

HB

1

1-LS0020\H
Cramer✓
3/10/99

CS FOR HOUSE BILL NO. 1(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE BRICE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to collective bargaining agreements and arbitration awards of
2 municipal police and fire protection employees."

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

4 * Section 1. AS 23.40.215(a) is amended to read:

5 (a) Except as provided in (d) of this section, the [THE] monetary terms of
6 any agreement entered into under AS 23.40.070 - 23.40.260 are subject to funding
7 through legislative appropriation.

8 * Sec. 2. AS 23.40.215 is amended by adding a new subsection to read:

9 (d) An agreement negotiated by a municipal public employer and a bargaining
10 organization as the representative of police or fire protection employees that has been
11 approved by vote of the governing body of the municipality and by the bargaining
12 organization constitutes a contract between the municipality and the bargaining
13 organization. The monetary terms of an arbitration award made under AS 23.40.200(b)
14 as a result of an impasse or deadlock in collective bargaining between a municipal

Municipality of Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-7968
Fax: (907) 343-7978
<http://www.ci.anchorage.ak.us>

Rick Mystrom, Mayor

March 10, 1999

OFFICE OF THE EXECUTIVE MANAGER

Representative Fred Dyson
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: House Bill 1, "Collective Bargaining Agreements & Arbitration Awards"

Dear Rep. Dyson:

This is in response to your memorandum of February 25 regarding our position on the referenced bill.

The Municipality of Anchorage does not bargain under PERA, so there would be no direct effect on existing bargaining agreements. However, we are concerned that the bill represents erosion of a crucial municipal power, the power of appropriation.

The Municipality has been confronted with several arbitration awards recently that have attempted to go far beyond the authority envisioned by the Municipality or the various unions. This bill would give an arbitrator powers that was not contemplated by either party to the contract and would have direct financial impacts on a municipality's operations.

There may also be constitutional issues surrounding the bill. Article IX, Section 1 says, "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away..." Clearly this bill strips from the assembly the power to tax and gives it to an arbitrator.

We hope you will consider these points as you consider this bill. While it may be well intentioned, it clearly causes major problems for municipalities.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Rogers". The signature is written in a cursive, flowing style.

Tim Rogers
Legislative Program Coordinator

Cc: House CRA members

1-LS0020\H
Cramer ✓
3/10/99

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12 organization constitutes a contract between the municipality and the bargaining
13 organization. The monetary terms of an arbitration award made under AS 23.40.200(b)
14 as a result of an impasse or deadlock in collective bargaining between a municipal

1 public employer and police or fire protection employees shall be treated as a contract
2 between the municipality and the bargaining organization representing the police or fire
3 protection employees.

4 * Sec. 3. This Act applies to agreements reached on or after the effective date of this Act
5 and to arbitration awards in cases of deadlocks or impasses submitted to arbitration under
6 AS 23.40.200(b) on or after the effective date of this Act.

Subject: HB1

Date: Tue, 09 Mar 1999 11:16:13 -0900

From: The Taylors <gctaylor@pci.net>

To: Representative_Andrew_Halcro@legis.state.ak.us

3/9/1999

Dear Representative Halco,

I am writing to you to urge your support of HB1, a bill that would provide for true binding arbitration for municipal class 1 employees. Your committee is currently considering this bill.

Passage of this legislation is important to me as a member for the Fairbanks Fire Fighters Association.

I urge you to vote for this bill because it would close the loophole in PERA and make both parties have to play by the same rules when an issue is submitted to binding arbitration. Currently, the municipality can wait for the decision by a neutral third party arbitrator, then if the lose, choose not to fund the decision.

I would appreciate your support of this position, and would like to know your views on this issue and how you intend to vote on this bill

Thank you for taking the time to consider my views.

Sincerely,

Greg Taylor
PO Box 82437
Fairbanks, AK 99708
gctaylor@pci.net
(907) 479-4574
Fax (907) 452-2322

Introduced By: Council Member Cleworth
Date: January 25, 1999

RESOLUTION NO. 3803
A RESOLUTION RELATING TO HOUSE BILL No. 1,
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Public Employment Relations Act ("PERA") provides that the monetary terms of a collective bargaining agreement for state employees are subject to funding by the legislature, and

WHEREAS, as a result of litigation initiated by the City, the Alaska Supreme Court ruled that the City Council has the same authority regarding the funding of City collective bargaining agreements, a ruling which provides an opportunity to control spending, and

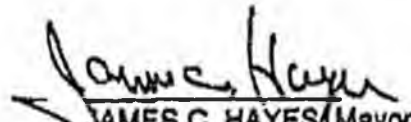
WHEREAS, House Bill No. 1, in its current form would eliminate the City Council's authority regarding funding of City collective bargaining agreements - without changing the Legislature's authority regarding state contracts, and

WHEREAS, passage of House Bill No. 1 would reduce City Council control over labor costs.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA as follows:

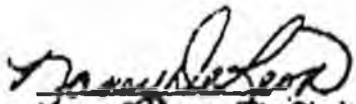
Section 1. The City Council opposes adoption of House Bill No. 1, unless the Bill is amended to reinstate the right of a municipality to "opt out" of PERA by ordinance as other municipalities have been permitted.

Section 2. That the effective date of this Resolution shall be the 25th day of January 1999.


JAMES C. HAYES, Mayor

AYES:
NAYS:
ABSTAIN:
ABSENT:
ADOPTED: 1/25/99

ATTEST:


Nancy D. Leon, City Clerk

APPROVED AS TO FORM:

HERBERT P. KUSS, City Attorney

1-LS0020\G.1

Cramer

3/5/99

Brice

3/5/99

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 1

1 Page 1, lines 10 - 12:

2 Delete "representing employees of the municipality who are members of the class in
3 AS 23.40.200(a)(1)"

4 Insert "as the representative of police or fire protection employees"

5 Page 2, lines 1 - 2:

6 Delete "employees of the municipality who are members of the class in
7 AS 23.40.200(a)(1)"

8 Insert "police or fire protection employees"

PUBLIC SAFETY EMPLOYEES ASSOCIATION

4300 Boniface Parkway, #116
Anchorage, AK 99504-4387
(907)337-1979 FAX:(907)337-1753

House Labor & Commerce Committee
Alaska State Legislature
Juneau, AK 99801-1182

February 25, 1999

Dear Representatives Rokeberg, Halero, Harris Murkowski, Sanders, Brice and Cissna.

The Public Safety Employees Association supports the passage of House Bill one.

Our Association represents several Municipal employee groups. One of these groups currently collectively bargains under the Public Employee Relations Act (PERA) as class I employees.

Under PERA, class I employees, who are mainly made up of police officers, fire fighters, correctional officers, and probation officers, cannot strike should they reach an impasse in negotiating a contract. Under PERA, these class I public safety employees have the right to binding arbitration should an impasse occur. The right of binding arbitration is in Lieu of not being able to strike.

The Alaska Supreme Court has ruled that PERA, in it's current form, does not necessarily bind the legislative body of a municipality or city to follow an arbitrator's decision in the case of monetarily funding a contract.

This effectively means that there is no "binding arbitration". There is only an arbitrator's decision, which according to the intent of this law, both parties are supposed to recognize as part of the contract in whole. Under this current miscue in the law, the employer can essentially pick and choose which parts of the arbitrator's decision they like, and simply ignore the monetary parts. This only tends to lead to never ending, unproductive contract negotiations. There is no finality to any meaningful collective bargaining.

HB 1 addresses this issue by giving the law the intent it needs to be fair to the employer and employee by making sure both parties adhere to the rules.

I urge you to pass HB 1 out of your committee, and begin restoring good faith collective bargaining for class I municipal and city employees.

Sincerely,

Craig Persson
PSEA Legislative Liaison



FAIRBANKS POLICE DEPARTMENT EMPLOYEES ASSOCIATION

856 7TH AVENUE FAIRBANKS ALASKA 99701



Representative Tom Brice
Alaska Legislature
State Capitol Building
Room 426
Juneau, Alaska 99801

February 6, 1999

Re: HBI

Representative Brice,

The Fairbanks Police Department Employees Association strongly supports HBI.

The present language in the Public Employees Relations Act (PERA) does not provide for a means to compel agreement between municipal employers and class one (police and fire) employees. If an impasse occurs in negotiations there must be a way to resolve the differences. For most public and private employees one tool available to break an impasse is the ability to strike. Although the use of a strike action is seldom used, the employer knows that this is a real possibility thereby compelling serious negotiations.

The original architects of PERA recognized that the services provided by some employees, primarily police and fire, are of such an essential nature that the ability to strike should not be an option for these class one employees. The Fairbanks Police Department Employees Association is in agreement with this belief. The designers of PERA recognized the dilemma created by this restriction and provided for differences between the parties to be settled through binding interest arbitration. In interest arbitration, the parties present their positions to a neutral arbitrator, and that arbitrator then reaches a decision based on the information presented. The decision of the arbitrator is then binding on both parties. Under the present language of PERA the municipal public employer is not compelled to fund the arbitrator's award. Thus, binding

employees the municipal employer may implement that award. This creates an unfair relationship between the employer and employees, one that is strongly in favor of the employer. The employer is under no obligation to abide by the arbitrator's decision while the employees have no such ability. What was intended to be a level playing field is now tilted at a very steep angle in favor of the employer. What was intended to be binding arbitration is binding only on the employees.

As police officers we take great pride in the profession we have chosen. We are called upon every day to risk our lives to protect the citizens of our community, including being asked to make the ultimate sacrifice and lay down our lives. This is our job and we accept the risks involved. We strive to provide the highest level of service to the community that we can. We do not want, nor are we asking for special treatment. What we want is a level playing field when it comes time to negotiate contracts. HBI would provide that level playing field and make the arbitration process binding on both parties.

The collective bargaining agreement between our Association and the City of Fairbanks expired on June 30, 1993. Negotiations continued on a successor agreement until impasse was reached over wages to be paid officers. No settlement could be negotiated and the matter was heard before an arbitrator. The arbitrator ruled in favor of the Association. The City of Fairbanks refused to fund the arbitrator's award and has gone as far as the Alaska Supreme Court in defending their 'right' not to abide by the arbitrator's decision.

The City of Fairbanks has used the same tactics in dealing with their fire department employees. Wages for starting fire fighters has remained at the same level since 1990. There exists no incentive for the City to



FAIRBANKS POLICE DEPARTMENT EMPLOYEES ASSOCIATION

1000 7TH AVENUE FAIRBANKS ALASKA 99701



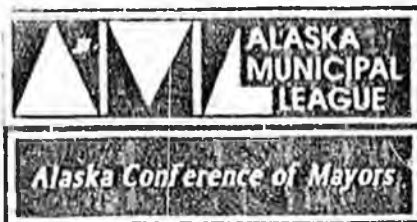
negotiate in good faith. They know that should a matter go to arbitration they can only win and we can only lose. The City appears committed to continuing to exercise what they see as their right under PERA to negotiate in bad faith.

We support HBI in the interest of true collective bargaining. Those who oppose this bill are opposed to the very concept of collective bargaining.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew L. Soden".

Matthew L. Soden
President
Fairbanks Police Department Employees Association



217 Second Street Suite 200 • Juneau, Alaska 99801 • Tel (907)586-1325 Fax (907)-463-5480

March 5, 1999

Representative Andrew Halcro, Co-Chair
Representative John Harris, Co-Chair
House Community & Regional Affairs Committee
State Capitol
Juneau, AK 99811

Dear Co-Chairs Halcro and Harris:

Thank you for the opportunity to discuss HB 1 with our members to develop a position on the legislation. We discussed the issue with several municipal attorneys, other municipal officials, the state Department of Law, and a union representative.

On March 5, the Education and Local Government Subcommittee of the AML Legislative Committee met by teleconference and unanimously voted to:

1. Oppose the adoption HB 1, primarily because only an elected state or local legislative body can make appropriation or tax decisions. This is both a constitutional issue, as well as a practical issue in regard to the public expectation that the "best towns" with their elected representatives.
2. Suggest the option of developing a new approach by creating standards for interest arbitrators to improve current state statute. This would reduce instances when state or local governing bodies feel that an interest arbitrator's decision did not adequately consider the tax and service impacts of a decision or other critical issues.

Labor negotiations are obviously a highly complex and important area of law. In regard to the power of elected bodies to not fund an interest arbitrator's decision, the current system is balanced by the election process. While a council, assembly, or legislature cannot be forced to appropriate funds, the elected body is, of course, subject to the will of the voters. Therefore, non-appropriation powers are never exercised lightly, whether by the state legislature or a local governing body.

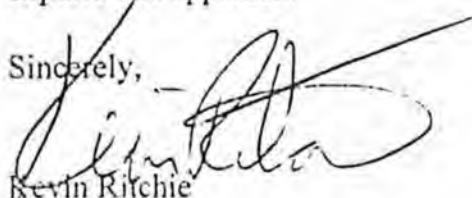
The Constitution says (Art IX sec 1), "The power of taxation shall never be surrendered. This power shall not be suspended or contracted away....". The bill gives the power to determine a local appropriation or public service levels to an arbitrator. This could also essentially be the power to tax. Alaska (as well as other states) guards the power of

appropriation, and has asserted the power to non-appropriate negotiated contracts and even court judgments, when deemed necessary.

Current state law presently sets no standards for interest arbitrators. Many states have such standards. If standards were set (e.g. consider local tax rates, etc.) it could reduce the occurrence of arbitrator's decisions that conflict with local appropriation and tax policy. An arbitrator may consider whatever issues they want to and many may have little or no knowledge of local financial issues.

The development of draft changes to state statutes regarding interest arbitration would require significant work and negotiation by state and local government and labor officials. AML would be pleased to participate in this effort if the decision is made to explore this approach.

Sincerely,



Kevin Ritchie
Executive Director

cc: Representative Tom Brice
AML Board of Directors
Legislative Committee Chairs
Education and Local Government Subcommittee

D:\KEVIN\Legcomm99\399HB1LetterHCRA

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Sincerely,



Kevin Ritchie
Executive Director

cc: Representative Tom Brice
AML Board of Directors
Legislative Committee Chairs
Education and Local Government Subcommittee

Introduced By: Council Member Cleworth
Date: January 25, 1999

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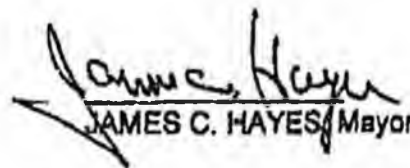
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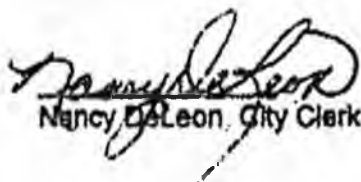
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JAMES C. HAYES Mayor

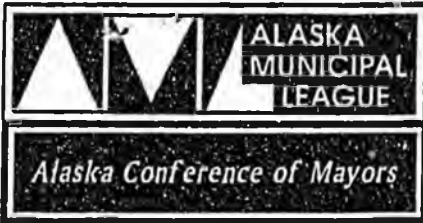
AYES:
NAYS:
ABSTAIN:
ABSENT:
ADOPTED: 1/25/99

ATTEST:


Nancy DeLeon, City Clerk

APPROVED AS TO FORM:

HERBERT P. KUSS, City Attorney



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907)586-1325, Fax (907)-463-5480

March 5, 1999

Representative Andrew Halcro, Co-Chair
Representative John Harris, Co-Chair
House Community & Regional Affairs Committee
State Capitol
Juneau, AK 99811

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The development of draft changes to state statutes regarding interest arbitration would require significant work and negotiation by state and local government and labor officials. AML would be pleased to participate in this effort if the decision is made to explore this approach.

Sincerely,



Kevin Ritchie
Executive Director

cc: Representative Tom Brice
AML Board of Directors
Legislative Committee Chairs
Education and Local Government Subcommittee

02/25/99
09:52:48

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (ALL PARTICIPANTS)

LTN1150
BY:FBX
FOR:FBX

TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LOCATION: FAIRBANKS

HB	1	MR.	MARK	DRYGAS	FBX FIRE FIGHTER	TESTIFY
HB	1	MR.	DAN	HOFFMAN	FBX POLICE DEPT	TESTIFY
HB	1	MR.	MATT	SODEN	FNX POLICE DEPT	TESTIFY
HB	1	MR.	RANDY	COFFEY	FBX POLICE DEPT	TESTIFY
HB	1	MR.	DAVE	MAITLEN	FBX POLICE DEPT	TESTIFY
HB	1	MR.	PERRY	WILLIAMSON	FBX POLICE DEPT	TESTIFY
HB	1	MR.	LEONARD	BROWN		TESTIFY
HB	1	MR.	PATRICK	COLE	CITY OF FBX	TESTIFY

02/25/99
08:44:24

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)

LTN1150
BY:JNU
FOR:FBX

TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LOCATION: FAIRBANKS

HB	1	MR.	MARK	DRYGAS ✓	FBX FIRE FIGHTER	TESTIFY
HB	1	MR.	DAN	HOFFMAN ✓	FBX POLICE DEPT	TESTIFY
HB	1	MR.	MATT	SODEN ✓	FNX POLICE DEPT	TESTIFY
HB	1	MR.	RANDY	COFFEY ✓	FBX POLICE DEPT	TESTIFY
HB	1	MR.	DAVE	MAITLEN ✓	FBX POLICE DEPT	TESTIFY
HB	1	MR.	PERRY	WILLIAMSON ✓	FBX POLICE DEPT	TESTIFY
HB	1	MR.	LEONARD	BROWN ✓		TESTIFY

MOST CURRENT

02/25/99
08:00:33

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90208 SCHEDULED FOR:02/25/99 08:00 TO 10:00
PUBLIC HEARING HOUSE COMMUNITY AND REGIONAL AFFAIRS

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE/

HB 76

STEVE

VAN SANT

TESTIFY

LOCATION: HOMER/

~~HB 19~~

~~MR~~

~~JIM~~

~~BRADY~~

~~INDEPENT LIVING TESTIFY~~



Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293

While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

REPRESENTATIVE TOM BRICE SPONSOR STATEMENT for HB 1

HB1 puts meaning back into the term binding arbitration. There are two tools available to employees to achieve finality when bargaining collectively, binding arbitration and the strike. Class (a) (1) public employees are not allowed to strike by law. Instead they have been statutorily given the right to go through binding arbitration as an alternative.

Problems arise when a contract is placed before a governing board such as a city council, which either approve or disapprove the contract. If the council disapproves the contract, the employees have no avenue to seek redress. They are left without a contract. Employees that have the right to strike have that option to compel further discussion of their contracts. HB 1 will give a contract to those employees who do not have legal authority to strike.





Representative Tom Brice

ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Memorandum

To: Representative Andrew Halcro, Co-chairman Community & Regional Affairs

From: Representative Tom Brice 

Date: January 26, 1999

RE: HB 1: Municipal collective bargaining contracts

I respectfully request that this bill be scheduled for a hearing in your committee. Attached are all the pertinent backup materials requested.






Representative Tom Brice
ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205
Fairbanks, AK 99701
907-456-7423 / Fax: 451-9293
While in Juneau
State Capitol
Juneau, AK 99801-1182
907-465-3466

Memorandum

To: Representative Andrew Halcro, Co-chairman, Community & Regional Affairs
From: Representative Tom Brice 
Date: January 26, 1999
Re: Sectional Analysis, HB 1

Section 1 amends AS 23.40.215 labor funding and legislative approval, to provide that there is an exception to the section listed under a new subsection (d).

Section 2 is subsection (d) of 23.40.215. It states that an agreement negotiated between class (a) (1) public employees and a municipality constitutes a contract whether or not it is funded. It also specifies that if the two groups are not able to come to an agreement and call in an arbitrator, the monetary terms of an arbitration award constitutes a contract, whether or not they are funded.

Section 3 provides that the act applies to agreements and arbitration that take place after the effective date.



FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to collective bargaining BRU: _____
agreements and arbitration awards Component: _____
 Sponsor: REPRESENTATIVE BRICE
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
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 (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709
 Division: Division of Administrative Services Date: 2/22/99
 Approved by Commissioner *Nina Miller* Date: 2/22/99
 Agency: Community & Regional Affairs

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION

4501 South Bragaw Street

Anchorage, Alaska 99507-1599

Representative Tom Brice
Alaska Legislature
State Capital Building
Room 426
Juneau, Alaska 99801

Feb13,1999

Re: HB1

Dear Representative Brice:

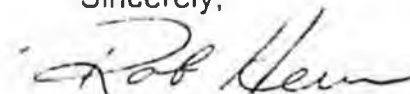
The Anchorage Police Department Employees Association strongly supports HB1.

As the sole representative for law enforcement professionals employed by the Municipality of Anchorage and not subject to the parameters of the Public Employees Relations Act (PERA), we presently bargain collectively under Anchorage Municipal Code 3.70, which provides for binding arbitration for public safety employees. This ordinance, with its provisions for binding arbitration as a means of impasse resolution, has ensured stable and continued deliverance of public safety services and allowed for a fair and equitable determination of wages, hours and working conditions.

Though the APDEA has used interest binding arbitration as a culmination of the collective bargaining process only twice since 1975, both times it was before reputable arbitrators who were mutually selected by the parties. Those arbitrators considered social and economic impacts, surveys of comparable jurisdictions, and other evidence put forth in formal fact finding hearings. The arbitrators then determined which party had the strongest standing, based on the findings of fact, on an issue by issue basis.

While the spirit of the law is intended to guarantee binding acceptance of the arbitrator's decision by both parties, such intent is worthless without inherently guaranteed funding to implement the decision. HB1 would encourage both parties to bargain in good faith, and provide to class one employees of municipalities subject to the parameters of PERA assurances that an arbitrated agreement under PERA is, indeed, binding on both parties.

Sincerely,



Rob Heun
President, APDEA



Fairbanks Fire Fighters Association

Local 1324

International Association of Fire Fighters

POST OFFICE BOX 71739, FAIRBANKS, ALASKA 99707

Representative Tom Brice
Alaska Legislature
State Capitol Building
Room 426
Juneau, Alaska 99801

February 3, 1999

Re: HB1

Representative Brice,

The Fairbanks Fire Fighters Association strongly supports HB1.

The present language in the Public Employees Relations Act (PERA) does not provide for a means to compel agreement between municipal employers and class one (police and fire) employees. If the parties negotiate to impasse, there must be a way to resolve the differences. For most public and private employees this can involve a strike. Although the use of a strike action is seldom used, the employer knows this is a real possibility and therefore compels serious negotiations.

The original architects of PERA recognized that the services provided by some employees, primarily police and fire, are of such an essential nature that the ability to strike should not be an option available for these 'class one' employees. On this point, the Fairbanks Fire Fighters Association could not agree more. So, how do we break impasse in bargaining? The designers of PERA also recognized this dilemma and provided for differences between the parties to be settled through binding interest arbitration. In interest arbitration, the parties present their positions to a neutral arbitrator, and that arbitrator then reaches a decision. This decision is then binding on the parties. Now comes the need for HB1 – under the present language in PERA, the municipal public employer is not compelled to fund the arbitrator's award. Thus, binding arbitration is not binding on the employer. However, should the arbitrator decide to reduce the pay or benefits of the employees, his decision is now binding. This is not fair. Obviously, there is no incentive for a class one employee group to pursue 'binding' arbitration. The playing field, which was intended to be level, is now tilted, at a very steep angle, in favor of the employer. What was intended to be collective bargaining is reduced to collective begging.

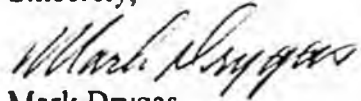
As firefighters, we take great pride in the profession we have chosen. We risk our lives daily to save lives and protect property. This is our job, and we strive hard to provide the best service possible to the public we serve. We do not ask for special treatment. What we want is a level playing field. HB1 would do just that – level the field. It certainly does not shift the balance in favor of employee groups as some would argue.

The collective bargaining agreement between our Association and the City of Fairbanks expired on December 31, 1995. Negotiations for a successor agreement have continued for more than three years. Our last wage rate increase was in 1990. At that time, a starting firefighter made \$11.69 per hour. In 1999, a starting firefighter earns the same \$11.69 per hour. There exists no incentive for the City to negotiate in good faith. They know that if we go to arbitration, they can only win and we can only lose. At the negotiation table, the City negotiators have repeatedly reminded us of this in an effort to extract concessions from our Members.

We are not alone. The City of Fairbanks has used the same tactics in dealing with their police employees. The City went as far as going to the Alaska Supreme Court in defending their 'right', under PERA, to not fund an arbitrator's award and thereby continuing what they see as their right to bargain in bad faith.

We support HB1 in the interest of true collective bargaining. Those that oppose this bill are opposed to the very concept of collective bargaining.

Sincerely,



Mark Drygas
Business Agent

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THE SUPREME COURT OF THE STATE OF ALASKA

FAIRBANKS POLICE DEPARTMENT)
CHAPTER, ALASKA PUBLIC)
EMPLOYEES ASSOCIATION,)

Appellant,)

v.)

CITY OF FAIRBANKS,)

Appellee.)

Supreme Court No. S-7060

Superior Court No.
4FA-94-865 CI

O P I N I O N

[No. 4365 - June 28, 1996]

NOTICE TO COUNSEL: This opinion will be released to the press and public at 12:30 p.m. (Alaska time) on the date indicated. This copy is provided to counsel of record in advance. Plus to their release time, please do not inform persons other than your clients in this case of the outcome.

Clerk of the Appellate Courts

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Mary E. Greene, Judge.

Appearances: William K. Jermain and James A. Gasper, Jermain, Dunnagan & Owens, P.C., Anchorage, for Appellant. Paul J. Ewers, Deputy City Attorney, and Herbert P. Kuss, City Attorney, Fairbanks, for Appellee.

Before: Compton, Chief Justice, Rabinowitz, Matthews, Eastaugh, Justices, and Shortell, Justice, pro tem.

SHORTELL, Justice pro tem.

RABINOWITZ, Justice, concurring.

I. INTRODUCTION

A chapter of the Alaska Public Employees Association (APEA), a labor organization that represents employees of the Fairbanks Police Department, sued the City of Fairbanks (the City)

Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

for failure to comply with the result of mandatory interest arbitration during collective bargaining between the parties. APEA appeals the superior court's grant of summary judgment in favor of the City. We affirm the superior court's decision.

II. FACTS AND PROCEEDINGS

APEA exclusively represents certain employees of the Fairbanks Police Department. The collective bargaining relationship between APEA and the City is governed by the Public Employment Relations Act (PERA), AS 23.40.070 - .260.

PERA divides public employees into three classes. AS 23.40.200(a). APEA represents police employees, who by statute belong to the first class: those employed to perform "services which may not be given up for even the shortest period of time." AS 23.40.200(a)(1), .200(b). PERA flatly prohibits this class of employees from engaging in strikes and compels submission of their unresolved collective bargaining issues to arbitration. AS 23.40.200(b).

In collective bargaining that began in 1990, APEA and the City could not resolve three outstanding issues, one of which concerned meal and clothing (or uniform) allowances. Under the terms of PERA, the outstanding issues were submitted to arbitration. On May 8, 1991, the arbitrator, John Abernathy, issued a decision. In addition to awarding pay raises, Abernathy awarded four percent increases in the meal and clothing allowances to become effective on July 1, 1991 and on July 1, 1992.

Under PERA, monetary terms of collective bargaining agreements are subject to legislative appropriation. AS 23.40.215(a). The City's executive branch sought and obtained approval for the pay increases from the Fairbanks City Council (the Council). The Council never funded the future meal and clothing allowance increases.

In 1993 a police employee noticed that employees had not received the increases in meal and clothing allowances. APEA demanded them. The City responded that under § 215(a) of PERA, implementation of the arbitrator's award is subject to legislative appropriation. Because the Council had never funded the allowance increases, the City took the position that it did not have to comply with the arbitral award.

APEA filed suit to enforce the award. The superior court granted summary judgment in favor of the City, finding that arbitration awards are subject to legislative funding under § 215(a), that this award had not been funded, and that employees were therefore not entitled to it.

APEA appeals. At issue is a narrow question of statutory interpretation. APEA urges us to find § 215(a) inapplicable to arbitration results reached under § 200(b). The City urges us to uphold the superior court's finding that § 215(a) applies to the results of arbitration.

III. DISCUSSION¹

A. Subsection 215(a) Applies to Arbitration Awards.

APEA asserts that § 215(a), the statute requiring legislative approval, does not apply to arbitration awards established under § 200(b). After the superior court issued its opinion, this court clearly settled the law on the question. Public Safety Employees Ass'n. Local 92 v. State, 895 P.2d 980, 986 (Alaska 1995), aff'd on reh'g, 902 P.2d 1334 (Alaska 1995) (citing State v. Public Safety Employees Ass'n. 798 P.2d 1281, 1285 n.7 (Alaska 1990)). Subsection 215(a) does apply to arbitration awards. Id.

This interpretation is dictated by the explicit provision that § 215(a) applies to "any agreement entered into under AS 23.40.070 - 23.40.260." AS 23.40.215(a). Moreover, this interpretation is in keeping with the purpose of § 215(a): to preserve legislative authority over governmental appropriations. Public Employees' Local 71 v. State, 775 P.2d 1062, 1064 (Alaska

¹ In reviewing a lower court's grant of summary judgment, this court "determine[s] whether any genuine issue of fact exists and whether the moving party is entitled to judgment on the law applicable to the established facts." R.E. v. State, 878 P.2d 1341, 1345 (Alaska 1994) (quoting Wright v. State, 824 P.2d 718, 720 (Alaska 1992)). In questions involving statutory interpretation, this court substitutes its independent judgment for that of the trial court. Journey v. State, 895 P.2d 955, 957 n.5 (Alaska 1995).

1989). The alternative would ignore the purpose of § 215(a) and would fail to interpret PERA as a consistent whole.²

Legislative approval is a common requirement in public sector collective bargaining. See State v. Florida Police Benevolent Ass'n, Inc., 613 So. 2d 415, 417 (Fla. 1992) (public employees' unions may need "to, in effect, obtain approval of a proposed contract by a legislative body through appropriation") (quoting Antrv v. Illinois Educ. Labor Relations Bd., 552 N.E.2d 313, 343 (Ill. App. 1990)). The requirement ensures legislative control over fiscal appropriations.

The superior court concluded, based on the statute's plain meaning and purpose, that the legislative funding requirement of § 215(a) applies to collective bargaining agreements reached through arbitration under § 200(b). We reach the same conclusion as did the superior court. The legislative appropriation requirement of § 215(a) applies to arbitration awards under § 200(b). Public Safety Employees Ass'n, Local 92, 895 P.2d at 986.

² Although the superior court reached this conclusion, it determined that public policy might support the opposite result, because PERA as written creates unequal bargaining power; § 215(a) allows the legislature to choose whether to accept or reject a negotiated result, but § 200(b) prohibits essential employees from striking, thereby denying them the same choice. Subsection 215(a) also allows the legislature to make that choice in several stages, as each item of a negotiated result requires funding. Because on its face § 215(b) applies only to the state government, this problem may be heightened where the dispute involves a municipality.

B. Subsection 215(a) Applies to Political Subdivisions of the State.

APEA suggests that § 215(a) does not apply "to political subdivisions of the State." This interpretation contradicts PERA. Both sides agree that other provisions of PERA apply to this agreement and that the City is a public employer under PERA.³ Subsection 215(a) states, "[t]he monetary terms of any agreement entered into under [PERA] are subject to funding through legislative appropriation." The word "legislative" can describe the Council, and nothing else in § 215(a) indicates inapplicability to political subdivisions of the state. Although the terms of § 215(b) refer only to the state, the superior court correctly noted that § 215(a) predates § 215(b) and nothing indicates an intent to make § 215(a) inapplicable to municipalities.

C. The City Is Not Estopped from Applying Subsection 215(a).

Arguing in the alternative, APEA claims that equitable estoppel bars the City from applying § 215(a) to the arbitrator's award.⁴ The City conceded in oral argument that APEA raised equitable estoppel at the superior court level; therefore APEA is not deemed to have waived this argument. Zeman v. Lufthansa German Airlines, 699 P.2d 1274, 1280 (Alaska 1985).

³ PERA defines a "public employer" to include "the state or a political subdivision of the state." AS 23.40.250(7). The City exempted itself from PERA in 1972, but waived its exemption in 1983, making PERA applicable to its labor relations. Fairbanks Ordinance 4264 (Sept. 12, 1983).

⁴ APEA has only argued that the equitable estoppel doctrine applies here. It asserts no other aspect of estoppel doctrine.

The elements of estoppel are assertion of a position by word or conduct, reasonable reliance on that assertion, and resulting prejudice. Municipality of Anchorage v. Schneider, 685 P.2d 94, 97 (Alaska 1984). APEA contends that the City asserted a position when the City Council resolved that the disputed issues "are to be submitted to binding arbitration." APEA interprets this resolution as establishing that the City would consider itself bound by the arbitration results and would comply with them.

APEA had notice by virtue of the plain language of § 215(a) that the "monetary terms of any agreement entered into under AS 23.40.070 - 23.40.260 (would be) subject to funding through legislative approval." In addition, this court in 1989 said "it is clear that the monetary terms of a collective bargaining agreement are not effective until the funds are appropriated by the legislature." Public Employees' Local 71, 775 P.2d at 1064. In 1990, the court reiterated that finality in interest arbitrations could not be achieved until legislative funding took place. Public Safety Employees Ass'n, 798 P.2d at 1285 n.7 (recognizing that, although finality is an important consideration in interest arbitration, "the legislature eventually might decide not to fund an arbitrator's award"). Other jurisdictions have also upheld the discretionary power of state legislatures to veto collective bargaining agreements by refusing to fund them. See Florida Police Benevolent Ass'n, 613 So. 2d at 420 ("the vast majority of courts have held that the agreements were subject to this contingency") (citing District 2A, Transp., Tech., Wrbse., Indus. & Serv.

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Employees Union v. Government of the Virgin Islands, 794 F.2d 915 (3d Cir. 1986)); Public Employees' Local 71, 775 P.2d at 1062; Suffolk County v. Labor Relations Comm'n., 444 N.E.2d 953 (Mass. App. 1983), rev. denied, 447 N.E.2d 670 (Mass. 1983); Minnesota Educ. Ass'n v. State, 292 N.W.2d 915 (Minn. 1979), appeal dismissed, 444 U.S. 1062 (1980); Stephen F. Befort, Public Sector Bargaining: Fiscal Crisis and Unilateral Change, 69 Minn. L. Rev. 1221, 1243-45 (1985)).

In the face of clear statutory language requiring legislative funding of the arbitrator's award, Alaska case law requiring legislative funding as the last step in the collective bargaining process, and the "vast majority" of decisions from other jurisdictions upholding legislative funding requirements, APEA agreed to submit its proposals to arbitration. The City also agreed to arbitration. Neither party explicitly agreed to waive the funding requirement of AS 23.40.215(a), but the Council called the agreed-upon arbitration "binding" in an ordinance ratifying the agreements the parties had entered into before the arbitration. Fairbanks Ordinance 4977 (Mar. 25, 1991). Use of that word without further definition or explanation does not amount to an assertion that the council would waive its statutory right to refuse to fund all or part of the arbitration award.

APEA has not shown conduct or words amounting to assertions by the City that the Council would not exercise its prerogative not to fund the award. Nor has APEA demonstrated that it reasonably relied on any such assertions as it claims to have

understood them. Finally, APEA has not specified any evidence showing prejudice to it that resulted from its resubmission of the contested issues to arbitration, except the prejudice that normally results from the clear legal requirement that no arbitration awards are final until they are legislatively funded.

IV. CONCLUSION

Alaska Statute 23.40.215(a) applies to arbitration agreements. APEA's claim that § 215(a) is inapplicable to political subdivisions of the state has no basis in the statutory language and is incorrect. APEA's final argument, that equitable estoppel bars the City from invoking § 215(a) to reject the arbitration result, fails because APEA did not establish any of the elements of equitable estoppel as a matter of law or fact. Therefore, we AFFIRM the superior court's decision.

RABINOWITZ, Justice, concurring.

I agree with the holdings set forth in sections III. A. and B. of the court's opinion. Because I believe APEA waived the equitable estoppel issue by failing to raise it in the superior court, I concur in the court's rejection, in Section III. C., of APEA's equitable estoppel argument. The court reaches the merits of the argument and concludes that the record does not support APEA's contention that equitable estoppel bars the City from applying section 215(a) to the arbitrator's result.

The court reaches the merits of the equitable estoppel issue because "The City conceded in oral argument that APEA raised equitable estoppel at the superior court level; therefore APEA is not deemed to have waived this argument." My study of the record leads me to the conclusion that the issue was not adequately raised before the superior court. Thus I would hold that equitable estoppel has been waived by APEA for purposes of this appeal.¹ In short, I would not accord controlling significance to counsel for the City's concession at oral argument before this court that APEA had "tangentially" raised equitable estoppel at the superior court level, because record support is lacking for such concession.

¹ Nenana City Sch. Dist. v. Coghill, 898 P.2d 929, 934 (Alaska 1995); Carvalho v. Carvalho, 838 P.2d 259, 261 n.5 (Alaska 1992); Gates v. City of Tenakee Springs, 822 P.2d 455, 460 (Alaska 1991).

The legislature gave the teachers the right to strike about 6 years ago, mainly because they didn't want them to get binding arbitration.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK. 99801-1182

COMMITTEE ON COMMUNITY AND REGIONAL AFFAIRS
REPRESENTATIVE ANDREW HALCRO, REPRESENTATIVE JOHN HARRIS, CO-CHAIRMEN
STATE CAPITOL, ROOM 418
JUNEAU, ALASKA 99801-1182
(907) 465-3882

AGENDA

FEBRUARY 25, 1999

1. Call Meeting To Order
2. Call Roll
 - a. Morgan
 - b. Murkowski
 - c. Dyson
 - d. Joule
 - e. Kookesh
 - f. Halcro
 - g. Harris
3. HB 76 - Property Tax Exemption for Deteriorated Properties
 - a. Sponsor - Representative Halcro
 - b. Public Testimony
 1. Marc Marlow
 2. Other Public Testimony
4. HB 1 - Binding Arbitration for Municipal Employees
 - a. Sponsor - Representative Brice
 - b. Public Testimony
 1. Mark Drygass, Fairbanks Fire Fighters Association (By Phone from Fairbanks)
 2. Matt Soden, Fairbanks Police Department Association (By Phone from Fairbanks)
 3. Kevin Ritchie, Alaska Municipal League
 4. Other Public Testimony
5. Any announcements from other members of the Committee
6. Motion to Adjourn