a). January 13, 1984, Op. Att'y Gen.

A state employee in a collective bargaining unit who does not belong to an organized religion is entitled to an accommodation of his religious opposition to the payment of union dues. January 13, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978).

Sec. 23.40.230. Assistance by Department of Labor. [Repealed, E.O. No. 77 § 8 SLA 1990.]

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

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 1978); Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979).

Sec. 23.40.245. Postsecondary student involvement in collective bargaining. (a) When a bargaining unit includes members of the faculty or other employees of a public institution of postsecondary education, the public employer and the representative of the bargaining unit shall permit student representatives of that institution to

(1) attend and observe all meetings between the public employer and the representative of the bargaining unit which are involved with collective bargaining;

(2) have access to all documents pertaining to collective bargaining exchanged by the employer and the representative of the bargaining unit, including copies of transcripts of the meetings.

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

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

(d) When the institutions are negotiating with bargaining units representing more than one major geographic area of the state, the student representatives shall be from those areas. No more than three student representatives may attend meetings at any time (§ 1 ch 148 SLA 1978)

Sec. 23.40.250. Definitions. In AS 23.40.070 — 23.40.260, unless the context otherwise requires,

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

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.070 — 23.40.260;

(3) "labor relations agency" means the Alaska labor relations agency established in AS 23.05.360;

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees;

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

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

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

(8) "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; am § 2 ch 10 SLA 1984; am E.O. No. 77 § 3 (1990))

Revisor's notes. — In 1984, paragraph (8), added in 1984, was renumbered as paragraph (4) and former paragraphs (4)-(7) were renumbered as present paragraphs (5)-(8) to retain alphabetical order.

Effect of amendments. — The 1990 amendment, effective July 1, 1990, rewrote paragraph (3).

Opinions of attorney general. — AS 23.40.070(2) and paragraph (8) 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

Labor organization representing two bargaining units within same employer. — There is nothing in the language of the definition of "organization" which suggests that an otherwise qualified labor organization could not represent two different bargaining units within the same public employer. Indeed, the use of the phrase "labor organization of any kind" suggests the contrary. City of Fairbanks v. Alaska Dep't of Labor, 763 P.2d 976 (Alaska 1988).

Ferry personnel are public employees of a public employer and are not included within any of the itemized exceptions of paragraph (6). Hafling v. Inlandboatmen's Union, 585 P.2d 870 (Alaska 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, 585 P.2d 870 (Alaska 1978).

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., 648 P.2d 993 (Alaska 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., 648 P.2d 993 (Alaska 1982).

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, 590 P.2d 437 (Alaska 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, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Since such attendance areas appear to be school districts. — Regional educational attendance areas appear to be school districts within the meaning of paragraph (6), defining "public employees" for the purposes of this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

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, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

The legislature did not intend to bind the regional educational attendance areas to the employment contracts of their predecessor, the Alaska State Operated School System. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Although the Alaska State Operated School System, the predecessor to the regional educational attendance areas, was a state agency subject to this article and not a "school district" whose noncertificated employees are exempt under paragraph (6), and therefore did not have a "right" to refuse to bargain which it could waive. Even if the Alaska State Operated School System had waived its right to claim exemption under this article, it does not follow that the regional educational attendance areas also have waived their right to assert the statutory exemption, since the regional educational attendance areas are not simply successors to the Alaska State Operated School System but

are independent entities which have been given broad powers to run their individual school districts as they see fit. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Jurisdiction to determine applicability of collective bargaining agreement. — Because the noncertificated employees of school districts are not employees of the state directly or public employees under this article neither the state personnel board nor the Department of Labor has jurisdiction to determine the applicability of a collective bargaining agreement to the regional educational attendance areas. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, 591 P.2d 1292 (Alaska 1979), overruled on other grounds, Alaska Com. Fishing & Agric. Bank v. O/S Alaska Coast, 715 P.2d 707 (Alaska 1986).

Quoted in Carter v. Alaska Pub. Employees Ass'n, 663 P.2d 916 (Alaska 1983).

Sec. 23.40.260. Short title. AS 23.40.070 — 23.40.260 may be cited as the Public Employment Relations Act. (§ 2 ch 113 SLA 1972)

Chapter 45. General Provisions.

Section
10. Definitions

Sec. 23.45.010. Definitions. In this title

(1) "commissioner" means the commissioner of labor;

(2) "department" means the Department of Labor;

(3) "wages" means, except for the purposes of construing AS 23.20 and AS 23.30

(A) the basic hourly rate of pay; and

(B) all other compensation to an employee for services performed, including revocable and irrevocable contributions made by an employer to a trustee or third party for the benefit of the employee and contributions which may be reasonably anticipated in providing benefits to employees under an enforceable agreement to provide medical care, compensation for death or injury, or other fringe benefits. (am § 1 ch 115 SLA 1966)

Senator Vic Fischer's presence was noted.

CONSIDERATION OF THE CALENDAR

SENATE BILLS IN SECOND READING

SB 154

SENATE BILL NO. 154 (repealing the municipal exemption option to the Public Employees Relations Act) which had been held from June 7 was before the Senate in second reading.

Senator Falke moved and asked unanimous consent for the adoption of the Rules Committee Substitute offered on page 1180. Senator Eliason objected, then withdrew his objection. There being no further objection, CS FOR SENATE BILL NO. 154 (RLS) (relating to the municipal exemption option to the Public Employees Relations Act) was adopted.

CS FOR SENATE BILL NO. 154 (RLS) was read the second time.

Senator Mulcahy offered the following Amendment No. 1:

Page 1, line 18: after "option" insert "(1)"

Page 1, line 23: after "resolution" insert "; or (2) conduct a local election to determine whether to adopt such local ordinances. If the election indicates that local ordinances shall be adopted the borough or political subdivision shall adopt local ordinances within 180 days after the results of the local election are certified"

Senator Mulcahy moved that Amendment No. 1 be adopted. Senator Fahrenkamp objected.

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

SB 154 cont'd

CS SB 154 (RLS) AM 1

Yeas:	10	Eliason, Falke, Fischer Paul, Gilman, Halford, Kerttula, Mulcahy, Pettyjohn, Ray, Ziegler
Nays:	8	Bennett, Fahrenkamp, Fischer Vic, Josephson, Kelly, Moss, Rodey, Sturgulewski
Absent:	2	Ferguson, Sackett

and so, Amendment No. 1 was adopted.

Senator Ray moved and asked unanimous consent that CS FOR SENATE BILL NO. 154 (RLS) am be considered engrossed, advanced to third reading, and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 154 (RLS) am was read the third time.

Senator Sackett's presence was noted.

Senator Ray moved and asked unanimous consent that the calendar be held until tomorrow. Senator Kelly objected, then withdrew his objection. There being no further objection, it was so ordered.

SB 154

CS FOR SENATE BILL NO. 154 (RLS) am (municipal exemption option to the Public Employment Relations Act) will appear on the June 10 calendar in third reading.

SB 224

CS FOR SENATE BILL NO. 224 (FIN) (establishment of prison facilities) will appear on the June 10 calendar in third reading.

HB 202

SENATE CS FOR HOUSE BILL NO. 202 (JUD) (increasing the liquor tax) will appear on the June 10 calendar in second reading.

Citations will appear on the June 10 calendar.

Introduced: 2/28/83
Referred: Labor and Commerce
and Finance

IN THE SENATE BY FAHRENKAMP

SENATE BILL NO. 154

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act repealing the municipal exemption option to the Public Employment Relations Act."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.075. APPLICABILITY. This chapter applies to all public employers including organized boroughs or political subdivisions of the state that have rejected by ordinance or resolution having the provisions of AS 23.40.070 - 23.40.260 apply.

* Sec. 2. Section 4, ch. 113, SLA 1972 is repealed.

Offered: 4/25/85
Referred: Rules

Original sponsors: Fahrenkamp and Moss

IN THE SENATE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 154 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the municipal exemption option to the Public Employment Relations Act."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.227. MUNICIPAL OPTION. (a) AS 23.40.070 - 23.40.260 apply to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

(b) An organized borough or political subdivision that has exercised its option to reject the provisions of AS 23.40.070 - 23.40.260 under (a) of this section shall within 180 days following the exercise of that option adopt local ordinances which guarantee its employees the right to engage in collective bargaining concerning wages, hours, and other terms and conditions of employment, to be certified as a bargaining unit, to be represented by a labor organization, and to adopt grievance procedures and methods of impasse resolution.

* Sec. 2. An organized borough or political subdivision which before the effective date of this Act has exercised its option to reject having the provisions of AS 23.40.070 - 23.40.260 apply shall comply with AS 23.40.227(b) added by sec. 1 of this Act within 180 days following the effective date of this Act.

* Sec. 3. Section 4, ch. 113, SLA 1972 is repealed.

Offered: 6/2/83

Original sponsors: Fahrenkamp and Moss

IN THE SENATE BY THE RULES COMMITTEE

CS FOR SENATE BILL NO. 154 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the municipal exemption option to the Public Employment Relations Act."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.227. MUNICIPAL OPTION. (a) AS 23.40.070 - 23.40.260 apply to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

(b) An organized borough or political subdivision that has exercised its option to reject the provisions of AS 23.40.070 - 23.40.260 under (a) of this section and that has a population of 5,000 or more shall within 180 days following the exercise of that option adopt local ordinances which guarantee its employees the right to engage in collective bargaining concerning wages, hours, and other terms and conditions of employment, to be certified as a bargaining unit, to be represented by a labor organization, and to adopt grievance procedures and methods of impasse resolution.

* Sec. 2. An organized borough or political subdivision which before the effective date of this Act has exercised its option to reject having the provisions of AS 23.40.070 - 23.40.260 apply and that has a population of 5,000 or more shall comply with AS 23.40.227(b) added by sec. 1 of this Act within 180 days following the effective date of this Act.

* Sec. 3. Section 4, ch. 113, SLA 1972 is repealed.

1/26/88

SPONSOR STATEMENT

for Senate Bill 372

The purpose of this bill is to clarify the conditions under which a municipality or political subdivision may opt in or out of PERA, the Public Employment Relations Act. Section 4 of Chapter 113, SLA 1972 indicates that PERA applies to all boroughs and political subdivisions of the state, "unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply." It seems clear that the legislature intended to give full control to the local governments, allowing them to decide whether or not they wished to come under the provisions of PERA, however the courts have not interpreted that provision of the law the way the legislature intended.

This bill merely clarifies the intent of the original 1972 law by giving a municipality or political subdivision the choice to either opt in or out of PERA. The Mat-Su Borough, Anchorage, Juneau, and Kenai have opted out of PERA; In fact, only seven communities in Alaska are currently covered by PERA. Passage of this bill would provide the opportunity for all local governments in Alaska to be on an equal footing - allowing them to retain local control of their bargaining process. This bill does not preclude collective bargaining, but rather allows the local governments, not the State of Alaska, to set the parameters.

In 1983 when Fairbanks chose to opt back into PERA, Alaska's economy was in good shape. The state's budget was $600 million more for FY83 than it was for FY88. That, of course, also affected the revenues available to Fairbanks. Now the economic picture has changed, and communities across the state are tightening their belts. Binding arbitration, a measure mandated by PERA, can be extremely costly to local governments. In Fairbanks those employees who, under PERA, were mandated to go to binding arbitration, took substantively smaller pay and benefit reductions than those taken by other municipal employees. Since the city cannot, under PERA, achieve equitable and necessary pay cuts, they must resort to layoffs. Last year the City laid off 105 employees; an additional 42 layoffs are expected this year. We only have 300 employees - 1/2 the work force has been cut. It's bleak. This bill would give local governments the flexibility needed to ensure that all city and municipal employees would receive fair treatment.

While the legislation should be noncontroversial - in that it only clarifies current law, and while there are only seven communities in our state covered by PERA - those who oppose local option will undoubtedly protest loudly. This bill is supported by the Alaska Municipal League, which is composed of 135 municipal members.

SYNOPSIS OF SB 372

Section 1 (a) allows a municipality or a political subdivision to exempt itself from the provisions of PERA (the Public Employment Relations Act) by adopting an ordinance or resolution. If the municipality or political subdivision are not currently covered by PERA, this allows them to adopt the provisions of PERA through an ordinance or resolution.

Section 1 (b) mandates that a municipality or political subdivision who either adopt PERA or opt out of PERA, as provided for in Section 1(a), may not change their status for at least three years following that action.

Section 2 repeals a non-codified section of the original Public Employment Relations Act (PERA) that defines which political subdivisions are to be covered by the Act. SB 372 more clearly spells out this provision of PERA, so the old language is no longer needed.

Introduced: 1/26/88
Referred: State Affairs and Community and Regional Affairs

5-1643A

IN THE SENATE BY FANNING

SENATE BILL NO. 372

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the applicability of the Public Employment Relations Act to municipalities and political subdivisions."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.235. EFFECT ON MUNICIPALITIES AND POLITICAL SUBDIVISIONS. (a) A municipality or political subdivision of the state may adopt an ordinance or resolution to exempt itself from AS 23.40.070 - 23.40.260. A municipality or political subdivision that exercises its exemption power may rescind the exemption by adoption of an ordinance or resolution. The exemption or rescission does not affect the terms of an existing collective bargaining agreement.

(b) A municipality or political subdivision that exempts itself or rescinds its exemption under (a) of this section may not change its status under this section for at least three years.

* Sec. 2. Section 4, ch. 113, SLA 1972, is repealed.

City of Petersburg
P. O. Box 329
Petersburg, Alaska 99833

FEB 1 1988

January 29, 1988

Senator Fanning
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fanning:

This letter is a follow-up to a discussion that I had with your aide, Mrs. Gail Thibodeau concerning the City of Petersburg's experience under the Public Employees Relations Act of 1972 (PERA).

Prior to my initial discussion with Ms. Gail Thibodeau, I became aware of your Senate Bill #372 through the Alaska Municipal League. I was very pleased to see that there is the possibility of some relief from this oppressive piece of legislation.

As you are aware, the Charter of the City of Petersburg authorized the institution of a "home rule" municipality. In other words, the citizens of Petersburg in a "charter election" chose to maintain as much "local control" over their own affairs as was possible under the state law at that time. Since our Charter was adopted by these voters, there has been no single piece of state legislation that has had, as oppressive an impact on this fundamental concept (local control) as the Public Employee Relations Act of 1972 (PERA).

The problem with PERA has been this single opt-out "window" and the courts restrictive interpretation of this concept.

As a practical matter PERA gave Petersburg six months from the time of its passage, to opt-out.

In my opinion, this "single window of time" was totally inadequate for a City Council to digest the implications of PERA and opt-out in an intelligent manner. In other words, with our own collective bargaining ordinance.

Coincidentally, during this time the "International Brotherhood of Electrical Workers" were actively "signing up" employees in our electric utility. Our City Council reacted to this "perceived threat", rather than the more fundamental issues, and passed a resolution to opt-out of PERA. The courts later interpreted this opt-out as invalid, because it was done concurrently with the unionizing efforts.

Compounding this, the court ruling did not address the rest of the employees, and whether or not, they were under PERA also, or under our existing ordinance. Ultimately, another large union

used this issue to organize the remaining employees and file a lit against the city on the issue of "partial opt-out" or equity. After many thousands of dollars of legal expenses and employee consternation the court in 1987 ruled that there could not be a "partial opt-out" and consequently all our employees are under PERA.

Consequently, due to PERA we now have two large outside unions, IBEW and APEA. Their "leadership" and their expectations comes from outside Petersburg, the process is controlled by outside state agencies that are use to dealing with state issues and state resources.

Consequently, the Petersburg taxpayer and rate payer has "last control" of the single largest expenditure in their annual budget.

Please let me know if I can be of any future assistance in your effort to amend PERA.

Sincerely,

Ed Fefferman, City Manager
City of Petersburg

cc: Senator Jones
Representative Taylor
Representative Sund

Municipality of Anchorage

MEMORANDUM

RECEIVED
FEB 02 1987
Discussion Copies

DATE: February 1, 1987

TO: Lee Nunn, Executive Manager Government Affairs
THRU: Glenn Lundell, Employee Relations Director
FROM: Personnel Director

SUBJECT: Senate Bill No. 372

As requested, I have reviewed the proposed amendment to AS 23.40 under Senate Bill 372 to add a proposed new section, 23.40.235. The effect of this proposal would be to give municipalities and political subdivisions of the State to option to elect exemption from the provisions of PERA if they had missed the window period originally provided in the act or were currently covered and wished to withdraw.

The immediate impact of this legislation on Anchorage would be negligible as the Municipality has elected to withdraw from PERA and is not covered by the terms of that act. I would, however, recommend our commenting favorably on the proposed legislation as it provides flexibility to local governments that does not currently exist. Employers under PERA who wish to enact a local labor relations ordinance to govern their bargaining currently cannot do so but could under this proposal. Conversely, those finding administration of a local ordinance too onerous could opt to come under PERA. The three year minimum status period proposed under 23.40.235(b) provides a good vehicle for insuring some stability in employee relations while providing the local governments the flexibility in policy decision-making proposed under 23.40.235(a).

While I support this proposed legislation I am concerned about another piece of proposed PERA legislation that is currently in the House Judiciary Committee. That bill is CSHB 170 which proposes the addition of a new section 23.40.075 would have the net effect of requiring coverage under PERA for municipalities or political subdivisions who do not either provide their employees the right to strike or final and binding arbitration as the last step in the negotiation process. The effect of this proposed change is that municipalities (including Anchorage) who do wish to control their employee relations through local ordinance must provide their employees either the right to strike or binding arbitration to settle negotiation impasses. If they do not do so, their PERA exemptions would no longer be valid and their employee relations would have to be governed by PERA.

Currently our labor ordinance AMC 3.70 does provide the proposed impasse resolution mechanisms so we would not come under PERA if CSHB 170 were to pass in its present form. If, however, we found that those mechanisms were not effective for us or responsive to the interests of the community and wished to replace them with other options such as advisory arbitration which is also commonly used in the public sector, we could not do so.

In summation, I would recommend support or at least positive monitoring of SB 372. I would recommend opposition to CSHB 170. If further information or recommendations on these bills is desired, please let me know.

CITY OF FAIRBANKS
Office of City Manager
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

February 3, 1988

Senator Ken Fanning
P.O. Box V
Juneau, Alaska 99811

RE: Support of Senate Bill #372

Dear Senator:

The City of Fairbanks has suffered economically, like the rest of the State, with the recent downturn in the economy. The City of Fairbanks attempted to reduce costs, to live within its means, through meaningful labor negotiations intended to reduce wage and benefit costs.

Due to the State's Public Employment Relations Act, the City's ability to reduce wage and labor rates is extremely limited. The Governor, likewise laboring under the terms and conditions of PERA, has found it nearly impossible to gain any meaningful reduction in wages and benefits in spite of the critical fiscal dislocation that governmental units in the State of Alaska have been experiencing.

While the City subscribes to the collective bargaining process, I can only point to the examples of the City's and State's bargaining results, under PERA, as an indictment of the PERA system. The ability of the City and the State to reduce wage costs is an impossible task under the procedures established by the PERA legislation.

Localities should be allowed to opt out or exempt themselves from the framework established by PERA. Local municipalities or political subdivisions should be allowed to establish its own rules and regulations to govern collective bargaining procedures. Local municipalities must gain control of its fiscal destiny, and be allowed to set wage and benefit rates at levels affordable to the local residents ability to pay. As Mayor of the City of Fairbanks, I wholeheartedly support SB372 as an act to give control of city finances back to the municipal government officials.

Very truly yours,

BILL WALLEY
Mayor, City of Fairbanks

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Senator Mitch Abood, Chair
Members of the Senate State Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: February 3, 1988

SUBJECT: SB 372 - Applicability of Public Employment Relations Act to municipalities and political subdivisions

On behalf of its 135 municipal members, the Alaska Municipal League supports SB 372, allowing municipalities and political subdivisions of the State to exempt themselves from the Public Employees Relations Act (PERA).

The AML's support is based on the language contained in the 1988 AML Policy Statement adopted by the membership at its annual meeting in Anchorage in November 1987:

> 1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

The bill would clarify existing exemptions provided by Section 4, Chapter 113, SLA 1972 which allowed municipalities to opt out of PERA by ordinance or resolution when the Act was first passed. The bill would place this into statute but would also allow municipalities and political subdivisions to change their status after three years.

While not opposed to collective bargaining, the membership supports each community's ability to determine its own process of dealing with its employees based on their unique circumstances. The AML is opposed to the State dictating provisions of local public employee relations ordinances. I have attached a policy paper developed by the AML Legislative Committee in 1986.

Again, the AML supports SB 372, and urges its passage.

Position Paper
of
AML Legislative
Subcommittee on Education
March 1986

RE: Proposed Legislation Relating to Local Governments and Alaska Public Employees Labor Relations Act.

The 1986 Alaska Municipal League Policy, Part VIII, Local Government Powers, Section B(1), Alaska Public Employees Relations Act states "the League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. In addition, the League opposes just as strongly, any legislative efforts to dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at anytime to reject or withdraw from the terms of the Alaska Public Employees Relation Act." In addition, Section B(2) states, that the League also opposes any legislation which forces municipalities to develop collective bargaining procedures ending in strike or binding arbitration. The following is in support of the League position:

1. Binding arbitration/PERA limits the authority of the Council/Assembly. If wages are set by binding arbitraton, the Council/Assembly has to work any arbitration wage increases into the budget. If it is necessary to make cuts, cuts must be made in areas other than the arbitrated wages. The Council/Assembly would no longer have the authority to determine wages or control budgets.

2. Arbitrators tend to be from outside and do not have to deal with the overall budget or raise the funds to finance employee costs.

3. Municipal employees do have recourse -- the election process. They can influence voters to elect Council/Assembly members supportive of their positions. Also, employees still have the right to form employee organizations.

4. Each municipality is unique and should be allowed to handle collective bargaining in a manner that fits the community. Large communities have employee circumstances that are very different from small, and rural is different than urban. In addition, most of our local governments in Alaska are small, population under 1000, and there are not many staff members in any one category. This makes collective bargaining extremely impractical.

5. The provisions of PERA or binding arbitration are costly. There is the cost of the negotiation process itself. Municipalities in general do not have excess staff or staff time to prepare bargaining positions. Cost of hiring a negotiator is beyond most local budgets.

6. Government wages in Alaska tend to exceed those of private business and industry. Therefore, employees seem to be doing well without the added regulation.

7. In a time of funding cutbacks, increasing the cost of government doing business does not make much sense.

8. In regard to strikes, if a strike provision would ever be required, the municipality as an employer should have the same options that exist in private industry; for example, the employer (the municipality) should be able to continue services and hire others if employees strike.

In the end, it is, of course, the taxpayer who must bear any financial burden. The taxpayer now has control through the election process. With binding arbitration, the taxpayer gives up this control to the employee and arbitrator.

Alaska Municipal League

Policy Statement

1988

Adopted at the Business Meeting
of the 37th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Anchorage, Alaska
November 13, 1987

and an amendment to the statutes governing these codes that would allow municipalities adopting these codes to provide for a transition period regarding licensing and certification requirements for plumbers and electricians working within their boundaries. The League supports the adoption of the national codes as the standards for Alaska.

9. Authorities: The League opposes any effort by the Legislature to restrict the method of establishment, form, powers, or other features of municipal port or other authorities. The League supports legislation that would clarify the authority of municipalities to form public corporations, authorities, and similar public entities through which they may exercise a power.

B. PUBLIC EMPLOYEE LABOR RELATIONS

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

2. Binding Arbitration: The League opposes legislation imposing binding arbitration on local governments and school districts. Binding arbitration hinders local elected officials' ability to determine their personnel costs and prevents local governments from having complete control of determining the local tax rate. The scope of decisions with regard to what local government can afford for labor is best left to the local bodies possessing that knowledge.

C. UNORGANIZED BOROUGH

The League urges the Legislature to address the organization of the unorganized borough.

D. TRIBAL COUNCIL/LOCAL GOVERNMENT RELATIONS

The League supports and encourages efforts on the part of the Legislature and other concerned parties to address tribal/local government relations.

E. FORMATION OF NEW MUNICIPALITIES

1. State Policies: The League supports state policies that encourage rather than discourage the formation of new municipalities.

2. Funding: The League strongly supports legislation to provide adequate funds to assist in the study of the feasibility of forming new municipalities and in the unification and/or consolidation of borough and city governments. The League also supports increasing funds for the formation of newly organized municipalities.

City of Soldotna

P.O. Box 409 • 177 North Birch • Soldotna, Alaska 99669 • Phone: 262-9107

February 11, 1988

Alaska Senate State Affairs Committee
c/o Senator Ken Fanning
P.O. Box V - State Capital
Juneau, Alaska 99811

DHL DELIVERY

Re: SB 372

Ladies and Gentlemen:

I would like to add my name to the growing list of municipal officials who have supported Senator Ken Fanning's effort to provide an opportunity for municipalities to opt out of PERA.

The Soldotna City Council recently reconsidered whether we should opt back into PERA and unanimously concluded that we should retain the right to govern our labor relations at the local level. I am enclosing a few pages of our local collective bargaining ordinance. The preamble to the ordinance and Section 2.30.020 set forth our findings as to why we think a local collective bargaining ordinance is more appropriate to our particular situation.

Our ordinance prohibits closed shops and strikes, but it also provides a binding arbitration procedure as the final step of the collective bargaining process if all other impasse resolution steps fail. In Soldotna, however, our voters will be the final arbitrators. Final and best offers will be put to the test of a referendum at the next general election.

I encourage you to approve SB 372 and to oppose any legislative effort that would force municipalities to be subject to provisions of PERA.

Sincerely,

Dolly M. Farnsworth

Dolly M. Farnsworth
Mayor of Soldotna

Enclosure (1)

cc Senator Paul Fischer
Representative Mike Navarre
Represenative C.E. Swackhammer
Scott Burgess, Executive Director, Alaska Municipal League

CITY OF SOLDOTNA, ALASKA

ORDINANCE NO. 447
(As Amended October 21 and December 2 and Adopted December 16, 1987)

AN ORDINANCE CONCERNING COLLECTIVE BARGAINING WITH CITY EMPLOYEES

WHEREAS, the 1972 Alaska State Legislature adopted the "Public Employee Relations Act" and provided that it would be applicable to all political subdivisions, unless political subdivisions took action within six months after its effective date to exempt themselves from this Act; and,

WHEREAS, the Soldotna City Council voted to reject application of the "Public Employee Relations Act" pursuant to Resolution No. 72-17, adopted August 24, 1972; and,

WHEREAS, on consideration of this subject again on July 5, 1979, the Soldotna City Council rejected a request to rescind Resolution No. 72-17; and,

WHEREAS, it has been reported that some of the City's employees may want to affiliate with a labor organization for the purpose of collective bargaining with the City; and,

WHEREAS, the City Council is aware of the right of employees to join a union and to become subject to terms of a collectively bargained agreement;

WHEREAS, the Soldotna City Council desires to grant employees the right to become covered by a collectively bargained agreement, but under terms of a local ordinance, rather than by terms of the "Public Employee Relations Act", in order to retain local control over labor relations and to codify provisions on issues which might be in dispute among the various courts; and,

WHEREAS, the City Council wishes to make known some of its reasons for adopting a local ordinance concerning collective bargaining, rather than being bound by the State's "Public Employee Relations Act", now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA AS FOLLOWS:

Section 1. Chapter 2.30 is hereby added to the Soldotna Municipal Code to read as follows:

Chapter 2.30

COLLECTIVE BARGAINING

Sections:

2.30.010 Declaration of Policy
2.30.020 Legislative Findings
2.30.030 Rights of Employees
2.30.040 Employee Relations Board
2.30.050 Collective Bargaining Unit
2.30.060 Exemptions from Collective Bargaining
2.30.070 Representatives and Elections
2.30.080 Collective Bargaining
2.30.090 Mediation and Fact Finding
2.30.100 Final Determination of Disputed Issues
2.30.110 Grievance Resolution
2.30.120 Prohibited Activities
2.30.130 Unfair Labor Practices
2.30.140 Agreement
2.30.150 Reservation of Management Rights
2.30.160 Funding
2.30.170 Payroll Deduction for Dues & Fees
2.30.180 Definitions

2.30.010 Declaration of Policy.

A. The Soldotna City Council hereby declares that it is the policy of the City to promote harmonious and cooperative relations between the government and its employees and to protect the public by assuring orderly and effective operations of government. The City Council desires to govern its labor relations at a local level and, therefore, continues to exempt the City from application of the provisions of Chapter 113, SLA 1972 (Article 2 of AS 23.40, known as the Public Employment Relations Act) as prescribed in prior resolutions and actions.

B. The City's labor relations policies are to be effectuated (1) by recognizing the right of employees to organize for the purpose of collective bargaining under this Chapter, (2) by negotiating according to this Chapter with employee organizations on matters of wages,hours, and other terms and conditions of employment, and (3) by maintaining merit system principles among City employees.

C. Nothing in this Chapter shall be construed so as to make membership in any union or other employee organization a condition of employment with the City, nor to allow an agency shop, closed shop or union shop arrangement.

2.30.020 Legislative Findings. The Soldotna City Council makes the following legislative determinations in support of its reasons for adopting a local ordinance concerning collective bargaining, rather than being bound by the State's "Public Employee Relations Act":

A. The City of Soldotna provides essential public services including police protection, street repair, snow removal, water, sewer and other services critical to public health, safety and convenience.

B. Granting City employees the right to strike pertaining to wages, benefits and working conditions may be construed as granting employees the right to override the authority of the local governing body, and, as a first class municipality, the City of Soldotna desires its authorities, as provided by Alaska Constitution and Statutes, to be broadly construed.

C. Employees of the City of Soldotna, being agents of the City and serving only public purposes, are entirely different from employees in the private sector and a strike by them could contravene the public welfare and paralyze the City and endanger the public health, safety and convenience.

D. Since the terms of employment of City employees include economic obligations and commitments which under this Code can only be determined by the City Council, granting a right to strike would, in effect, permit employees to place undue pressure and influence on the City Council by striking. The City Council may be influenced to accede to the demands of the employees in order to protect the public from the affect of a strike, even though the concessions granted in so doing may be against the public interest. Employees should not be allowed to place the local government in such a dilemma.

E. Unlike private enterprise, the City of Soldotna does not perform its public functions and activities for profit. Thus, purely economic considerations may not appropriately be the most important considerations and should not be allowed to become the most important through public employee labor relations law and ordinances.

F. For the foregoing reasons, a strike or a work stoppage by public employees should not be condoned or permitted.

G. The efficient operation of the City and harmonious labor relations between the City and its employees will best be served when each individual employee has the maximum freedom possible to choose individually whether to affiliate with other employees or a labor organization for the purpose of collective bargaining.

H. The interests of the majority of the City employees should not infringe on the interests of the minority provided the interests of the majority can be accomodated.

I. Because the City of Soldotna has a long-standing set of personnel procedures and ordinances which, for the most part, have resulted in stable and harmonious labor relations, the public interest would be best served by permitting each individual employee the right to choose to continue to be subject to the existing personnel policies and procedures (as they may be amended from time to time), thus permitting each employee the widest freedom to choose while at the same time permitting those who wish to collectively bargain the right to do so. The City realizes that this approach could be construed as a possible violation under Section 8(a)(1) of the National Labor Relations Act in the private sector, but also realizes, for reasons set forth in this Chapter, that the City has the right to determine its own labor relations policies, and has determined, as a legislative matter, that the greatest freedom of choice for individual employees serves the public interest.

J. The City Council realizes its obligation never to surrender the power of taxation as set forth in Alaska Statutes. The City Council determines that the accountability of the City Council to the public can only be maintained if this power to tax remains exclusively with the City Council. Since the commitment of public monies in the form of wages, benefits and working conditions can result in a tax adjustment, the City Council determines that it is essential that the City Council approve any collective bargaining agreement before it can become effective. Because of the budget requirements set forth in Alaska Statutes, and in order to preserve the public's opportunity to be heard on the budget, any collective bargaining agreement which would result in a change in the amounts budgeted for City employees must be concluded in time for the changes to be considered in the annual budget prior to the end of the fiscal year.

K. The City Council finds that it would disrupt the orderly operation of the City if collective bargained agreements were to expire at any time other than the close of the fiscal year.

L. In recognition of certain commitments made by the City in a "memorandum of understanding" pertaining to wages, benefits and working conditions for a term beginning July 1, 1987, the City Council herein represents that in the event any employees affected thereby engage in collective bargaining that the provisions of this memorandum of understanding shall serve to establish the minimum standards upon which any such bargaining will be based during the term of the "memorandum of understanding".

2.30.030 Rights of Employees. City employees may self organize and form, join or assist an organization for the purpose of collective bargaining through representatives of their own choosing in accordance with the terms and conditions of this Chapter.

2.30.040 Employee Relations Board.

A. There is hereby established an Employee Relations Board which shall administer the policy established by this Chapter and shall have duties which shall include but are not limited to:

(1) Determining the units appropriate to collective bargaining;

(2) Certifying or decertifying employee organizations as exclusive representatives;

(3) Conducting representation elections; and

(4) Handling the procedures for resolution of disputes and grievances, as provided in this Chapter.

B. The Employee Relations Board shall consist of three members. One member shall be appointed by the Mayor and confirmed by the City Council. One member shall be appointed by the City's employees pursuant to appropriate procedures devised by the employees' collective bargaining agent(s). If there is no collective bargaining agent, the employee member shall be elected by a majority of the City's employees under election procedures to be administered by the City Clerk. The third member shall be chosen by and mutually acceptable to the other two board members.

(1) The term of office of Employee Relations Board members shall be three years and shall run with the term of the Mayor.

(2) Members of the Employee Relations Board must be residents of the City of Soldotna. Members of the Board may not be employees of the City, nor members of any labor organization which represents or is attempting to represent City employees.

2.30.100 Final Determination of Disputed Issues.

A. If, upon conclusion of negotiation and after use of mediation and fact finding as appropriate, no agreement is reached, the City Council shall formulate a last best offer. The offer shall be reduced to writing and represent the proposed collective bargaining agreement for a term not to exceed three years.

B. If the Employee Organization is not satisfied with the last best offer of the City Council, the Employee Organization shall formulate its last best offer. This offer shall, likewise, be reduced to writing and represent the Employee Organization's proposed collective bargaining agreement for a term not to exceed three years.

C. The Council shall thereupon hold a public hearing on the proposed collective bargaining agreements, on at least seven days' notice. At the conclusion of the hearing, the Council shall: either approve the Employee Organization's last best offer; or, submit the last best offer of each party to a referendum of the Soldotna voters at the next general election. The results of the election shall be binding for the period of the agreement upon both parties, who in the interest of facilitating the prompt resolution of any and all labor disputes shall forebear from any judicial appeal of the decision.

(1) The question submitted at the election shall be substantially in the following form: "To resolve an impasse between the City and an Employee Organization over a collective bargaining agreement, each party has been asked to submit its last best offer to public referendum. Which offer shall be approved?

The City Council's last offer. ☐

The Employee Organization's last offer. ☐

(2) The Clerk shall publish, with the regular notice of election, a summary, in 300 words or less, of the last best offers of the City and the Employee Organization, as prepared by a representative of each party, with a notice that copies of the full text of the last best offers of each party are available at the Office of the Clerk.

2.30.110 Grievance Resolution. Except as these provisions may be modified for covered employees by the terms of a collective bargaining agreement, employee grievances shall be handled according to Section 2.28.260 of the Soldotna Municipal Code.

2.30.120 Prohibited Activities.

A. Strikes or Other Concerted Cessation of Work.

(1) No City employee shall have the right to strike.

(2) A strike is defined as a concerted failure to report for duty, a willful absence from work, a stoppage of work, or an abstinence from the full and proper performance of duties for the purpose of inducing or coercing a change in working conditions or compensation. The term strike includes any refusal to perform regular duties while other City employees, or any other persons, are engaged in picketing or any other work stoppage, slowdown or refusal.

(3) An employee shall be subject to discipline, according to the City's Personnel Code, for an unauthorized absence from work or a failure or refusal to perform regular duties in a full and proper manner whether or not the unauthorized absence, action or inaction is in relation to a strike.

(4) Upon a finding by the City Council that employees are engaging or are about to engage in a strike or other concerted cessation of work, the City Council may petition the Courts for an injunction, restraining order or other such order as may be appropriate. The City Council may file a petition with the Courts without first submitting an unfair labor practice complaint to the Employee Relations Board.

B. Agency shop, Closed Shop or Union Shop Arrangements.

(1) No collective bargaining agreement shall contain terms which mandate affiliation with a designated labor organization as a prerequisite to employment or as condition of continued employment with the City.

(2) Neither the City nor any City employee shall discriminate against any employee solely by reasons of that employee's exercise of this right to choose whether or not to affiliate with a labor organization, although differences between terms and conditions of employment set forth in the City Personnel Code and those terms and conditions set forth in a collectively bargained agreement that result in differential treatment will not be a violation of this section.

(3) Each new employee shall, likewise, have the right to choose between the Personnel Code and any collectively bargained agreement after being offered a position, but before beginning work.

Alaska Public
Employees Association APEA
State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Cherie Shelley
APEA

SUBJECT: Senate Bill 372

DATE: February 2, 1988

The Alaska Public Employees Association (APEA) is adamantly opposed to Senate Bill 372, which strikes at the heart of collective bargaining for municipal employees.

APEA represents municipal employees covered under the Public Employee Relations Act in Ketchikan Gateway Borough, City of Petersburg, City of Fairbanks and Fairbanks North Star Borough. SB 372, if allowed passage could effectively destroy collective bargaining for these municipal employees. The legislation would allow municipal governments which have opted for coverage under PERA to now opt-out, leaving employees relations in a vacuum. Management would be free to unilaterally set wages and other working conditions.

In 1972 the legislature found that joint-decision making is the modern way of administering government, including municipal government. If public employees are granted the right to share in the decision-making process affecting wages and working conditions, they are more responsive and better able to exchange ideas, and information in operations with their administrators. Accordingly government is made more effective. PERA provides the legal structure for such process.

CS/jm

Fairbanks Field Office
825 College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
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Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-2284

Bill No. Senate Bill 372

Date February 2, 1988

Title "An Act relating to the applicability of the Public Employment Relations Act to municipalities and political subdivisions."

Contact: Eileen Plate 465-2700

This legislation repeals Section 4, Chapter 113, SLA 1972, which permits municipalities and political subdivisions to elect not to be covered by the Public Employment Relations Act; and replaces it with language that permits municipalities and political subdivisions to opt in, or out, of PERA coverage at will, subject to a lapse of three years between each action.

Under this bill, political subdivisions who are currently under PERA coverage would have the opportunity to opt out by adopting an ordinance or resolution to that effect. Similarly, as is provided under current law, political subdivisions who opted out in 1972 could rescind that exemption and come under PERA coverage. The only restriction placed on exercising one option or the other is that three years must have elapsed since the time an option was last exercised.

This has no practical effect on those political subdivisions who elected to opt out when PERA was passed in 1972. They may presently rescind that action by ordinance or resolution and come within coverage of PERA, as the City of Fairbanks did in 1983. However, this bill would allow those political subdivisions currently under PERA to exempt themselves from coverage, an option that does not currently exist.

The municipality or political subdivision could, at its discretion, therefore rescind rights previously extended to employees without any participation by the workers in that decision. This clearly goes against the intent of the act which is to promote harmonious employer/employee relationships. The provisions of this bill are, therefore, contrary to the principals upon which collective bargaining laws are premised.

There are presently six communities that are covered by PERA - City of Fairbanks, Fairbanks North Star Borough, City of Petersburg, Ketchikan Gateway Borough, City of Unalaska, and City of Nome. These communities could, under this bill, exempt themselves and discontinue the collective bargaining relationship at the expiration of existing contracts.

This bill is not in the interest of good management and labor relations; and the Department is opposed to it.

There is no fiscal impact on the Department.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 372
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An Act relating to Public Employment Relations Act.."
Sponsor: Fanning
Requestor: State Affairs

Agency Affected: Labor
BRU: Labor Standards and Safety
Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart Director TStuart Phone: 264-2452
Division: Labor Standards and Safety Date: 2/2/88

Approved by Commissioner: Jim Sampson Jr. Date: 2/2/88
Agency: Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 998
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 3, 1988

SUBJECT: Applicability of PERA to municipalities (SB 372)

TO: Senator Ken Fanning

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked several questions concerning the effect of SB 372 on the right of a municipality or a political subdivision to decide to withdraw from coverage under the Public Employment Relations Act.

1. Can a municipality reject coverage under PERA?

The right to withdraw from coverage is established in temporary law, sec. 4, ch. 113, SLA 1972, which states:

> This Act [enacting the Public Employment Relations Act] is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

A municipality can reject coverage under PERA. To do so, the city council or borough assembly adopts an ordinance or resolution.

There are limits to a municipality's power to reject the application of the PERA. In an early case considering sec. 4, State v. City of Petersburg, 538 P.2d 263 (Alaska 1975), the state supreme court held that the city council of Petersburg could not validly adopt a resolution rejecting the application of PERA to its employees after members of the city council had learned that certain employees were engaged in collective bargaining organizational activity. The court noted, id. at 267,

> The critical point beyond which the right and power of the City to reject the Act become subordinated to the rights of the employees granted by the same legislation must be ascertained. We hold that the analysis must turn on both the substantiality of the organizational activities undertaken by the employees and the extent of the City's awareness of those activities. Prior to becoming aware of substantial organizational activity, the City could have exempted itself from the applicability of the PERA without interfering with the right of the employees to organize. Rejection of the PERA after becoming aware of such activity constitutes a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them. (Footnote omitted)

In a later case, the court permitted a city to reject the application of PERA even though the city's employees had earlier expressed an interest in membership in a union. In City & Bor. of Sitka v. International Brotherhood of Electrical Workers, 653 P. 2d 332 (Alaska 1982), Sitka had passed an ordinance in 1973, exempting the municipality from PERA under sec. 4. For many years before the ordinance was considered and passed, the plaintiff union in the case, IBEW, had attempted to have the city recognize it as representing certain city employees. The court upheld the exemption, distinguishing the situation from the Petersburg case by stating that Petersburg is limited to its factual setting. The court noted, id. at 335, that

> there is not evidence in the record of any organizational activities occurring between PERA's effective date, September 5, 1972, and the passage of the exemption ordinance, July 10, 1973. Thus, in contrast to Petersburg, the employees in Sitka were not acting in reliance on rights granted them by PERA.

Although it held that Sitka had effectively exempted itself from PERA under sec. 4, the court did find that Sitka had failed to abide by the terms of its city charter and that therefore it would be required to recognize employee organizations under the terms of the charter.

In Anchorage Municipal Employees Assoc. v. Municipality of Anchorage, 618 P.2d 575, (Alaska 1980), considering whether the newly formed Municipality of Anchorage could properly

exempt itself from PERA in 1975, more than three years after PERA took effect, the court noted that the exemption option contained in sec. 4 was not limited to a period of time. The court stated, id. at 579, that the Petersburg decision

> does not deprive a newly formed municipality of the option to reject PERA, so long as it does so promptly after its formation and without interfering with the employees' exercise of their established rights.

While sec. 4 does not grant unlimited ability to reject application of the PERA, as long as the legislative body of the municipality or political subdivision acts reasonably promptly after its employees gain collective bargaining rights under PERA and as long as it is not attempting, in adopting the rejection, to interfere with ongoing collective bargaining activity that is based on the PERA rights, the exemption will be upheld.

2. If a municipality is covered by an ordinance or resolution establishing a system of negotiation with employees, are there limitations on the municipality's power to amend the ordinance or resolution?

PERA does not limit the municipality's power to amend its own municipal law. In City of Fairbanks v. Fairbanks AFL-CIO, 623 P.2d 321 (Alaska 1981), the court held that a personnel ordinance which was adopted after the city had a collective bargaining system in place, and which limited the subjects of the existing collective bargaining system, did not violate PERA.

However, the terms of a collective bargaining contract may dictate when a change in the municipal system may take effect. In City of Fairbanks v. Fairbanks Fire. Union, 623 P.2d 339 (Alaska 1981), the city had adopted a resolution establishing a system of employee bargaining and had negotiated a collective bargaining agreement that provided for automatic renewal from year to year unless one party notified the other of intent to change the terms. The agreement required that notice be given at least 90 days before the termination date of the contract. The city adopted a personnel ordinance that differed from the bargaining agreement in probationary periods, sick leave, annual leave, and other areas. However, the adoption

occurred less than 90 days before the termination of the contract. The court held that the change was ineffective for the next contract year but would apply to contracts in the years after that.

3. If a municipality rejects coverage under PERA, can it later reverse its decision and come within PERA?

I have found no cases addressing this issue. However, the policy set out in PERA and supported in the court opinions is to favor collective decision-making in matters affecting wages and working conditions. AS 23.40.070 states, in part,

> . . . it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by
>
> (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
>
> (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;
>
> (3) maintaining merit-system principles among public employees.

Although sec. 4, ch. 113, SLA 1972, does not specifically permit a municipality to elect to resume coverage under PERA, it is probable that a court would hold that the policy statement supports a finding that the law implicitly permits a municipality to do so.

If I may be of further assistance, please advise.

TBC:gc
WKG1:061

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;

(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 secs. 70 - 260 of this chapter;

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

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

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

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

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

Sec. 23.40.260. SHORT TITLE. Secs. 70 - 260 of this chapter may be cited as the Public Employment Relations Act.

* Sec. 3. AS 09.43.010 is amended to read:

Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF CHAPTER. 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 inequity for the revocation of a contract. However, this chapter does not apply to a labor-management contract unless it is incorporated into the contract by reference or its application provided for by statute.

* Sec. 4. This Act is applicable to organized boroughs and

political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

* Sec. 5. AS 23.40.010 is repealed.

Chapter No. 113
Session Laws of Alaska
1972

Approved by governor: June 7, 1972
Actual effective date: September 5, 1972

Introduced: [redacted]/88
Referred: State Affairs and Community
and Regional Affairs

5-1645A

IN THE SENATE BY FANNING

SENATE BILL NO. 372

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the applicability of the Public Employment Relations Act to municipalities and political subdivisions."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.40 is amended by adding a new section to read:

Sec. 23.40.235. EFFECT ON MUNICIPALITIES AND POLITICAL SUBDIVISIONS. (a) A municipality or political subdivision of the state may adopt an ordinance or resolution to exempt itself from AS 23.40.070 - 23.40.260. A municipality or political subdivision that exercises its exemption power may rescind the exemption by adoption of an ordinance or resolution. The exemption or rescission does not affect the terms of an existing collective bargaining agreement.

(b) A municipality or political subdivision that exempts itself or rescinds its exemption under (a) of this section may not change its status under this section for at least three years.

* Sec. 2. Section 4, ch. 113, SLA 1972, is repealed.

STATE of Alaska, Petitioner,

v.

CITY OF PETERSBURG, Alaska, and International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, Respondents.

No. 2241.

Supreme Court of Alaska.

July 24, 1975.

The Superior Court, First Judicial District, Juneau, Thomas B. Stewart, J., upheld city's rejection of applicability to it of the Public Employment Relations Act, and the State and union petitioned for immediate review. The Supreme Court, Boochever, J., held that as to municipal power plant employees, city could not exempt itself from applicability of the Act at a time more than six months after its effective date and after becoming aware of fact that all such employees had authorized particular union to represent them.

Reversed and remanded.

Connor and Burke, JJ., filed separate dissenting opinions.

1. Appeal and Error ⇐363

Petition for review of order upholding city's rejection of application of the Public Employment Relations Act would be granted, though other issues remained to be determined in the case, where the order involved a controlling question of law as to which there was a substantial ground for difference of opinion and immediate decision might materially advance the ultimate termination of the litigation, and where the substance and importance of the order presented the need of present and immediate review. AS 23.40.070(1, 2); Rules of Appellate Procedure, rules 23(d), 24(a)(1, 2) 46.

2. Labor Relations ⇐52

Whether political subdivision may reject application of the Public Employment Relations Act terms on substantiality of organizational activities already undertaken by employees and the extent of the subdivision's awareness of those activities. AS 23.40.070(1, 2); Laws 1972, c. 113, § 4.

3. Labor Relations ⇐52

City could not exempt itself from applicability of the Public Employment Relations Act more than six months after its effective date, as to municipal power plant employees, after becoming aware of fact that all such employees had authorized particular union to represent them; city's prerogative to reject Act could not be used as a de facto veto against particular union, which would constitute interference with employees' freedom to choose which collective bargaining association should represent them. AS 23.40.010, 23.40.070, 23.40.070(1, 2), 23.40.110(a)(1, 5); Laws 1972, c. 113, § 4.

4. Labor Relations ⇐52

Applying a liberal construction to the powers of local government cannot override express declarations of policy made a part of the Public Employment Relations Act that the Act be applicable to all political subdivisions unless rejected. Const. art. 10, §§ 1, 11; Laws 1972, c. 113, § 4.

5. Labor Relations ⇐677

Where review of decision of the Department of Labor presented question of statutory interpretation, trial court did not err in substituting its independent judgment for that of the hearing examiner.

Michael R. Peterson, Deputy Atty. Gen., Ronald W. Lorensen, Asst. Atty. Gen., Norman C. Gorsuch, Atty. Gen., Juneau, for petitioner.

Robert B. Baker of Robertson, Monagle, Eastaugh & Bradley, Anchorage, for appellee City of Petersburg.

Robert M. Goldberg, Anchorage, for appellee Local 1547, IBEW.

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

OPINION

BOOCHEVER, Justice.

On June 7, 1972, the Governor of the State of Alaska approved the Public Employment Relations Act (hereinafter PERA) which conferred upon public employees the right to organize and to bargain collectively with their employers, and correspondingly required public employers to recognize collective bargaining units formed under the PERA.[1] The actual effective date of the PERA was September 5, 1972.[2] Of particular concern in this case is a provision whereby the legislative body of any political subdivision of the state may reject the Act thereby preventing its application to the public employees of that subdivision.[3] Specifically, we are confronted with the issue as to whether the Petersburg City Council could validly reject application of the Act more than six months after it became effective,[4] and after the members of the Council had learned of the organizational activity of the City's power plant employees.

Early in 1973, employees of the City of Petersburg light and power plant began discussing the possibility of joining a union. As a result, on March 23 and 24, 1973, the entire eight-man work force signed cards authorizing the International Brotherhood of Electrical Workers Union Local 1547 (hereinafter IBEW) to act as their collective bargaining representative. A few nights later, the Petersburg City Council held a special meeting at which it passed Resolution 366–R purporting to exempt the City from the provisions of the PERA.[5] At the time of this meeting, the members of the City Council then present were well aware of the activities of the power plant employees concerning the formation of a collective bargaining unit.[6] In

1. AS 23.40.070(1) and (2).
2. SLA ch. 113 (1972).
3. SLA ch. 113, § 4 (1972) provides as follows:

   This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

4. In view of our holding in the instant case, we do not reach the issue of whether the City could act by means of passage of a resolution rather than by enactment of an ordinance.
5. Only four of six Council members were present at the meeting and only three voted for the resolution. Due to concern that procedural irregularities might have rendered the first resolution invalid, the Council met again on April 11, 1973 and passed a second resolution, 367–R, purportedly exempting the City of Petersburg from the applicability of the PERA.
6. This was indicated by testimony before the labor relations hearing officer. Paul Jones, an employee of the City testified that Councilman Ted Smith was aware that the employees of the power plant had signed pledge cards two or three days after the signing occurred. Doug Weide testified that on the day following the signing of the cards, Councilman Oines asked him "What's this I hear about the IBEW and the Union". Councilman Ted Smith testified that he was aware prior to the March 29, 1973 meeting that the employees of the power plant had signed something indicating that they were interested in a union. Smith further testified that the resolution passed at the March 29 special meeting was in response to the organizational activities at the power plant. Councilman Oines testified to a similar motivation for this meeting and stated that the signing of the IBEW cards could have been discussed at the meeting. Councilman Fred Haltiner admitted that, prior to the March 29 meeting, he had been told that possibly all of the power plant employees had signed pledge cards. However, Ms. Jerry Van Bleek, the Clerk-Treasurer for the City of Petersburg, testified that at the March 29 meeting there was no mention of the power plant employees having signed authorization cards. In his decision, the hearing examiner deemed the following conclusively proved by the evidence:

   The right of the City to exempt itself from the operation of the PERA had existed and was notice to the world since the Act was signed by the Governor in June of 1972; *but the City took no action to escape from the PERA until it learned that its eight power plant employees had signed pledge cards.* It acted five days later on March 29, 1973, at which time the City passed Resolution 366–R for the purpose of exempting itself from the operation of PERA. (emphasis added)

(Alaska, 526 P.2d 983)

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...loyees of the City of ...d power plant began ...sibility of joining a ... on March 23 and 24, ...ght-man work force ...ing the International ...rical Workers Union ...er IBEW) to act as ...aining representative ..., the Petersburg City ...al meeting at which ...66–R purporting to ex... ...the provisions of the ...e of this meeting, the ...y Council then present... ...f the activities of the ...ees concerning the for... ...e bargaining unit.[6] In ... that ... was aware prior ... 19... meeting that the ... power plant had signed ... that they were inter... Smith further testified ... passed at the March 29 ... in response to the or... ...ies at the power plant. ... testified to a similar me... ...eting and stated that the ...W cards could have been ...eting. Councilman Fred ... that, prior to the March ... been told that possibly ...lant employees had signed ...ever, Ms. Jerry Van Block, ... for the City of Peters... at the March 29 meeting ...tion of the power plant ...ned authorization cards ... hearing examiner decided ...sively proved by the ...

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fact, Councilwoman Annie Taylor testified that, at the March 29 meeting and prior to the passage of Resolution 366–R, she told those members of the City Council then present that all of the power plant employees had signed pledge cards with the IBEW.

After an unsuccessful effort by the union to discuss the situation with the City Council, the matter was placed on the agenda for a meeting held on May 7, 1973. At that meeting, the Council refused to deal with the union, asserting that because of the passage of its resolution, it was not required to recognize the IBEW as the bargaining agent of the power plant employees. As a result, the union representative advised the Council that a strike vote would be held that night, and at 11:00 p. m., the employees notified the Mayor that they would go on strike at 6:00 the next morning. Notice was also given to the fire department and the hospital. At approximately 6:30 a. m. on May 8, the power plant was shut down. The three men involved in shutting down the power plant were immediately fired, and the other five were terminated when they refused to return to their jobs.

On May 16, 1973, the union sent a telegram to the Alaska Department of Labor alleging that the actions of the City in refusing to recognize the union and in firing the power plant employees constituted unfair labor practices under the PERA and requesting an immediate investigation. A formal accusation was filed on June 15, 1973. The Deputy Commissioner of the Department of Labor, on the basis of his preliminary investigation, found that there was probable cause to believe that the City had interfered with the rights of its employees to organize and had refused to bargain collectively in good faith with the IBEW, an organization which was the exclusive representative of employees in an appropriate unit. He concluded that such activities were in apparent violation of AS 23.40.110(a)(1) and (a)(5).[7]

The City of Petersburg filed a complaint in the superior court on June 29, 1973 (CA No. 73–201) seeking damages from the local IBEW and the employees involved in the strike. Additionally, the City alleged that the Department of Labor was without jurisdiction over this labor dispute, and that, therefore, it should be enjoined with regard to any further proceedings. On July 18, 1973, the superior court denied the City's motion for a temporary restraining order thereby allowing the Department to proceed with formal hearings on the accusation that the City had committed certain unfair labor practices.[8]

A hearing was held in Petersburg before Douglas L. Gregg, a hearing examiner of the state labor relations board, who, on January 14, 1974, issued an order requiring the City to recognize IBEW Local 1547 as the bargaining agent for the power plant employees. The hearing officer further ordered that no fines be imposed against any party and that all employees who were terminated be reinstated on their jobs at wage rates not less than those prevailing at the time they were terminated.

The City filed a notice of appeal to the superior court from this administrative order on January 24, 1974 once again raising the issue of the Department's jurisdiction

7. AS 23.40.110(a)(1) and (5) provide:
(a) A public employer or his agent may not
(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in § 80 of this chapter;
...
(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

8. In denying the injunctive relief requested by the City, Judge Stewart reasoned that while there was a large degree of doubt as to the jurisdiction of the Department over this dispute, benefit might be derived from allowing the Department to deal with the question first, thereby taking advantage of whatever expertise it might possess, particularly since he felt there would not be a large or abnormal expense involved in allowing the administrative hearing to go forward.

over the matter (CA No. 74-30). The State of Alaska filed a notice of cross-appeal on February 1, 1974, claiming that the hearing officer's denial of back pay was an abuse of discretion.

Judge Stewart issued an interlocutory order in which he dealt with both the case originally filed in superior court by the City and the case there on appeal from the administrative hearing, these having been consolidated by stipulation of the parties in March 1974. He ordered that the City be given time for full consideration of whether to enact an ordinance for the purpose of rejecting application of the PERA to the City of Petersburg. The judge indicated that if the City properly rejected the application of the PERA by passage of an ordinance, a final judgment would be entered affirming that rejection. Judge Stewart also ordered that the City was not required to reinstate the employees involved in the strike but rather should offer them jobs to the extent available within the City's workforce at rates not less than those prevailing at the time of termination. No decision was made concerning the City's damages claim found in the original complaint filed with the superior court.

The State of Alaska on October 21, 1974, joined by the IBEW on October 28, filed a petition with this court seeking immediate review of the superior court's interlocutory order. The petition was denied.

[1] A motion for reconsideration of the petition was filed with this court on December 5, 1974. By this time, the City had rejected the application of the PERA by ordinance and, therefore, with respect to that portion of the case, the lower court order was final.[9] We have now decided to grant the petition for review limited to the question of whether a municipality can exempt itself from applicability of PERA at a time more than six months after its effective date and after it knows about organizational activity such as that which occurred here.[10]

We thus must determine the proper construction of the PERA exemption provision making the Act applicable to political subdivisions of the state, "home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply". Of particular significance to the resolution of this issue is that portion of the statement of policies to be effectuated by the PERA which provides:

> The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by
>
> (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
>
> (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment . . . .[11]

9. For this reason, we initially decided to consider the petition for review as an appeal under authority of In re E.M.D., 490 P.2d 658, 661 (Alaska 1971), and Alaska R.App.P. 46 permitting relaxation of rules. Due, however, to the fact that there are a number of issues remaining to be resolved by the trial court, we have determined that it is preferable to consider this matter as a petition for review.

10. Review is granted in accordance with Alaska R.App.P. 23(d) because the order involves a controlling question of law as to which there is substantial ground for difference of opinion, and an immediate decision may materially advance the ultimate termination of the litigation. Moreover, under Alaska R.App.P. 24(a)(1) and (2), the substance and importance of the order sought to be reviewed justify departure from normal appellate procedure and the sound policy behind the general rule of requiring appeals to be taken only from final judgments is outweighed by the need of a present and immediate review of the order.

11. AS 23.40.070.

Thus, the Act was intended to recognize the right of employees to organize for the purpose of collective bargaining and to require public employers to negotiate and enter into labor contracts with employee organizations. It is apparent that this purpose would be substantially frustrated if the City could wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of the Act if that union was not favored by the City.[12] In effect, this would give the City the right to control the organization to be selected by the employees. In fact, that is exactly what was attempted by the Petersburg City Council when, at a meeting held on April 4, 1973, it was suggested to the employees, who had been requested to attend the meeting, that they form their own union rather than join the IBEW.

[2, 3] The critical point beyond which the right and power of the City to reject the Act become subordinated to the rights of the employees granted by the same legislation must be ascertained. We hold that the analysis must turn on both the substantiality of the organizational activities undertaken by the employees and the extent of the City's awareness of those activities. Prior to becoming aware of substantial organizational activity,[13] the City could have exempted itself from the applicability of the PERA without interfering with the right of the employees to organize. Rejection of the PERA after becoming aware of such activity constitutes a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them.

That the City's prerogative to reject the Act is not to be used as a de facto veto against particular unions is evidenced by a comparison of the exemption provision set forth in SLA ch. 113, § 4 (1972) with the prior provision expressly repealed by the 1972 Act.[14] The earlier provision contained in AS 23.40.010 [15] specified that:

> The state or any political subdivision thereof including . . . [a] municipal corporation . . . may enter into union contracts with any labor organization whose members furnish services to the state or such political subdivision. . . . *[P]rovided however that nothing contained in this Act shall be construed to require the state or any political subdivisions thereof to enter into union contracts.* (emphasis added)

Under that provision, neither the state nor its political subdivisions were required to enter into union contracts. Prior to the 1972 Act, a municipality could wait until approached by a specific organization and still refuse to negotiate with or even recognize that union. The position advocated by the City in this case, that the exemption provision may be invoked at any time prior to an official demand by the particular organization of public employees for recognition, would constitute a reversion to the situation existing under the former statute which expressly entrusted the local government with complete authority to block attempts by public employees to or-

12. Even the City admits that the exemption provision cannot be read as placing no time limit on the action of political subdivisions. Otherwise, even after recognizing an employee organization, a City could exempt itself from the provisions of the Act and thereafter refuse to negotiate.

13. The City contends that determination of when it becomes aware of substantial organizational activity is too imprecise a standard. While admittedly difficult factual situations may be conjured up, courts are constantly required to make similarly difficult determinations (as, for example, whether a party has exercised due care in a negligence case). *See also State v. Marathon Oil Co.*, 528 P.2d 293, 297–98 (Alaska 1974); *United States v. Ragen*, 314 U.S. 513, 523, 62 S.Ct. 374, 86 L.Ed. 383, 390 (1942). In any event, it is clear that substantial organizational activity has occurred when all of the employees of a particular unit of government have signed cards authorizing a specific union to represent them.

14. SLA ch. 113, § 5 (1972).

15. SLA ch. 108, § 1 (1959).

ganize even after significant steps toward organization had been taken.[16]

The 1972 Act repealed AS 23.40.010, and in lieu thereof, the Act was specifically made applicable to "political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply". More than a nice semantical distinction may properly be made concerning the fact that the legislature provided for the PERA to be applicable to all political subdivisions of the state unless they rejected it rather than making the Act inapplicable unless affirmative steps are taken by these same subdivisions to adopt the Act. In its arguments, the City contends that adopting the position that the Act must be rejected prior to substantial organizational activity by public employees limits the freedom of the political subdivision to consider whether it wishes the PERA to apply to it. While no doubt true, it is equally evident from the wording of the exemption provision that this is precisely what the legislature intended. Had the legislature wished to bestow upon local governments the unlimited, unfettered discretion to deal with the question of the applicability of the PERA at their leisure, the exemption provision could have been written, as was the prior provision, to require affirmative action by the political subdivision to adopt the Act. It is not so written and the reason it is not so written is apparently to prevent precisely what the City argues for here. Under the present statute, applicability of the PERA is the rule, exemption the exception.

The City in its able presentation contended that the reason that AS 23.40.010 was repealed and Section 4 of SLA ch. 113 (1972) enacted was to render the terms of the Act mandatory as to the state and not for the purpose of changing the requirements with reference to labor negotiations by political subdivisions. It is true that the state was not furnished the option to exempt itself from the Act by the 1972 amendment. But if that had been the only change desired by the legislature, the former provision could have been re-enacted limited to political subdivisions only. The change in the language of the provision thus retains its significance as to political subdivisions, despite the elimination of the state from the exemption authorization.

The City also argues that small municipalities may not become aware of the terms of the PERA until after substantial organizational activity occurs, at which time they would have no reasonable opportunity to elect to be exempted. As noted at the outset, however, the Act, although signed into law on June 7, 1972, did not become effective until September 5, 1972. This interim period afforded adequate time for municipalities to become informed in most cases. In any event, it is apparent from the record that members of the Petersburg City Council were well aware of the terms of the Act. We are thus not required to pass on questions that might arise in the event that a small municipality was unaware of the statutory provisions.

[4, 5] The City contends that under home rule provisions, its powers should be construed broadly, and the superior court based its decision on such a construction. Article X, § 1 of the Alaska Constitution provides in part that a liberal construction be given to the power of local government units, and Article X, § 11 specifies that a home rule borough may exercise all legislative powers not prohibited by law or charter. But here the Act was expressly made

16. The City of Petersburg seemingly concedes that once there has been an official demand for recognition by the public employee organization, the local governmental entity can no longer exempt itself from the PERA. As this case well illustrates, such a concession is rather meaningless. For all practical purposes, given the size of the communities in Alaska, the local governmental entities will be aware of the organizational activities well enough in advance of a demand for recognition to pass legislation, however hastily, to prevent the necessity of ever being forced to deal with an organization selected by employees when such organization is not satisfactory to the city.

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applicable to home rule municipalities, and thus municipalities were implicitly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted.[17] Applying a liberal construction to the powers of local government cannot here override the express declaration of policy made a part of the PERA when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, SLA ch. 113, § 4 (1972).[18]

The interlocutory order of the superior court is, therefore, overruled insofar as it permits the City to reject application of the PERA after becoming aware of the fact that all of the employees of the City power and light plant had authorized IBEW to represent them.[19]

Reversed and remanded.[20]

CONNOR and BURKE, JJ., dissenting separately.

CONNOR, Justice (dissenting).

I must respectfully dissent.

I am unable to read § 4, ch. 113, SLA 1972 as imposing any definite time limit upon organized boroughs and political subdivisions in their rejection of the coverage of the Public Employment Relations Act. If the legislature had intended that municipalities should act within some definite time, it would have been a simple matter to insert such a time limitation in the text of the statute. That the legislature did not do this is, to me, significant as a guide to interpreting the statute.

Several considerations buttress the conclusion which I have reached. For one thing, many small municipalities might not have been aware of the act and the need to expressly exempt themselves from its provisions until organizational activity actually occurred. Moreover, because the act stated no definite time limit, even those municipalities which were aware of the act might not have felt any sense of urgency in acting to exempt themselves before organizational activity among their employees began to occur. In these circumstances I have difficulty reading into the act an implied time limitation within which a municipality must exempt itself from the statutory coverage.

The majority opinion places emphasis on the contrast between the 1972 statute and the earlier provision contained in AS 23.40.010,[1] which did not require the state or any political subdivisions to enter into union contracts, although the state or a political subdivision was permitted to enter into such contracts. On the contrary, it can be argued that if the political subdivisions of the state were under no previous obligation to enter into union contracts they might well read the 1972 act as continuing the

17. *See Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974).

18. The state and the IBEW alternatively argued that the trial court erred in the standard of review it applied to the decision of the Department of Labor, contending that the superior court's review of the Department's construction of SLA ch. 113, § 4 (1972) should have been limited to a determination of whether there existed a reasonable basis for the hearing examiner's decision. Here the question presented involved statutory interpretation about which courts have specialized knowledge and experience. Although we disagree with the conclusions reached on the merits by the trial judge, we hold that he did not err in substituting his independent judgment for that of the hearing examiner. The standard applied by the trial court was consistent with the guidelines set forth in *Kelly v. Zamarello*, 486 P.2d 906, 916–17 (Alaska 1971). The appropriate standards of *Kelly* should also be applied upon remand in reviewing other portions of the Department's decision.

19. Our decision is limited in its application to the municipal power plant employees. We do not pass on the question of whether the PERA shall now apply to all employees of the City of Petersburg.

20. The trial court may conduct such further proceedings as are necessary to resolve the remaining issues presented by the City of Petersburg complaint as well as by the appeal and cross-appeal from the order of the Department of Labor.

1. § 1, ch. 108, SLA 1950.

right not to bargain collectively with labor unions, and as conferring upon the political subdivisions an indefinite time limit within which to exempt themselves should they be approached by a labor organization with a demand for collective bargaining. This might well explain why a municipality would wait until organizational activity among its employees actually occurred before acting to exempt itself from the coverage of the 1972 statute.

A quite different and more serious problem would be presented if a city had entered into a collective bargaining agreement with its employees and then later attempted to exempt itself from the coverage of the statute, but that is not the case here.

For the reasons stated I would affirm the judgment of the superior court.

BURKE, Justice (dissenting).

I respectfully dissent. Article X, Section 11 of the Constitution of the State of Alaska provides: "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." Exercising a legislative power expressly conferred upon it by Section 4, Chapter 113, SLA 1972, the City of Petersburg, by resolution, rejected the application of the provisions of the Public Employment Relations Act. The majority now says that such action was improper since the city was aware of "substantial organizational activity" on the part of certain of its employees. I do not agree.

We are required to give a liberal construction to the powers of local government units.[1] With that principle in mind I can find nothing in the language of the Public Employment Relations Act, or its legislative history, justifying the implied limitation suggested by the majority. Particularly where, as here, there has been an express delegation of legislative authority I believe that this court should act with the utmost restraint in placing any restriction on the exercise of that authority by a home rule city. In this case the legislature's failure to impose a time limitation, in express terms, is simply too obvious to be without meaning. To me there is clear evidence of an intent that there be no such limitation.

But, even if some limitation was intended, as found by the majority, I oppose the adoption of a standard as uncertain as one based upon a political subdivision's awareness of "substantial organizational activity" on the part of its employees. What level or awareness is sufficient? Is actual knowledge required? If so, whose knowledge? Does the term "substantial organizational activity" refer to the number of employees involved or the level of their activity? Does it mean substantial in relation to the size of the political subdivision's total work force, the number of employees eligible for membership in a particular union, or those working at a particular facility, such as a municipal light and power plant?

Because of these and other questions I foresee grave difficulty in any future attempt to determine whether a political subdivision is entitled to avail itself of the protection afforded by Section 4, Chapter 113, SLA 1972. The only safe course of action for such an entity would appear to be the immediate enactment of an ordinance or resolution rejecting the provisions of the Public Employment Relations Act.

1. Article X, Section 1, Constitution of the State of Alaska.

Sec. 23.35.100. Transportation, hospital, nursing, medical and surgical expenses. The department may pay out of the fund all reasonable transportation charges incurred under AS 23.35.080 and 23.35.090, including cost of returning the fisherman to the boat or home of the fisherman or to another place which reasonably meets with his convenience, and the reasonable hospital, nursing, medical and surgical expense incurred in the examination, treatment and care of the fisherman. (§ 6 ch 100 SLA 1951)

Opinions of attorney general. — Money cannot be expended from the sick and disabled fishermen's fund for the payment of charges for medicine prescribed by chiropractors. 1961 Op. Att'y Gen., No. 23.

It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 23.

Sec. 23.35.110. Contracts for care. In carrying out this chapter, the department may enter into contracts or other arrangements with hospitals and doctors in the state for furnishing care on an annual basis to persons entitled to benefits. (§ 6 ch 100 SLA 1951)

Sec. 23.35.120. Cooperation with other agencies. In providing care the department shall provide the type and quality of treatment which will restore the fisherman to health and productivity, if possible. The department may enter into cooperative arrangements with agencies of the federal government, other states and territories, and private clinics and rehabilitation centers for the care and treatment of fishermen. (§ 7 ch 100 SLA 1951)

Sec. 23.35.130. Duration of care. Except for compelling reasons, compensation may not be paid for the care of any one person involving a single injury or disability beyond a period of one year from the date of initial allowance. (§ 7 ch 100 SLA 1951)

Opinions of attorney general. — The legislature intended a relatively liberal interpretation of the act. 1959 Op. Att'y Gen., No. 5.

Scope of term "compelling reasons". — See 1959 Op. Att'y Gen., No. 5.

Sec. 23.35.140. Limitation on benefits. (a) Except for compelling reasons,

(1) compensation may not be paid for medical care or hospitalization furnished before the ascertainable time of injury, or before authorization in the case of disability caused by an occupational disease;

(2) the total allowance for any one injury or disablement is $2,500.

(b) The total allowance for any one heart attack is $2,500. (§ 7 ch

Opinions of attorney general. — There might be many very "compelling reasons" to raise the benefits above $2,500 under some circumstances 1959 Op. Att'y Gen., No. 5

Sec. 23.35.150. Definitions. In this chapter

(1) "approved medical facilities" and "medical care" include the facilities of, or the care and treatment prescribed or performed by, a practitioner of chiropractic licensed by the state under AS 08.20.

(2) "commissioner" means the commissioner of labor;

(3) "council" means the Fishermen's Fund Advisory and Appeals Council;

(4) "department" means the Department of Labor;

(5) "fisherman" means a person who is licensed by the state to engage in commercial fishing under AS 16.05.480 or who is the holder of a permit issued under AS 16.43 and who, at the time injury is sustained or illness is contracted, is actually so engaged or is occupied in Alaska in preparing or dismantling boats or gear used in commercial fishing;

(6) "fund" means the Fishermen's Fund;

(7) "occupational disease" means hernia; varicose veins of the leg; the respiratory diseases, bronchitis, pleurisy, and pneumonia caused by or aggravated by the fishing endeavor, but excluding the common cold and influenza; rheumatism, arthritis and those musculoskeletal diseases (such as bursitis, traumatic sciatica, and tenosynovitis) directly caused by or aggravated by the fishing endeavor; and does not include a disease not common to both sexes, venereal disease, or a condition arising out of an attempt of a fisherman to injure self or another. (§§ 4, 5, 8 ch 100 SLA 1951; am §§ 1, 2, ch 99 SLA 1955; am § 1 ch 59 SLA 1957; am § 13 ch 64 SLA 1959; am § 1 ch 93 SLA 1960, am § 1 ch 77 SLA 1962; am § 1 ch 51 SLA 1972; am § 17 ch 105 SLA 1977)

Revisor's notes. — This section was reorganized in 1984 to place the defined terms in alphabetical order.

Chapter 40. Labor Organizations.

Article

1. Local Organizations and Ferry System Employees (§§ 23.40.020 — 23.40.040)
2. Public Employment Relations Act (§§ 23.40.070 — 23.40.260)

Article 1. Local Organizations and Ferry System Employees.

Section Section

20. Enforcement of certain contracts with [illegible] 30. Definitions of [illegible]

Sec. 23.40.010. Union contracts with state and political subdivisions. [Repealed, § 5 ch 113 SLA 1972.]

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

Sec. 23.40.030. Definition of labor organization. For the purpose of AS 23.40.020 — 23.40.040 "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees. (§ 1 ch 108 SLA 1959; am § 32 ch 53 SLA 1973)

Collateral references. — 48 Am. Jur. 2d, Labor and Labor Relations, § 46.

51 C.J.S., Labor Relations, §§ 43-45, 66 C.J.S., Master and Servant, § 28(15).

Rights and remedies of workmen blacklisted by labor union, 46 ALR2d 1124.

Combination of separate plants or units of the same employer as single bargaining unit, 12 ALR3d 787.

Right of labor union to exclude applicants for membership and remedies of applicant so excluded, 33 ALR3d 1305.

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. A collective bargaining agreement is not 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 E. O. No. 39, § 11 (1977))

NOTES TO DECISIONS

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

This section cannot be read as an implied exception to the Public Employment Relations Act, AS 23.40.070, et seq. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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

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

This section and Public Employment Relations Act can be harmonized. — The Public Employment Relations Act, AS 23.40.070, et seq., and this section can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting the Public Employment Relations Act. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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

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

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

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

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

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

If there is no implied exemption for ferry personnel under the Public Employment Relations Act, AS 23.40.070, et seq., it cannot be said that the two acts do not cover the same people. This section is a subset of the broader Public Employment Relations Act coverage and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1787-1999.

51 C.J.S., Labor Relations, §§ 148-216, 56 C.J.S., Master and Servant, §§ 28(20)-26(42).

Secs. 23.40.045 — 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties. [Repealed, § 55 ch 69 SLA 1970.]

Article 2. Public Employment Relations Act.

Section

70. Declaration of policy
80. Rights of public employees
90. Collective bargaining unit
100. Representatives and elections
110. Unfair labor practices
120. Investigation and conciliation of complaints
130. Complaint and accusation
140. Orders and decisions
150. Enforcement by injunction
160. Power to investigate and compel testimony
170. Regulations
180. Penalty for violation of order or decision
190. Mediation
200. Classes of public employees; arbitration
210. Agreement
212. Agreement with the Board of Regents
215. Funding and legislative approval
220. Labor or employee organization dues and employee benefits, deduction and authorization
225. Exemption from Public Employment Relations Act
230. Assistance by Department of Labor
240. Effect on certain units, representatives and agreements
245. Postsecondary student involvement in collective bargaining
250. Definitions
260. Short title

Cross references. — For applicability of article to political subdivisions unless rejected by them, see § 4, ch. 113, SLA 1972 in the Temporary and Special Acts; for provisions relating to collective bargaining for teachers, see AS 14.20.650 — 14.20.610.

NOTES TO DECISIONS

Right of public employees in Alaska to bargain collectively was created by this article. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 565 P.2d 552 (1976).

This article confers upon public employees the right to organize and bargain collectively with their employers and requires public employers to recognize collective bargaining units designated pursuant to this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 691 P.2d 1292 (1979).

This article allows political subdivisions of the state to reject its provisions for conduct of labor relations and to substitute their own provisions. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 565 P.2d 552 (1976).

Applicability of article is the rule. — Under the present statute, applicability of this article is the rule, exemption the exception. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

This article is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Applying a liberal construction to the powers of local government cannot override the express declaration of policy made a part of this article when coupled with considerations of the impact of the repeal of AS 23.40.010 and the different language used in the 1972 exemption provision, § 4, ch. 113, SLA 1972. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Article applicable unless state political subdivisions reject it. — The legislature provided for this article to be applicable to all political subdivisions of the state unless they rejected it rather than making the article inapplicable unless affirmative steps are taken by these same subdivisions to adopt the act (see § 4, ch. 113, SLA 1972). State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Section 4, ch. 113, SLA 1972, not temporary. — Had the legislature wanted § 4, ch. 113, SLA 1972, to be of temporary duration, it would have so indicated. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

When article may be rejected. — This article may be rejected when all evidence indicates that municipal governments exempted themselves solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980); City of Sitka v. International Bhd. of Elec. Workers, Local 1547, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

Rejection of this article in order to gain an undue advantage in a labor dispute or the negotiation of a new collective bargaining agreement constitutes a deliberate interference with the right of employees to organize and bargain collectively in derogation of the act's express declaration of policy. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Rejection must be prior to substantial organizational activity by public employees. — It is evident from the wording of the exemption provision that the legislature intended to limit the freedom of the political subdivision to consider whether it wishes this article to apply to it by adopting the position that the article must be rejected prior to substantial organizational activity by public employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Prior to becoming aware of substantial organizational activity, the city could have exempted itself from the applicability of this article without interfering with the right of the employees to organize. Rejection of this article after becoming aware of such activity constitutes a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

This article was intended to recognize the right of employees to organize for the purpose of collective bargaining and to require public employers to negotiate and enter into labor contracts with employee organizations. It is apparent that this purpose would be substantially frustrated if a city could wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of this article if that union was not favored by the city. In effect, this would give the city the right to control the organization to be selected by the employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

A city council cannot validly [illegible] application of this article more than six [illegible] this after it becomes effective, and after the members of the council have learned of the organizational activity of the city's power plant employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

The right and power of a city to reject this article becomes subordinated to the rights of the employees granted by the same legislation once the public employer becomes aware of substantial organizational activity on the part of its employees. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Freedom to develop varying scheme of collective bargaining. — Local governments which have validly rejected this article are free to develop a local scheme of collective bargaining which varies from the state scheme as provided in this article. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

The legislature has expressly declared that the state policy of promoting harmonious and cooperative relations in public employment relations can best be effectuated by requiring public employers to bargain collectively with their employees. It is, therefore, most difficult to construe this article to prohibit local governments, which effectively rejected the article, from engaging in collective bargaining under their own local ordinances. It is far more likely that § 4, ch. 113, SLA 1972, was added to give political subdivisions of the state the freedom to fashion their own labor ordinances and systems of collective bargaining. Anchorage Mun. Employees Ass'n v. Municipality of

Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Determining timely rejection. — Whether a local government has exercised its option to reject this article in a sufficiently timely fashion is best determined by looking at the circumstances of the individual case rather than setting an inflexible deadline. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Forfeiture of exemption from article. — A city did not forfeit its exemption from coverage by this article, by continuing to recognize and negotiate with unions subsequent to its exemption. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (1981).

There is nothing in the language of the Public Employment Relations Act, AS 23.40.070 — 23.40.260, or its legislative history to suggest that the legislature intended to preclude local governments which have validly exempted themselves from coverage under the act from thereafter voluntarily engaging in collective bargaining with employee organizations. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (1981).

The city did not waive its exemption under § 4, ch. 113, SLA 1972, by negotiating with the union, and thus did not forfeit the authority to enact its own personnel guidelines. City of Fairbanks v. Fairbanks Firefighters Union, Sup. Ct. Op. No. 2290 (File No. 4925), 623 P.2d 339 (1981).

Effect of elimination of state from exemption authorization. — See State v. City of Petersburg, Sup. Ct. Op. No. 1176 (File No. 2341), 538 P.2d 263 (1975).

AS 23.40.010, relating to collective bargaining agreements, was not repealed by implication by the enactment of this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an implied exception to article. — AS 23.40.040 cannot be read as an implied exception to this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article was intended to incorporate existing collective bargaining agreements rather than exempt them. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Construed in pari materia. — Since AS 23.40.040 cannot be treated as an implied exception to this article, and since this article did not repeal AS 23.40.040 by implication, the statutes are construed in pari materia. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Any possible conflict between AS 23.40.040 and this article is neither severe nor irreconcilable, particularly in [illegible] of AS 23.40.240 which incorporates existing agreements. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of AS 23.40.040 and saw no inconsistency in enacting this article to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the AS 23.40.040 authorization of collective bargaining. Rather, it gives it additional content. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article contains far more detailed provisions than AS 23.40.040. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

And further defines AS 23.40.040. — AS 23.40.040 was comprehensive when it was enacted, but it was further defined by this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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).

This article applies to employees of the state division of marine transportation. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

If there is no implied exemption for ferry personnel under this article, it cannot be said that the two acts do not cover the same people. AS 23.40.040 is a subset of the broader coverage under this article and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

"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).

Employees covered by this article are free to join a national as well as a local union. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n, Sup. Ct. Op. No. 1802 (File No. 3800), 590 P.2d 437 (1979).

As to procedural safeguards which local labor ordinances must afford concerning representation elections, see Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

Cited in Warwick v. State ex rel. Chance, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (1976); Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 656 P.2d 769 (1983); Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764 — 1775.

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

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

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

(3) maintaining merit-system principles among public employees. (§ 2 ch 113 SLA 1972)

Opinions of attorney general. — Paragraph (2) of this section and AS 23.40.250(7), 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

Applied in State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975); Hufling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980); Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Cited in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764 — 1775.

51 C.J.S., Labor Relations, §§ 20-22, 33.

Bargainable or negotiable issues in state public employment labor relations, 84 ALR3d 242.

Sec. 23.40.080. Rights of public employees. Public employees may self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Quoted in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in 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).

Collateral references. — Right of public employees to strike or engage in work stoppage, 37 ALR3d 1147.

Right of public employees to form or join a labor organization affiliated with a federation of trade unions or which includes private employees, 40 ALR3d 728.

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

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees, 22 ALR4th 1103.

Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 — 23.40.260, 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. (§ 2 ch 113 SLA 1972)

Sec. 23.40.100. Representatives and elections. (a) The 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 public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

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

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, it shall direct an election by secret

desire to be represented and shall certify the results of the election. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the regulations of the labor relations agency or an election in a bargaining unit agreed upon by the parties. The labor relations agency shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

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

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

(e) An election may not be directed by the 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, a collective bargaining agreement may not 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. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Halling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.110. Unfair labor practices. (a) A public employer or an agent of a public employer may not

(1) interfere, restrain or coerce an employee in the exercise of the employee's rights guaranteed in AS 23.40.080;

(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 the employee has signed or filed an affidavit, petition or complaint or given testimony under AS 23.40.070 — 23.40.260;

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

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

(1) membership in the organization which represents the unit on or after the 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 23.40.080, or

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

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of AS 23.40.070 — 23.40.260 as the exclusive representative of employees in an appropriate unit. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Similarity to federal act. — Paragraphs (a)(1) and (a)(3) are substantially similar to § 8(a)(1) and (a)(3) of the Labor Management Relations Act, 29 U.S.C. § 158(a)(1) and (a)(3). Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

For establishment of violation of 29 U.S.C. § 158(a)(3), see Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Derivative violation of (a)(1) from violation of (a)(3). — A violation of paragraph (a)(3) derivatively results in a violation of (a)(1) as well since employer discrimination in hiring, firing or working conditions also coerces or restrains employees in their rights to organize, bargain collectively and engage in other concerted activities. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Refusal to ratify tentative agreement. — It is permissible for an employer to refuse to ratify a tentative collective bargaining agreement in accordance with an agreed upon ground rule, so long as the employer's failure to ratify does not appear to have resulted from the employer's intent to string out negotiations and avoid reaching agreement. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6681), 669 P.2d 1299 (1983).

Work rule changes. — Since employers are free to make unilateral changes on matters which fall outside mandatory subjects of bargaining, the labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of

Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Burden on union. — A union is required to demonstrate that an applicant was denied employment because of some antiunion motive on the part of the employer. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

The union did not establish the presence of an antiunion motive on the part of the university where there was testimony that the applicant was not hired because more qualified applicants were available and ultimately because a lack of student interest caused the class to be cancelled and where although the union presented correspondence which demonstrated that the university considered the applicant's unavailability (because of his position as a negotiator) in determining his qualification, there was unequivocal testimony that it was the mere fact of the applicant's unavailability, not the reason therefor, which was considered in this regard. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Quoted in State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Cited in Hicklin v. Orbeck, Sup. Ct. Op. No. 1435 (File No. 3025), 565 P.2d 159 (1977).

Sec. 23.40.120. Investigation and conciliation of complaints. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by AS 23.40.110, or a written accusation that a person subject to AS 23.40.070 — 23.40.260 has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.130. Complaint and accusation. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 23.40.070 — 23.40.260, 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). (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.140. Orders and decisions. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring the person to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of AS 23.40.070 — 23.40.260. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Distinction between mandatory and permissive bargaining subjects. — This section requires the labor relations agency to distinguish between mandatory and permissive bargaining subjects in its remedial orders. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

While this section authorizes the agency to issue cease and desist orders barring prohibited practices, and to order affirmative action which will carry out the provisions of the Public Employment Relations Act, it does not require employers to bring to the bargaining table subjects other than wages, hours, and other terms and conditions of employment. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

The labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.150. Enforcement by injunction. The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond. (§ 2 ch 113 SLA 1972)

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.160. Power to investigate and compel testimony. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of AS 23.40.070 — 23.40.260, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under AS 23.40.070 — 23.40.260, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring the person to comply with the subpoena. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.170. Regulations. The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of AS 23.40.070 — 23.40.260. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

Stated in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

Sec. 23.40.180. Penalty for violation of order or decision. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than $500. (§ 2 ch 113 SLA 1972)

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.190. Mediation. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings. (§ 2 ch 113 SLA 1972)

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

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

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

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to

threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

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

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

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference. (§ 2 ch 113 SLA 1972)

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).

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

II. ARBITRATION.

Not exclusive remedy. — The fact that an arbitrator cannot grant the relief afforded by a statute is an indication that 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. 23.40.210. Agreement. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a pay plan designed to provide for a cost-of-living differential between the salaries paid employees residing in the state and employees residing outside the state. The plan shall provide that the salaries paid, as of August 26, 1977, to employees residing outside the state shall remain unchanged until the difference between those salaries and the salaries paid employees residing in the state reflects the difference between the cost of living in Alaska and living in Seattle, Washington. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency. (§ 2 ch 113 SLA 1972; am § 1 ch 62 SLA 1977)

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.212. Agreement with the Board of Regents. (a) The Board of Regents of the University of Alaska may delegate to the Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

(b) The Department of Administration shall participate in the negotiations between the Board of Regents and an organization. An agreement between the board and an organization requires the approval of the department. (§ 1 ch 148 SLA 1978)

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

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The

is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984)

Effect of amendments. — The 1984 amendment, effective February 24, 1984, added subsection (b).

Opinions of attorney general. — To the extent the cost of negotiated group life and health insurance coverage exceeds what the State would have paid under its employer-sponsored plan, the negotiated coverage is subject to legislative approval under this section. January 23, 1978, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Cited in Warwick v. State ex rel. Chance, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (1976).

Sec. 23.40.220. Labor or employee organization dues and employee benefits, deduction and authorization. Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative. (§ 2 ch 113 SLA 1972)

Sec. 23.40.225. Exemption from Public Employment Relations Act. Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 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 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 labor relations agency. (§ 1 ch 85 SLA 1976)

Editor's notes. — Section 2, ch. 85, SLA 1976 provides: "If any portion of AS 23.40.225 is declared unconstitutional or void by a court of competent jurisdiction, then that entire section is void."

Opinions of attorney general. — state employee in unit who does no religion is entitle his religious oppo union dues. Janu Gen.

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Sec. 23.40.230. Assistance by Department of Labor. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conduct of elections and investigating unfair labor practices. (§ 2 ch 113 SLA 1972)

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

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3363), 591 P.2d 1292 (1979).

Sec. 23.40.245. Postsecondary student involvement in collective bargaining. (a) When a bargaining unit includes members of the faculty or other employees of a public institution of postsecondary education, the public employer and the representative of the bargaining unit shall permit student representatives of that institution to

(1) attend and observe all meetings between the public employer and the representative of the bargaining unit which are involved with collective bargaining;

(2) have access to all documents pertaining to collective bargaining exchanged by the employer and the representative of the bargaining unit, including copies of transcripts of the meetings.

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

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

(d) When the institutions are negotiating with bargaining units representing more than one major geographic area of the state, the student representatives shall be from those areas. No more than three student representatives may attend meetings at any time. (§ 1 ch 148 SLA 1978)

Sec. 23.40.250. Definitions. In AS 23.40.070 — 23.40.260, unless the context otherwise requires,

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

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in AS 23.40.070 — 23.40.260;

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

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees.

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

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

(7) "public employer" means the state or a political subdivision of the state, including without limitation, a town, city, borough, district

ity or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(8) "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; am § 2 ch 10 SLA 1984)

Revisor's notes. — In 1984, paragraph (8), added in 1984, was renumbered as paragraph (4) and former paragraphs (4)-(7) were renumbered as present paragraphs (5)-(8) to retain alphabetical order.

Effect of amendments. — The 1984 amendment, effective February 24, 1984, added paragraph (4). (See revisor's notes.)

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 for 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). Halling 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. Halling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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).

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. 3800), 590 P.2d 437

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).

The legislature did not intend to bind the regional educational attendance areas to the employment contracts of their predecessor, the Alaska State Operated School System. 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).

Although the Alaska State Operated School System, the predecessor to the regional educational attendance areas, was a state agency subject to this article and not a "school district" whose noncertificated employees are exempt under paragraph (5), and therefore did not have a "right" to refuse to bargain which it could waive. Even if the Alaska State Operated School System had waived its right to claim exemption under this article, it does not follow that the regional educational attendance areas also have waived their right to assert the statutory exemption, since the regional educational attendance areas are not simply successors to the Alaska State Operated School System but are independent entities which have been given broad powers to run their individual school districts as they see fit. 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).

Jurisdiction to determine applicability of collective bargaining agreement. — Because the noncertificated employees of school districts are not employees of the state directly or public employees under this article neither the state personnel board nor the Department of Labor has jurisdiction to determine the applicability of a collective bargaining agreement to 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).

Quoted in Carter v. Alaska Pub Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

Sec. 23.40.260. Short title. AS 23.40.070 — 23.40.260 may be cited as the Public Employment Relations Act. (§ 2 ch 113 SLA 1972)

Chapter 45. General Provisions.

Section
10. Definitions

Sec. 23.45.010. Definitions. In this title

(1) "commissioner" means the commissioner of labor;

(2) "department" means the Department of Labor;

(3) "wages" means, except for the purposes of construing AS 23.20 and AS 23.30

(A) the basic hourly rate of pay; and

(B) all other compensation to an employee for services performed, including revocable and irrevocable contributions made by an employer to a trustee or third party for the benefit of the employee and contributions which may be reasonably anticipated in providing benefits to employees under an enforceable agreement to provide medical care, compensation for death or injury, or other fringe benefits. (am § 1 ch 115 SLA 1966)

Introduced by: Council Member Cleworth
Date: March 28, 1988

RESOLUTION NO. 2954

A RESOLUTION ENDORSING SENATE BILL 372 INTRODUCED BY SENATOR KEN FANNING TO ALLOW MUNICIPALITIES TO OPT OUT OF PERA.

WHEREAS, Senator Ken Fanning has introduced SB 372 in the state legislature to amend the Alaska Public Employee Relations Act (PERA), AS 23,40 et. seq., to allow a municipality to exempt itself from PERA; and

WHEREAS, a municipality should have the option to exempt itself if the municipality determines it to be in its best interest to do so; and

WHEREAS, the Alaska Municipal League supports this legislation; and

WHEREAS, SB 372 would provide the City of Fairbanks with this option.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, that the city council voice its support for SB 372 to amend the Public Employee Relations Act, AS 23.40, and encourage all Alaska legislators to pass the bill to allow municipalities to exempt themselves from PERA and that the city clerk provide Senator Fanning and the legislature with copies of this resolution.

PASSED and APPROVED this 28th day of March, 1988.

BILL WALLEY, Mayor

ATTEST:

CARMA B. ROBERSON, City Clerk

Substitute

LAWS OF ALASKA

1972

Source: HB 587 am S

Chapter No. 113

AN ACT

Relating to wages, hours and working arrangements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.10.140 is amended to read:

Sec. 23.10.140. PENALTY. An employer who violates a provision of secs. 50 - 150 of this chapter, or of any regulation or order of the commissioner issued under it, upon conviction is punishable by a fine of not less than $100 nor more than $2,000, or by imprisonment for not less than 10 nor more than 90 days, or by both. Each day a violation occurs constitutes a separate offense.

* Sec. 2. AS 23.40 is amended by adding new sections to read:

ARTICLE 2. PUBLIC EMPLOYMENT RELATIONS ACT.

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

harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

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

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

(3) maintaining merit system principles among public employees.

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

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

Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) The labor relations 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 public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

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

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice.

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

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

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

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

Sec. 23.40.110. UNFAIR LABOR PRACTICES. (a) A public employer or his agent may not

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

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

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

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

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

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

(1) membership in the organization which represents the unit on or after the 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 agent for the expense of representing the members of the bargaining unit.

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

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in sec. 80 of this chapter, or

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

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

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

Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with secs. 70 - 260 of this chapter, 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. 23.40.140. ORDERS AND DECISIONS. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative

action which will carry out the provisions of secs. 70 - 260 of this chapter. If the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

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

Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of secs. 70 - 260 of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

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

Sec. 23.40.170. REGULATIONS. The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of secs. 70 - 260 of this chapter.

Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than $500.

Sec. 23.40.190. MEDIATION. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public employer and an organization, the labor relations agency may appoint a competent, impartial, disinterested person to act as mediator in any dispute either on its own initiative or on the request of one of the parties to the dispute. The parties may also select a mediator by agreement or mutual consent. It is the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the labor relations agency has any power of compulsion in mediation proceedings.

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

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

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

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

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

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

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

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute

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;

(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 secs. 70 - 260 of this chapter;

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

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

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

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

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

Sec. 23.40.260. SHORT TITLE. Secs. 70 - 260 of this chapter may be cited as the Public Employment Relations Act.

* Sec. 3. AS 09.43.010 is amended to read:

Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF CHAPTER. 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 inequity for the revocation of a contract. However, this chapter does not apply to a labor-management contract unless it is incorporated into the contract by reference or its application provided for by statute.

* Sec. 4. This Act is applicable to organized boroughs and

arising from interpretation or application of a collective bargaining agreement to arbitration.

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

Sec. 23.40.210. AGREEMENT. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a 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.

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

Sec. 23.40.220. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative.

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

Sec. 23.40.240. EFFECT ON EXISTING UNITS, REPRESENTATIVES AND AGREEMENTS. Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining agreement if the unit, recognition, or agreement is in effect at the time this Act becomes effective.

Sec. 23.40.250. DEFINITIONS. In secs. 70 - 260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating

political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.

* Sec. 5. AS 23.40.010 is repealed.

Approved by governor: June 7, 1972
Actual effective date: September 5, 1972