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Sen Ray

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wo#6643
Humphreys

IN THE LEGISLATURE OF THE STATE OF ALASKA
LEVENTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act relating to the state merit system and collective bargaining; and providing for an effective date."

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

* Section 1. INTENT. The legislature intends that all collective bargaining agreements negotiated under AS 23.40 for positions in the classified and partially exempt service are to establish a merit system for the employees covered by the agreement. The merit system must be based on merit principles so that the persons best qualified to perform for the state will be employed and so that an effective career service will be encouraged, developed and maintained.

* Sec. 2. AS 39.25.090 is amended to read:

Sec. 39.25.090. COVERAGE OF CHAPTER. This chapter and the rules adopted under it apply to all positions which are not covered under collective bargaining agreements and are in (1) the classified service, and (2) the partially exempt service as specifically provided.

* Sec. 3. AS 39.25 is amended by adding a new section to read:

Sec. 39.25.095. MERIT SYSTEM UNDER COLLECTIVE BARGAINING CONTRACTS. (a) Collective bargaining agreements negotiated under AS 23.40 for positions in the classified and partially exempt service shall contain provisions establishing a merit system.

(b) If any provision of a collective bargaining agreement under (a) of this section does not comply with federal requirements and compliance is a condition on the receipt and expenditure of federal funds, the agreement shall immediately be renegotiated to meet the require-

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1 ments.

2 * Sec. 3. This Act takes effect July 1, 1979.

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BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Pouch AG
Juneau, Alaska 99811
465-4442

TO: Blue Ribbon Commission Members

FROM: Teresa B. Cramer, Administrative Assistant

DATE: January 21, 1979

RE: Issues Summary, Merit System/Collective Bargaining Subcommittee

MERIT SYSTEM/COLLECTIVE BARGAINING

1. Structure of the Division of Personnel and Labor Relations. It has been suggested that the Division should be divided into two separate entities, a Division of Personnel and a Division of Labor Relations. A position of Director of Labor Relations was placed in the budget by the Free Conference Committee for fiscal year 1978 at the Governor's request. The new position was never filled, and it was deleted from the budget for fiscal year 1979.

The Division of Personnel is specifically created by statute as a division of the Department of Administration. AS39.25.030. There does not appear to be direct statutory authority for the creation of the labor relations division, but the principal executive officer of each department does have the authority, with the Governor's approval, to create divisions or other organizational units within the department. AS44.16.020 and PR2 04.4. The new Division of Labor Relations could be placed within the Department of Administration or within the Governor's office.

QUESTION: Does the Commission wish to recommend the creation of a separate Division of Labor Relations? If so, where should the division be placed?

2. Relationship of collective bargaining contract terms to statutes, Personnel Rules and departmental standard operating procedures. There is confusion about how contract terms conflicting with provisions in statutes and the personnel rules are to be interpreted. The State Personnel Act was written and adopted in 1960 and has not been comprehensively revised since the enactment of the Public Employees Relations Act in 1972.

It has been suggested that the Personnel Rules should apply only to non-union employees, and that the unions and the Division of Labor Relations be required by statute to bargain on all those topics covered by the personnel rules. The proposed statute should require that a contract, to be valid, be in conformance with the constitutional requirement that merit principles govern employment of persons by the state (Article

XII, Section 6) and should set out specific topics to be covered by the agreement.

QUESTIONS: 1. Does the Commission wish to recommend legislation to establish the priority of contract terms and conflicting statutes and Personnel Rules and to indicate whether unions can bargain on matters otherwise prohibited by statute? 2) Should the Personnel Rules apply to members of unions or associations covered by a collective bargaining agreement with the state or should all those matters addressed in the rules be required to be part of any collective bargaining agreement entered into by the state? 3) Does the Commission wish to recommend that the Personnel Rules be revised so that those matters which should apply to all state employees, regardless of membership in a union or association, are clearly separated from those matters which apply only to non-unionized state employees?

3. Method of adopting the Personnel Rules and departmental standard operating procedures. By statute, AS39.25.140(c), the Personnel Rules are not required to be adopted in accordance with the Administrative Procedures Act because they are considered to relate to the internal management of state agencies. The statute requires that the Commissioner of Administration give notice of proposed rule changes by posting notices in public buildings throughout the state. The Personnel Board may, within 30 days, disapprove the suggested changes. If requested, the Personnel Board may hold public hearings on the amendments.

Dress codes and appearance standards adopted by departments for state employees are required to be in the form of a regulation subject to legislative review under the Administrative Procedure Act. AS39.26.015.

QUESTION. Does the Commission wish to recommend amendment of the statute to provide greater opportunity for public comment before Personnel Rules and Standard Operating Procedures are adopted?

4. Membership on the Alaska State Labor Relations Agency, the Personnel Board and the Retirement Board. Membership on these boards is presently nearly identical.

STATUTES:

The Personnel Board is composed of three members appointed by the Governor with confirmation by the legislature in joint session. The appointees must be qualified electors of the state, and there is a maximum of two members from the same political party. They serve at the Governor's pleasure and for a maximum of six years. AS39.25.060.

The Labor Relations Agency, for state employees, is the Personnel Board. For other public employees, the Department of Labor is the Labor Relations Agency. AS23.40.260(3).

The Retirement Board is composed of five members, three of whom are the members of the Personnel Board of the Department of Administration. AS39.25.030.

QUESTION: Is this over-lapping membership appropriate?

5. Scope of authority of the Labor Relations Agency and the Personnel Board. The Labor Relations Agency generally is concerned with the organization of bargaining units and the recognition of labor organizations of public employees. It hears and decides complaints alleging that an employer or a labor organization has engaged in unfair labor practices. (Unfair labor practices are generally attempts to interfere with employees rights to organize or failure by either party to bargain in good faith.) It may appoint a mediator where negotiations between a public employer and an organization have deadlocked, either on its own initiative or at the request of any party to the dispute. It may adopt regulations in accordance with the Administrative Procedures Act. It may seek to enjoin strikes of employees whose right to strike is prohibited or limited by statute. See AS23.40.

The Personnel Board approves or disapproves the original Personnel Rules and amendments to them, acts upon recommendations for the extension of the partially exempt and classified service, determines appeals by employees in the classified service, and establishes its own rules of procedure. AS39.25.070. An employee may appeal to the Personnel Board if the employee has been dismissed, demoted or suspended for more than 30 working days in a 12-month period. The board may reinstate the employee if it finds that the action was taken for a political, racial or religious reason or in violation of Chapter 25 of the statutes or of the Personnel Rules. In all other cases, the board reports its findings and recommendations to both parties. AS39.25.170.

QUESTION: Is the division of authority between these bodies appropriate? Should the Commission recommend the creation of an Ethics Committee to consider the adoption of Personnel Rules? (See discussion, Classification, Certification & Recruitment Subcommittee Memo, Issue number 12, page 12 and 13, and Issue number 13, page 14).

6. Inclusion of non-certificated school district employees under the Public Employment Relations Act. As the law is written now, the definition of "public employee" in the Public Employment Relations Act specifically excludes noncertificated school district employees. AS23.40.060(5). The definition of "public employer" does not exclude school districts. AS23.40.260(6).

QUESTION: Does the Commission wish to recommend that legislation be adopted including non-certificated school district employees within the scope of the Public Employment Relations Act?

7. Inequity of wages between union members and non-union state employees. In some positions there is a sizeable difference between wages paid for union members and those paid for positions requiring similar skills but not unionized. In committee discussion, it was pointed out that it is not the legislature's responsibility to insure absolute equity of salaries between groups of employees. The state pay plan should reflect the principle of like pay for like work. AS39.25.150(2).

QUESTION: Should the Commission consider a recommendation to the administration to strive to reflect the principle of "like pay for like work"?

8. Due process rights for temporary employees. Under the Personnel Rules, temporary employees have only a limited right to pursue grievances. The grievance procedures set out in Rule 12 are available to "any employee occupying a position in the classified service who has a grievance relating to his position, working conditions or employment over which the Executive Head of his department may lawfully exercise discretion". However, Rule 6 04.0 limits the rights of probationary employees to appeal or have a hearing for a dismissal, except where the dismissal was due to discrimination based on race, color, sex, religion, national origin, or political beliefs. The Division of Personnel has reasoned that temporary employees have less status than probationary employees, and that therefore if probationary employees' right to appeal adverse decisions are limited, then the right of temporary employees must also be limited.

The Personnel Board appeals procedure set out in AS39.25.170 has been administratively construed to apply to employees having a permanent status, rather than a probationary status, except in cases where dismissal of a probationary employee is due to racial, religious or political discrimination. Whaley v. State, 438, P.2d 718 (1968). Therefore, it is probably also unavailable to temporary employees.

Under collective bargaining agreements, the right of temporary employees to use the grievance procedures is limited as well. In the past, APEA did pursue grievances for temporary employees within their bargaining unit. However, the Division of Personnel began, about a year ago, to hold the association to the letter of the agreement. Under language that had been in the contract since at least 1973, the definition of employee did not include temporary employees.

Art. 1, Sec. 2(c) "Employee" in this Agreement means a person in the state service who is paid a salary or wage and holds probationary, permanent, or provisional status.

Grievances were defined as "any controversy or dispute arising between APEA or an employee of the bargaining unit and the Employer". Article X, Section 1. Given the language, an arbitrator upheld the Division's position, that grievance rights were not available to temporary employees, even though that language had not been challenged by the department in previous grievances on the behalf of temporaries within the unit.

The Local 71 contract provides that temporary employees have the right to grieve on contract terms and penalty pay, but that only permanent or probationary employees have a right to arbitration procedures.

NOTE: This topic may also be considered by the Subcommittee of Categories of Employees, since they have concentrated their discussion on the temporary employee category.

QUESTION: Does the Commission wish to recommend that temporary employees be afforded due process rights beyond those presently provided for in cases of discrimination based on race, color, sex, religion, national origin or political beliefs?

SOURCES

1. Confidential Employees Association memorandum to the Commission
APEA Letter to the Commission on priorities dated September 25, 1978
Local 71 Letter to the Commission dated January 5th
2. APEA Inter-office memorandum on the Blue Ribbon Commission: Merit System vs. Collective Bargaining dated November 28, 1978

Committee discussion, Fairbanks meeting, December 18, 1978
3. Committee discussion, Fairbanks meeting, December 13, 1978
4. APEA Letter to the Commission on priorities dated September 25, 1978
5. Same
6. Same
7. Written testimony from the Classified Personnel Organization of Fairbanks North Star Borough School District, December 12, 1978
8. Position paper beginning with the words "Merit Increase", submitted to Representative Eliason and by him to the Commission
9. APEA Inter-office memorandum on Position of Temporary Employees, dated November 24, 1978

MERIT SYSTEM/COLLECTIVE BARGAINING &
BLUE RIBBON COMMISSION MEETING
Capitol Building, Juneau
November 15, 1979

MINUTES

Senator Bill Ray, Chairman, called the meeting to order and introduced Steve Halfling, Chairman of the Alaska State Personnel Board and Labor Relations Agency, and member of the Retirement Board.

Mr. Halfling briefly described his background as a 40-year Alaska resident and presented a summary of his views on the functions of the three boards. He believes that the Labor Relations Agency (LRA) is one of the most misunderstood operations in the state. It is effective and very frugal. A summary of the LRA's activities in 1979 was handed out to members.

Mr. Halfling was first appointed to the Personnel Board in 1960, when the agency met only three or four times annually to handle final steps in employee grievances. Following the adoption of the Public Employment Relations Act (P.E.R.A.) in 1972, the members of the Personnel Board were given additional duties as members of the LRA. The LRA has been meeting 30 to 35 times annually ever since. The first major task of the LRA was action on petitions to place positions in bargaining units. Since then, it has been responsible for refereeing disputes between the administration and collective bargaining units, hearing unfair labor practice allegations, monitoring strike votes, and generally performing functions similar to those of the National Labor Relations Board. In 1976, the agency heard over 250 disputes and held 60 hearings to make determinations. The LRA now spends an average of two days each month on hearings, investigations and research. Six or seven LRA decisions have been challenged in court, and all of them have been upheld.

Pat Murphy commented that the three members of the boards are volunteers who are not reimbursed for their assistance and that the subcommittee had questioned whether the agency should be given the support of a full-time staff or have full-time members. Mr. Murphy added that the present members have always impressed him with their performance. Mr. Halfling explained that the boards are funded by the state, but members don't work for any department. Therefore, members and staff can remain absolutely objective. The other two members of the boards, Morgan Reed of Skagway and Ron Henry of Fairbanks, and Mr. Halfling are longtime Alaskan residents and volunteers. The agency has a part-time secretary who handles office functions and who works on a contract basis for \$2,000 monthly. A consulting attorney in Anchorage, who is a former Assistant Attorney General, Mark Ertichek, is also contracted on an hourly basis. He receives approximately \$24,000-30,000 annually, which is half the cost of the former agency attorney, who lived out of state.

Mr. Halfling asserted that there is insufficient work on a continuing basis to justify having full-time agency members or staff. He doesn't believe that offices should be encouraged to justify their existence by creating work. As an example of this problem, Mr. Halfling cited the Labor Relations Office in the Municipality of Anchorage as a full-time office that appears to have created a lot of labor turmoil. The only unsolved business before the LRA for this year is the dispute between the University of Alaska and community college teachers. The LRA does not look for problems, and the law is written in such a way as to allow the agency to refuse cases that are frivolous.

Lois Jund commented that the members wear three hats. Mr. Halfling elaborated that as Personnel Board members, they have practically no workload since the advent of collective bargaining. The board holds semi-annual meetings to review changes to the Personnel Rules. The Retirement Board meets only occasionally to hear appeals. Their only real workload is as members of the LRA, and it is difficult to predict what the future volume might be. If all contracts are administered properly, the volume will decrease. Mr. Murphy stated that all states with numerous public employee unions have full-time labor relations agencies. He added that these positions are extremely vulnerable to political appointments and preconceived ideas and asked what will happen when present members choose to resign. Mr. Halfling responded that the boards must remain neutral--neither pro-union nor pro-administration.

Senator Ray asked whether the LRA's attorney's fees were excessive. Mr. Halfling replied that the Commissioner of Administration has questioned the expense of the legal consultant. Mr. Halfling believes that the finished product must be able to stand up in court, and the cost of a professional with experience in labor relations is therefore justifiable. Any inexperienced employee would be incapable of handling the demands of the position, and anyone on the state's payroll would have to be loyal to her or his employer. The LRA's secretary is also on contract for this reason. The total cost of services provided by the agency last year totalled under \$40,000.

Ms. Jund asked how members of the boards are presently appointed. Mr. Halfling replied that the Governor appoints members for six-year terms, although he wasn't sure what criteria are used in the selection process. The appointments are confirmed by the legislature. Ms. Jund asked what the duties of the Personnel Board include, and Mr. Halfling explained that the board did promulgate the initial Personnel Rules and acted as an appeals board in employee disputes. Senator Ray questioned whether the Personnel Board functions are obsolete. Mr. Halfling replied that the board hears only two or three appeals per year but must still act on changes to the Personnel Rules and changes in employee status from the partially exempt service to the classified service or vice versa.

Ms. Jund asked whether the Personnel Board or the Department of Administration would be responsible for a comprehensive revision of the Personnel Rules. Mr. Halfling replied that the Personnel Board only has authority to accept or reject Personnel Rule changes proposed by the Commissioner. The Board cannot write them nor modify them.

Senator Ray questioned whether the LRA has received inquiries or complaints regarding the hire of applicants from outside of Alaska. Mr. Halfling explained that in the early part of statehood, the Personnel Rules gave a five-point preference to anyone who had been an Alaskan resident for at least one year. Senator Ray commented that he has heard complaints about agencies and commissions hiring outside of the state without considering Alaskan applicants. Mr. Halfling stated that there is a Superior Court ruling that preferential treatment of state residents is in violation of the interstate commerce clause of the constitution. Senator Ray cited a written complaint he received from a long-time Alaskan who was not considered for a position with the Renewable Resources Corporation, even though he was extremely qualified. Mr. Kareen stated that the Renewable Resources Corporation is exempted by statute from the merit system hiring practices set out in the Personnel Rules. Mr. Halfling asserted that if the legislature could reenact the residential preference hiring system in Alaska, the Personnel Board would adopt it immediately if it were legal.

Mr. Halfling added that the Personnel Board must approve positions being placed in the partially exempt service, and the agency has turned down requests in the past which were unjustified. The board has also witnessed cases where partially exempt employees were dismissed without any appeal rights. He hopes that the commission can review these appointments to the exempt and partially exempt services.

Mr. Murphy asserted that preference for Alaskans might be provided for in collective bargaining contracts. Senator Ray stated that for strictly state-funded positions, the legislature might require a hiring preference towards individuals who had paid a state income tax during the previous year. Mr. Kareen commented that the argument for a preferential hiring system was turned down by the state's own Supreme Court, and federal funding did not enter into the question or the final decision. He added that he would be in favor of such a system, but there are exceptions when it is necessary to hire out-of-state applicants. He also pointed out that federal law requires that any minimum qualifications for positions be job-related. Ms. Jund stated that she would also favor the system when state applicants are better qualified. She proposed that agencies be required to justify the hire of out-of-state applicants in writing. Mr. Halfling asserted that employee turnover rates are increased when applicants are recruited from outside of the state. Mr. Kareen commented that this argument was raised in the state's unsuccessful court case.

Mr. Halfling concluded his discussion by reiterating his opinion that the LRA can maintain its neutrality by keeping its present structure. Mr. Kareen asked whether the agency would want additional staff if their workload increased. Mr. Halfling responded affirmatively, but said that he would not want the employees placed in the classified or partially exempt service. He also commented that an ideal candidate for board member would be someone who is retired, financially independent (to resist temptations) and objective.

Since the LRA formed, it has reached 55 formal decisions which were almost all unanimous. The most controversial of its decisions have gone to court and have been upheld.

Senator Ray summarized the situation of the LRA: The agency can work satisfactorily with its present contract attorney and part-time office staff as long as members are and continue to be completely neutral. He thanked Mr. Halfling for being candid in testifying before the commission and extended the commission's appreciation for his service on the boards.

The commission proceeded to review the Merit System/Collective Bargaining section of its draft report to the legislature, discussed changes, and added a section on positions in the partially exempt and exempt services which might be more appropriately placed in the classified service.

Senator Ray scheduled the next meeting for November 26 at 1:30 and adjourned the meeting.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Lois Jund
Lynda McCurry
Pat Murphy
Ken Kareen (for Sandra Withers)

OTHERS IN ATTENDANCE

Doryce Eggleston
Steve Halfling (guest speaker)

MERIT SYSTEM/COLLECTIVE BARGAINING
Capitol Building, Juneau
October 17, 1979

MINUTES

Senator Bill Ray, Chairman, called the subcommittee meeting to order and raised questions on the topic of merit increases. Lynda McCurry explained that merit increases are provided to employees in accordance with step-increase plans. For most state employees, merit increases (steps B-F in the pay plan) constitute the only raises provided by the state. Once the top step has been reached, there are no raises except for the longevity increments provided by statute. Pat Murphy commented that raises are provided in a number of ways by collective bargaining contracts. APEA has incorporated merit increase steps into its contracts. Mr. Murphy distributed copies of another union's pay plan which has two steps (APEA has six) and a service bonus plan as an alternative to the statutory longevity increments. The two steps provided for in the other union's contract represent salary increases equivalent to APEA's six steps (A-F). However, the other union contract provides its members with a lump-sum increase after six months of employment, and APEA's are available on an annual basis at management's discretion.

Lois Jund asserted that concerns over merit increases arise when the system is abused. She added that merit increase awards should be based on specific performance criteria. Ken Kareen elaborated that agencies have no performance-based standards established. Even if there were, each supervisor would interpret them differently. Senator Ray stated that present practices are unfair, and merit increases are being applied indiscriminately. Mr. Kareen stated that he is in favor of developing performance standards and maintaining the merit increase system, although he is skeptical of the results.

Ms. Jund commented that it is easier to evaluate employees who have lower-level functions than those in the higher echelons. There is nothing precluding supervisors from setting up performance standards, and the Division of Personnel encourages agencies to do so. Mr. Kareen observed that there will always be a certain amount of subjectivity involved in the evaluation of employees.

Senator Ray stated that the legislature is dissatisfied with the lack of uniformity in the granting of merit increases and is convinced that it is not the best way to reward employee performance. Unions can bargain about providing their members with raises. He added that the merit system is not compatible with collective bargaining on the

issue of merit increases. Senator Ray asserted that if an employee's performance is exemplary, that employee should receive an annual bonus at the discretion of the employer. Bob Mourant pointed out that a state supervisor cannot grant a bonus. Ms. Jund asked whether the legislature would be in favor of merit increases if some method could be devised for granting increases for meritorious service only. Senator Ray responded that the legislature apparently does not care for the terminology and would be more receptive to a system of rewarding longevity or seniority.

Senator Ray commented that few legislators are actually familiar with collective bargaining contracts, and they don't understand why the state provides raises to employees based on both the cost of living clause in contracts and merit increase provisions of the merit system. Mr. Kareen stated that there are not very many employees who advance through the final merit increase step. There is a 60% turnover rate of employees in the first three steps. Senator Ray responded that the turnover rate is decreasing as state employment becomes more popular because of benefits provided by both the merit system and collective bargaining unions.

Ken Kareen explained that merit increase steps A through F were originally provided for in Title 39, and steps J through M were added to provide for longevity in state service. Not all employees are hired at the initial step because there are instances when it is difficult to recruit for positions. Positions beginning at advanced steps are used as inducements to recruit valuable skills from the private sector. Ms. Jund commented that merit increases are necessary for recruiting and retaining valuable employee services, as well as for rewarding exceptional performance. She recommended that performance-based standards be mandatory for granting merit increases. Mr. Kareen asserted that a multi-step pay plan is better than granting a flat rate. Senator Ray stated that he doesn't believe employees should be hired at anything other than the beginning step. Ms. Jund added that if an employee in the private sector is earning more than step A, the state must compete with private industry for professional skills.

Senator Ray pointed out that although the economy in Juneau is dependent upon state and federal job income, government employees are minorities in other parts of Alaska. Mr. Murphy responded that government employees make up about 40% of Alaska's workforce, and 60-65% of the state's economy is impacted by government expenditures.

Senator Ray repeated that the legislature believes merit increases to be incompatible with collective bargaining. Ken Kareen stated that merit increase plans are presently negotiated, and changing the Personnel Act will not affect most classified state employees. Pat Murphy added that the only employees who would be affected by legislative

changes to the Personnel Act, unless collective bargaining is restricted, would be partially exempt and exempt employees. Mr. Murphy pointed out that although some believe that merit increases are automatically granted on an annual basis, they have not been funded by the legislature for the past year. Therefore, departments have been applying them inconsistently depending upon how much is left in the budget because of vacancy factors, etc. Some departments are better able to supply merit increases than others. Senator Ray suggested that the subcommittee list the alternatives in the commission's report to the legislature and that current practices be explained. The report will address: a bonus for meritorious service, collective bargaining impact, step increase plans, performance standards, etc. There was no further discussion of the issue.

On the topic of amplifying the merit principles in the Public Employment Relations Act (P.E.R.A.), Senator Ray commented that one essential principle is the concept of basing merit on ability and performance. Mr. Kareen elaborated that the evaluation of employees and retention in state service are also essential merit principles. He pointed out that although merit increases are not specifically defined under the merit principles, almost every state provides employees with increases for meritorious service. Alaska's problems with the system are not unique to state government. Terry Cramer commented that a memo from Commissioner Hudson states that merit increases are almost universally granted to public employees and include graduated pay plans.

Senator Ray asked what principles are essential to Alaska's personnel system. Mr. Kareen replied that the five principles outlined in Terry Cramer's memo (selection and retention of employees based on ability, including examination for positions; equal treatment of those seeking employment; regular integrated salary programs based on the nature of the work to be performed; selection or retention of one's position to be secure from political influences; and tenure during the time that employees perform well) should be applied to all public employees. Senator Ray observed that equal treatment of applicants seeking state employment is especially important according to recent testimony.

Senator Ray stated that the five merit principles should be defined in the Personnel Act. Mr. Kareen explained that collective bargaining impacts merit principles by implementing alternative provisions for each unit. The state does not comply with the principle of equal pay for equal work, for example, given that each unit bargains for a different pay plan. Unless the Collective Bargaining Act is revised, statutory changes to the Personnel Act will cover only partially exempt and exempt employees. Senator Ray and Mr. Murphy agreed that merit principles should be statutorily defined.

Senator Ray was advised that the Categories of Employees subcommittee had discussed the issue of statutory changes to the membership of the Labor Relations Agency, Retirement and Personnel Boards. Mr. Murphy pointed out that the Personnel Board meets only occasionally, and members do not have enough time to get the job done. An executive assistant has been holding hearings for members. Senator Ray asked whether there is a need for the boards. He was informed that the Personnel Board is the only agency authorized to adopt changes to the Personnel Rules, and it consists of three voluntary members. Terry Cramer explained that the statutes provide for the same three volunteers to be members of both the Personnel Board and the Labor Relations Agency. The Retirement Board consists of five members, three of whom must be the members of the Personnel Board and the Labor Relations Agency. Mr. Kareen commented that it is difficult for the Division of Personnel and Labor Relations to provide staff support for the boards, because of their involvement in labor relation disputes.

Senator Ray suggested that statutory requirements on the membership of the Labor Relations Agency, the Personnel Board and the Retirement Board be reevaluated, and recommended that the Legislative Budget and Audit Committee review the overall functions of the Boards to consider whether they should continue. There was a consensus that the Labor Relations Agency should be provided with a staff of classified employees.

Senator Ray directed the staff to prepare additional information on the topic of adopting Personnel Rules in accordance with the Administrative Procedures Act.

Senator Ray adjourned the meeting at 2:40.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Lynda McCurry
Pat Murphy
Bob Mourant (for John Pugh)
Lois Jund
Ken Kareen (for Sandra Withers)

MERIT SYSTEM/COLLECTIVE BARGAINING
AND BLUE RIBBON COMMISSION
Capitol Building, Juneau
October 11, 1979

MINUTES

Senator Ray, Chairman, called the meeting to order and referred to Senate Bill # 256, creating a Department of Employee Relations. He suggested that the commission consider recommending the separation of labor relations and personnel functions from others in the Department of Administration as an alternative to the creation of a new department. A Deputy Commissioner would be appointed to head each division. If the structure showed an improvement, the argument for a separate department would be substantiated. The commission could recommend to the legislature that it provide funding for the separation of functions to alleviate problems evidenced in the operation of the personnel system. Senator Ray moved that the commission include the recommendation in its report to the legislature. There were no objections.

On the issue of the legislature's involvement in collective bargaining, Senator Ray stated that the legislature doesn't appear to want to be directly involved in the bargaining process at this time. However, it must meet constitutional requirements of appropriating money to fund the contracts, and legislators want some form of veto power over unreasonable contracts in the name of the public. Senator Ray asserted that there should be some provision for legislative action on negotiated contracts within a specific time frame. A deadline for legislative action has been proposed, and if contracts are not acted upon within the time allotted, unions would be able to take any steps they believe are necessary.

Greg O'Claray stated that a legislative veto would be preferable to no legislative action. He added that he does not believe the legislature should be given two chances at approving or rejecting contracts. Sandra Withers pointed out that it is not uncommon for a government body to review contracts and order renegotiations. Mr. O'Claray responded that he doesn't believe contracts should be looked at piecemeal because the legislature would then be able to procrastinate in making a decision.

Sandra Withers commented that unions would have two opportunities to strike if the legislature had the authority to order renegotiations. Presently, all state contracts contain "no strike" clauses which provide that there will be no work stoppages during the life of the contracts. Therefore, when negotiations reach an impasse, unions are precluded from petitioning the Labor Relations Agency for striking authority until the existing contracts expire. If all contracts were to expire on December 31, and negotiations reached an impasse, unions would be able to strike

if mediation was unsuccessful. If negotiations resumed and an agreement was reached, it would then be submitted to the legislature. Unions would again be able to petition for a strike vote if the contract was not funded, unless the agreement had some legal force during the interim and also contained a "no strike" clause.

Senator Ray stated that agreements should be negotiated and transmitted to the legislature by a date convenient to the parties. The legislature would then have 30 days to either accept or reject the negotiated contract. If all contract expiration dates were changed to June 30, the unions would not be able to petition for a strike vote until after adequate time for renegotiations. The Department of Administration would thus only be responsible for handling negotiations, and strikes would have to be handled by the legislature. Mr. O'Claray questioned how a strike would be resolved. Senator Ray replied that either the Governor or the legislature would call a special session. Ms. Withers suggested that the commission research other state statutes that address legislative procedures for funding negotiated contracts. Senator Ray responded that public employee strikes are not uncommon, and they should be accepted as a possibility when the legislature does not approve the monetary terms.

Senator Ray asserted that the legislature is only interested in the monetary terms of the contracts. Mr. O'Claray reiterated his belief that the legislature should not be able to exercise a line-item veto over contracts. Ken Kareen commented that there are two large cost items: wages and benefits. Senator Ray stated that the legislature is only interested in the total price tag. Mr. O'Claray suggested that the commission recommend that the legislature be required to vote on negotiated contracts between the 90th and 120th day of the session. Senator Ray suggested that the legislature be required to take action by March 15 or within 30 days after receipt of contracts or before adjournment.

Ms. Withers pointed out that the expiration dates of contracts are currently considered bargainable items. Senator Ray stated that the commission should recommend that contracts coincide with the fiscal year. He added that language could be drafted to provide for multi-year contracts.

Senator Ray moved that the commission recommend that a time limit be set for legislative action on negotiated contracts. There were no objections. He added that the discussion should include alternatives to the procedure such as: negotiations being handled by the legislature, by a private negotiator hired by the legislature, or by the Department of Administration.

Mr. O'Claray stated that there should be a mechanism in the law for resolution of disputes if the legislature rejects a negotiated agreement. The method presently provided in the statutes is a strike. However, Mr. Kareen pointed out that some bargaining units are precluded from striking by statute. Lois Jund commented that if the timetable for legislative action was early enough, it could allow for renegotiation of contracts prior to the end of the session. Ms. Withers asserted that the legislature's role in collective bargaining is not unique to Alaska, and she suggested that other statutes be examined to get ideas on timetables. Mr. O'Claray stated that if the Finance Committee can give consideration to contracts in 30 days, then a negotiated agreement should be submitted by February 15. Mr. Kareen voiced concerns about the transition period on contracts, and Senator Ray responded that special provisions have to be made for implementing any new law.

On the issue of excluding policy-making supervisors from collective bargaining, Senator Ray commented that the partially exempt service appears to be another classification problem. Ken Kareen responded that some supervisors are responsible for policy making and others are required to enforce policy and collective bargaining contract terms. Mr. O'Claray mentioned that APEA representatives had testified at a House Committee meeting that they were willing to remove 90 supervisors from collective bargaining units. Senator Ray directed the staff to call the Governors Office to find out which classifications were proposed for removal from collective bargaining.

Senator Ray addressed the topic of a non-negotiable management rights clause and asked what would be included in such a clause. Terry Cramer explained that statutes in other states include hiring, promotion, transfer, and the establishment of personnel rules as management rights. Mr. Kareen elaborated that the issue relates to problems that arose when the Department of Administration negotiated with a collective bargaining union on hiring hall practices, which do infringe upon management's ability to recruit and examine applicants. He added that merit principles must be adhered to by both parties. The fundamental question is what should and what should not be bargainable. Ms. Withers stated that the Commissioner of Administration is attempting to define what is bargainable. Currently, the classification, recruitment and examination processes are bargainable, and a management rights clause would be a vehicle for setting out things that should remain consistent for all state employees. Ms. Withers added that the state negotiated an alternative to the statutory longevity system with one union. The only thing presently exempted from collective bargaining is retirement benefits. Changes to the Personnel Act are bargainable items.

Senator Ray recommended that the commission advise the legislature that certain items which are currently negotiable such as health benefits, classification, recruitment and examination might be exempted

from collective bargaining. He instructed the staff to make clear in the draft of the commission's report that collective bargaining has created inconsistencies in employee's health insurance and medical benefits. Mr. O'Claray pointed out that each union placed emphasis on different contract components. He added that IBU is tied into Taft-Hartley Act retirement trusts, and the state would have to amortize should it decide to require ferry workers to belong to the state's retirement system. Senator Ray directed the staff to point out in the commission's draft report that unions trade in different ways and place varying degrees of importance on increasing wages or benefits. This has prompted some discussion within the commission on the possibility of adopting a management rights clause to exclude certain topics from the collective bargaining process. Further investigation and study is needed before the commission will be prepared to make any definitive recommendations.

On the issue of cost of living adjustments, Senator Ray observed that there are two ways to go about it: lump sum or percentage increases. Mr. O'Claray suggested that there is no single answer to the question. The legislature is against percentage increases, but across-the-board increases create problems with compression of salaries. Senator Ray concurred that both systems have inherent problems. He suggested that this might be a topic for review each year. Ms. Withers commented that the country's economic situation will determine the continuation of such increases. Senator Ray stated that in the public's viewpoint, a hamburger costs the same amount for the guy who runs the elevator as it does for a commissioner. He does not believe that life styles should determine the allocations of increases. Lois Jund suggested that a third alternative is possible: varying percentage increases so that lower salary levels receive larger increases. Senator Ray reminded members that cost of living adjustments are not actual salary increases. They are not tied to geographical differences or anything else.

On the issue of merit increases, Senator Ray stated his belief that they should be done away with. Ken Kareen pointed out that they are currently negotiable items. Lois Jund commented that without merit increases, employee productivity is not encouraged. Senator Ray responded that a meritorious service award could be granted by a committee to deserving employees. The panel/committee could consider recommendations from supervisors and could have discretion on the amount of awards. Ms. Jund stated that it is not fair to pay a long term employee who is extremely productive the same amount that a new employee with no experience would receive. In addition, there are some positions in specialized fields where there is no career ladder and therefore no opportunity for advancement. She recommended that performance standards be created for evaluation of meritorious service, so that merit increases would not be considered "living and breathing" awards. Senator Ray asserted that

collective bargaining is not compatable with the merit system, and it is perceived as a double dip for state employees. Ken Kareen stated that he believes there should be performance evaluations, but that it would be impossible to have a uniform system of application because of the subjectivity inherent in any evaluation system. Mr. O'Claray pointed out that most labor organizations don't believe in merit increases, because it provides supervisors with a method for "playing favorites". He stated that a seniority system does not allow for favoritism. Senator Ray repeated that the legislature is seriously considering the incompatibility of the merit system and collective bargaining.

Senator Ray adjourned the meeting at 4:25.

MEMBERS IN ATTENDANCE

Senator Bill Ray, Chairman
Greg O'Claray, Vice Chairman
Lynda McCurry
Lois Jund
Sandra Withers

OTHERS IN ATTENDANCE

Doryce Eggleston
Ken Kareen

MERIT SYSTEM/COLLECTIVE BARGAINING SUBCOMMITTEE
Capitol Building, Juneau
October 5, 1979

MINUTES

Greg O'Claray, Vice Chairman, called the meeting to order and referred to the September 26 issues summary as the topic of subcommittee discussion. The meeting was recessed briefly to prioritize the issues to be addressed (issue numbers in parenthesis reflect those in the summary). Mr. O'Claray reconvened the meeting.

1. The legislative role in collective bargaining. (IIIB1)

The only place where the legislature's involvement in collective bargaining is addressed in the statutes is in AS23.40.215 of the Personnel Employment Relations Act. Presently, the legislature takes no active role in the bargaining process. The Constitution requires that the legislature enact all appropriations, including those for collective bargaining contracts. The result is that unions must deal initially with the Administration at the negotiation tables and then with the legislature to encourage appropriation of funds. John Pugh commented that the legislature appears to want more information about contracts and a better method of communication from the administration.

In discussing alternatives, Terry Cramer stated that Wisconsin has a joint committee consisting of the leadership of both houses and parties that is consulted by state negotiating teams. Sandra Withers commented that the legislature is considering taking a more active role in negotiations through a legislative employee at the bargaining table. The legislative representative could have either a moderating or approval role, but in either case it would be impossible. If the legislature sits at the table, it should take the entire responsibility for bargaining. Otherwise, the unions would be asked to bargain with people (Department of Administration staff) who do not have authority to make any commitments. Ms. Withers added that in some states, an elected body passes on both monetary and contract terms.

Greg O'Claray stated that he doesn't believe that the legislature should be involved in the process at all. Right now, it is not clear what role they play, and he does not feel that they want to bargain at the negotiating table. Sandra Withers suggested that the topic is beyond the subcommittee's purview. Mr. O'Claray disagreed, stating that the legislature is seeking information and direction on the topic from the commission. Darlene Livermore recommended that legislative involvement not be changed because 95% of collective bargaining contracts do

not deal with monetary terms and could be divorced from the legislative process. John Pugh commented that this is a constitutional issue that may be resolved in the courts.

Sandra Withers stated that if it is a legislative concern, there should be a vehicle for communicating concerns. Has the commission received any directives? Ken Kareen concurred and added that this is a relationship between the legislature and the Governor. Frank Flavin suggested that the subcommittee ask some legislators how they perceive the problem if the commission is going to address this issue. Greg O'Claray tabled the issue for discussion at a future subcommittee meeting.

2. Amplification of merit principles in the Personnel Employment Relations Act. (IIIB7)

John Pugh commented that Pat Hunt, former Director of the Division of Personnel and Labor Relations, had suggested placing merit principles in the statutes. Frank Flavin suggested that the subcommittee consider what part of the merit system or what merit principles are bargainable. It had been Mr. Hunt's belief that all principles are bargainable. There is a constitutional requirement for a merit system, but it may be provided for by collective bargaining contracts.

Ken Kareen stated that neither the state Constitution nor the statutes defines the principles. In practice, Alaska generally follows those of the federal government. Sandra Withers pointed out that the Personnel Act sets out the operation of merit principles. Mr. Flavin commented that this also relates to whether Alaska should adopt a management rights clause. Greg O'Claray asked whether merit principles should be spelled out in the P.E.R.A. John Pugh stated that they have been written out in the Model Personnel Administration Law.

Greg O'Claray tabled discussion of the topic for future subcommittee deliberation.

3. Membership of the Labor Relations Agency, the Personnel Board and the Retirement Board. (IIIB8 and IIIB9)

The subcommittee is on record as recommending the establishment of a full-time Labor Relations Agency. The issue was brought about due to concerns based on accessibility to the agency. The Labor Relations Agency is established by statute as a three member board and members serve on a voluntary basis, operating on limited resources. Both John Pugh and Greg O'Claray stated that they had never experienced problems with accessibility to the agency, but Darlene Livermore stated that bargaining unit changes end up being delayed for months due to the infrequency of agency meetings. The agency has never spoken before the subcommittee on problems.

Frank Flavin questioned the interrelationship of the three boards, and it was explained that membership overlaps. The three members of the Labor Relations Agency are required by statute to be the three members of the Personnel Board. Three of the five members of the Retirement Board are required to be the Personnel Board members. Ken Kareen explained that the function of the Retirement Board is to oversee the retirement system, to make decisions on investment of retirement funds and to act as an appellate board on claims, such as early retirement. The staff was asked to invite a member of the Labor Relations Agency to attend its next meeting and to research the function of the three boards. Ken Kareen mentioned that Title 39 does outline the agencies' duties.

4. Methods of adopting Personnel Rules and standard operating procedures. (IIIB10)

Sandra Withers pointed out that the Personnel Rules are exempted from the Administrative Procedures Act review. However, SB 256 as currently drafted deletes the exemption. Ken Kareen elaborated that the issue relates to concerns that the Personnel Rules do not detail procedures for implementation, and departments have been writing their own standard operating procedures. In many instances, the procedures differ and have impacted employees differently.

Mr. Kareen added that standard operating procedures are also subjects of collective bargaining. Frank Flavin commented that there is nothing in the Administrative Procedures Act that prohibits collective bargaining on the issue. The A.P.A. requires that before rules are adopted, they must be subject to public comment. Contracts are not considered rules and are therefore not subject to the A.P.A. Mr. Flavin added that those standard operating procedures which affect the public would be required to conform to the A.P.A. Those procedures which are solely concerned with internal management are excluded. Lynda McCurry asked if there is a problem in how standard operating procedures implement the Personnel Rules. Does the subcommittee want to recommend a review of the departmental standard operating procedures to determine whether there is consistency of treatment of state employees in various departments?

Greg O'Claray tabled the issue for future subcommittee consideration.

5. Exclusion of policy-making supervisors from collective bargaining. (IIIB2)

John Pugh stated that all supervisors are involved in some form of policy making, whether it be in disciplinary actions for subordinates or actual regulation formulation. However, it is possible for supervisors

to be in the classified service and exempt from collective bargaining. They would not have to be removed from the classified service and placed in the partially exempt service. However, this exclusion from bargaining would have to be provided for in the P.E.R.A. John Pugh stated that APEA has already agreed to the removal of some supervisors from collective bargaining.

Greg O'Claray tabled the topic for future subcommittee discussion and adjourned the meeting at 2:45.

MEMBERS IN ATTENDANCE

Greg O'Claray, Vice Chairman
Sandra Withers (for Commissioner Hudson)
Lynda McCurry
Darlene Livermore (for Pat Murphy)
John Pugh
Ken Kareen (for Sandra Withers)

OTHERS IN ATTENDANCE

Doryce Eggleston
Frank Flavin
Bob Maurant

MERIT SYSTEM/COLLECTIVE BARGAINING
Work Session Summary
February 23, 1979

The session was chaired by Ken Humphreys in the absence of Representative Buchholdt and Greg O'Claray.

DEPARTMENT OF EMPLOYEE RELATIONS DRAFT BILL

The subcommittee received copies of the Department of Employee Relations draft bill and discussed adding provisions concerning the structure and functions of the Labor Relations Agency, the Personnel Board, and the Retirement Board. These agencies should be structured and staffed to insure insularity from pressure and independence of action. Pat Murphy pointed out that the subcommittee should focus on establishing the new department and avoid opposition where possible. Changes to those agencies can be proposed in another measure.

Pat Hunt suggested amendment to Section 10, page 4, line 21, to reflect that the P.E.R.A. limits the ability of the division to remove people from collective bargaining units. The subcommittee agreed to amend the section by adding "Except as provided in AS23.40.090" to the beginning of the sentence.

The subcommittee discussed the qualifications for the commissioner of Employee Relations (Section 1, page 1, lines 13 and 14). John Pugh moved that the qualifications for the commissioner read: "shall have experience in both personnel administration and labor relations either in the public or private sector. The commissioner shall have a total of at least five years of full-time experience in those fields." The motion was adopted unanimously.

Changes were also made to the bill to require that the director of the Division of Labor Relations have at least three years of practical working experience in the field of labor relations. Pat Hunt moved that the subcommittee recommend to the Commission that this bill be submitted to the legislature. The motion passed unanimously.

Ken Humphreys presented a draft bill providing for a bargainable merit system. Pat Murphy pointed out that what is bargainable will remain discretionary between the parties involved. He also expressed his reluctance to be responsible for personnel functions such as training, recruitment, etc. Ken Kareen moved that the subcommittee recommend to the Commission that the bill be introduced in the legislature. The motion passed unanimously.

Ken Humphreys explained that this bill, if enacted, would

exempt all employees covered by collective bargaining from AS39.25. If the temporary hire draft bill was passed along with this, temporary hire rules would not apply to bargaining unit members. Bargaining agreements would therefore have to contain language addressing AS39.25 or offer alternatives. The statute would not apply to people covered by collective bargaining.

NON-CERTIFIED SCHOOL DISTRICT EMPLOYEES

Ken Spray requested the subcommittee recommend that the Commission support SB213, introduced by Senator Bennett, allowing non-certified school district employees the opportunity to bargain collectively under the P.E.R.A. Pat Hunt pointed out that the legislation addresses those employees not in the state system. It is not within the Division's nor the Commission's purview. Ken Spray moved that the subcommittee recommend that the Commission support SB213. Three (3) were in favor. Four (4) opposed. The motion failed.

IN ATTENDANCE

Ken Humphreys
Pat Hunt
Ken Kareen
Lynda McCurry
Pat Murphy
John Pugh
Ken Spray
Niel Thomas

OTHERS IN ATTENDANCE

Darlene Howard
Bob Mourant
Frank Flavin

MERIT SYSTEM/COLLECTIVE BARGAINING
Work Session Summary, February 5, 1979

The session was chaired by Representative Thelma Buchholdt. The Issue numbers, as follows, refer to the Summary of Issues dated January 21, 1979.

Issue 1. Structure of the Division of Personnel and Labor Relations.

SUBCOMMITTEE MOTION: Pat Murphy moved that the subcommittee request the Legislative Affairs Agency to draft a bill for further subcommittee review to create a Department of Employee Relations encompassing the functions of personnel, labor relations, training, and for the purposes of this bill, equal employment opportunity and affirmative action. Ken Spray requested that the functions include safety and training. Mr. Murphy agreed.

DISCUSSION

Retirement functions. Responsibility for maintaining the retirement system should remain in the Department of Administration.

Budget. The budget for the new department should result from the transfer of the budget of the existing divisions plus appropriation of additional funds for the creation of the position of the new Commissioner.

Safety. Safety should be included in the new department because there needs to be central coordination of safety programs. The system now is that user departments are supposed to coordinate with the Department of Labor, which supplies trainers on request. The requirements of OSHA, which directs that the state provide safety training for its employees, are not being met.

Pat Hunt suggested that money for safety and training programs could be provided by the user departments, who would compensate the Division or the new department for the cost of materials used. The training which the Division of Personnel has been able to provide to date (given limited staffing and funding) has been very well received. Money allocated for training is one of the first items to be cut in a lean budget year.

CLARIFICATION OF MOTION: The question of which state agency has the authority and responsibility to negotiate with the Marine Transit unions is not resolved. The state Supreme Court has ruled that those unions are now covered by the Public Employees Relations Act, and that therefore, they negotiate with the Division of Personnel and Labor Relations. Prior to that decision, the Commissioner of Public Works held that authority.

It was generally agreed that the motion applied to those unions representing employees of the University of Alaska.

Affirmative Action/EE0. At present, the state EE0 office is in the Department of Administration, having moved from the Office of the Governor. In addition to this central EE0 office, each department has its own EE0 officer, who is responsible for providing information to and counseling employees within that department as well as for preparing and monitoring the departmental affirmative action plan. There is a need to have trained, sensitive people who are aware of legal requirements in the departments. The departmental EE0 officers hold other jobs within the departments and usually place priority on those other duties.

The central EE0 office has placed a priority on providing training to supervisors and managers in state agencies, as well as reviewing the personnel practices and procedures of the state and monitoring Division of Personnel compliance, revising the affirmative actions plans, and gathering statistics on the state's work force.

Placing the central EE0 office as a division of the new Department of Employee Relations would ensure that there was communication between that division and the divisions of personnel and labor relations. Much of the functions of those divisions (recruitment, examination, certification and training) is of great concern to the EE0 office, and therefore having an opportunity to affect decisions in those areas as they are made is important. Making the EE0 office a division would ensure that it had the status necessary to act effectively and would help emphasize the state's commitment to equal opportunity.

Departmental Personnel and Training Officers. The creation of this new department does not address, at this stage, the placement of the departmental personnel officers. They could either remain departmental employees or become employees of the new department. Training officers in the departments could also

Training. The state's training programs, like the safety and EE0 functions, need central coordination, which could be achieved by making the new department responsible for that role. Individual departments would continue to provide their own, specialized programs, but the central office in the new department would provide information on what programs were being offered and would provide technical assistance in programs as its own staffing and expertise permitted. Having one central person in charge of that oversight would help to ensure that training programs which the state was required (by union contract, for example) to provide would take place. If the programs did not occur, then there

would be one person to whom the union could turn to question why they had not.

Training is often misunderstood in Alaska. There is a feeling that employees should know all the intricacies of their jobs at the time that they are hired. But government procedures are different from those in private industry - for example, in accounting - and the unique orientation to governmental work means that there will have to be an orientation for the new employee, whether that person is just out of school or has worked for a number of years in that field in private industry.

The efficiency and productivity of state employees depends in a large part upon the initial training they receive.

Orientation of the New Department. There is a hope that the Department of Employee Relations would be people oriented, rather than fiscally oriented, as the Department of Administration is. Most of the programs within the Department of Administration are financial in nature, while those programs proposed for transfer to the new department concern people directly: What happens to a new employee on entering and while serving in state government?

Model. The Department of Employee Relations should be modeled along the lines of the Anchorage Municipal ordinance, but without creating separate divisions for the separate functions in the Division of Personnel. There should be provision for the Commissioner of the department to delegate some personnel functions to the individual departments.

VOTE ON THE SUBCOMMITTEE MOTION: A vote was taken on the motion. It carried unanimously, nine (9) members voting.

Issue 2. Relationship of collective bargaining contract terms to statutes, Personnel Rules and departmental standard operating procedures.

SUBCOMMITTEE MOTION: Pat Hunt moved that staff be directed to design language to add to Title 39 which limits application of Title 39 to those not covered by collective bargaining units and to define merit principles which must be negotiated in all collective bargaining agreements. The draft should be brought to the subcommittee for further review.

DISCUSSION

There is confusion about what standards govern employees covered by both collective bargaining contracts and the Personnel Rules. The language suggested by the motion would clearly

make each union contract the operating system for determining all conditions of work for covered employees, while ensuring that merit principles would be recognized in each agreement and complied with. The Rules would then apply only to those solely affected by them. (At the work session on February 7, Mr. Hunt indicated that there are five classified employees in the state who are not members of a union. Ken Kareen represents 20% of that group.) The Rules are therefore needed to set out the conditions of employment for those five employees, as well as for any employees added to the group in the future.

At present, to change a Personnel Rule, the Personnel Board must consider not only the merits of the proposed change but also how that rule affects each contract. If the scope of the rule has been partially affected by any contract, then a change would have to be agreed to by the union in question.

Unions have established different systems to implement the merit principles (which are made applicable to union contracts by AS23.40.070:

The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to.. strengthen the merit principle where civil service is in effect...)

For example, employees hired for positions in APEA bargaining units are hired from the eligibility lists maintained by the state. Employees hired for positions within Local 71's bargaining unit are hired from eligibility list maintained by the union, except that OSHA inspectors are hired from the state's registers. The Marine Transit unions maintain their own retirement program, whereas APEA and Local 71 members participate in the program administered by the state.

There are also differing views on the policy of hiring by seniority. Local 71 members strongly support seniority hiring while members of APEA support hiring of the most qualified without direct consideration of seniority. If supervisors are responsible about disciplining and firing unsatisfactory employees, then a policy favoring seniority should ensure that fully-qualified individuals are at the top of the eligibility lists.

Wages negotiated by unions are usually passed on to non-unionized employees by management. This policy is followed by almost all states.

CLARIFICATION OF AMENDMENT OF MOTION:

Ken Humphreys suggested two amendments: that a section

be added requiring that any contract negotiated must meet federal merit principle standards, and that a savings clause be added, saying that if the contract does not comply with those standards, then the parties will renegotiate to provide for compliance.

General Policy Statement. There should be a policy statement identifying those topics which are essential to a merit system and which must be covered by all contracts. The list would include promotion, selection of the most qualified, career ladders, employee development potential, an agreed guiding principle on classification, and like pay for like work. Section 1 of the Model Public Personnel Administration Law is an example:

The general purpose of this act is to establish a system of personnel administration that meets the social, economic and program needs of the people of the state. This system shall provide means to recruit, select, develop and maintain an effective and responsive work force, and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe benefits, discipline, discharge and other related activities. All appointments and promotions in the state service shall be made without regard to sex, race, religion or political affiliation, and shall be based on merit and fitness.

Legislative Concern. The legislature is concerned about how the merit system and collective bargaining intertwine. The Commission should explain the two systems in its report as well as why it is important to retain each of them.

Exempt and Partially Exempt Employees. Janet Bradley expressed her personal concern that partially exempt employees have none of the benefits or protections of permanent employees, even though many of those placed in that category are not holding jobs appropriately considered political. The Categories of Employees Subcommittee should consider this issue.

VOTE ON SUBCOMMITTEE MOTION: The motion was adopted, eight (8) members of the subcommittee voting in favor, and one (1) opposed.

Issue 3. Method of adopting Personnel Rules and departmental standard operating procedures. (Discussion of this topic was postponed until the report of the group examining departmental standard operating procedures is prepared.)

Issue 4. Membership of the Alaska State Labor Relations Agency, the Personnel Board and the Retirement Board.

Issue 5. Scope of authority of the Labor Relations Agency and the Personnel Board.

These issues were combined for purposes of discussion. The subcommittee requested that Ken Humphreys research two bills introduced in previous sessions concerning the Labor Relations Agency. The subcommittee will discuss these issues in a later meeting.

Issue 6. Inclusion of non-certified school district employees under the Public Employment Relations Act.

A bill was introduced last session to include non-certified school district employees within the Public Employment Relations Act. It passed the House, but not the Senate.

Dwayne Carlson, the lobbyist for the AFL-CIO has indicated that passage of legislation in this area is priority number 2 of the AFL-CIO this session. Ken Humphreys will research the past bills in this area, and the subcommittee will then consider this issue.

Issue 7. Inequity of wages between union members and non-union state employees. This issue is incorrectly stated in the Issue Summary. It should read inequity of wages between members of two different unions.

The subcommittee decided to table this issue.

Issue 8. Due process rights for temporary employees.

This issue is within the scope of the Categories of Employees Subcommittee. The Merit System/Collective Bargaining Subcommittee decided to leave the topic for their consideration.

WORK SESSION SUMMARY
MERIT SYSTEM/COLLECTIVE BARGAINING SUBCOMMITTEE
Anchorage, January 26, 1979

The subcommittee discussed recommending the following to the Commission:

RECOMMENDATIONS

1. Creation of a new department composed of the Division of Personnel and Labor Relations. This would ensure that the Governor would receive prompt notification on Labor Relations activities, since there would be a Commissioner in his cabinet. The state of Wisconsin has adopted such a system. The subcommittee will consider whether to make a formal recommendation after hearing from a representative from Wisconsin at the conference on February 6.

2. Composition and duties of Labor Relations, the Personnel Board and the Retirement Board. The Labor Relations Agency has no permanent staff and relies on the Labor Relations Section to provide support. Its workload is increasing, and a need for permanent staffing has been indicated. The Personnel Board meets only two or three times a year and is not very busy.

Ken Humphreys will research bills from the last two legislative sessions on the creation of a full-time Labor Relations Agency. He will also compile examples of Labor Relations Agencies in other states and in federal government.

The subcommittee work session was chaired by Don Fisher, upon the request of Representative Buchholdt, Chairperson.

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Merit System/Collective Bargaining Subcommittee
Fairbanks North Star Public Library
December 13, 1978

MINUTES

Representative Buchholdt, Chairperson, called the meeting to order. There being no response to an invitation for public testimony, the hearing was opened to committee discussion.

COMMITTEE DISCUSSION

Pat Hunt began the discussion by stating that all issues covered by the committee indicate that the question of the merit system versus collective bargaining must be addressed. He asked if it is the intention of the committee to limit the scope of bargaining available to employees. What effect would the amendment of statutes have on future union contracts? Mr. Hunt also questioned the role of the legislature in the area of union contracts: Would it be politically feasible to limit bargaining rights?

Ken Spray responded by stating that he believes the committee does not want to limit collective bargaining rights. He suggested the separation of personnel and labor relations functions. At present, personnel is more regulatory than service oriented, and labor relations is influenced by this emphasis.

Niel Thomas questioned what is negotiable under collective bargaining. Pat Hunt replied that all conditions of employment are negotiable. The only exception, in accordance with an Attorney General's opinion, is retirement plans. The leave system, salary, wages, hours, insurance and classification are all negotiable.

Niel Thomas asked if anyone could conceive of a system in which the Legislature basically funds the personnel structure that emerges from the collective bargaining process without any other particular role over what is bargained. Ken Spray responded by stating that the Public Employment Relations Act is structured so that the responsibility is left to the Executive Branch. The Legislature maintains control over funding the agreement reached.

Representative Buchholdt suggested the major question appears to be the continuation of collective bargaining in conjunction with the merit system, modification of one or both, or elimination of one.

Ken Humphreys explained that as it stands, the Alaska Collective Bargaining Act is very broad in scope. The trend in other states has been towards very broad definitions of collective bargaining acts. It is within the Legislature's authority to limit and define conditions. However, he believes this would put additional constraints upon the unions and the

state government, causing additional conflicts.

Pat Hunt stated that the Constitutional mandate for a merit system for state employees could be fulfilled by a statutory requirement that those principles be incorporated in each collective bargaining agreement. The Personnel Rules would then set out a merit system to govern the terms of employment of non-unionized state employees not otherwise exempt from its coverage.

Niel Thomas questioned the testimony of individuals seeing the merit system as being against their rights for freedom of expression. Ken Spray added that labor relations was created for stability of labor, and that collective bargaining draws power from the labor movement, supplying employees with individual representation.

Niel Thomas brought up the question of the cost impact of collective bargaining. Ken Humphreys stated that his research indicates employee's salaries increased more before collective bargaining was enacted. In his study, he compared the increased percentages in employee salary seven years prior to the collective bargaining act implementation and seven years after. The salaries increased a total of 35% over the 73% cost-of-living increase within the past 14 years. This averaged out to a 2.5% annual increase. The cost of fringe benefits was not taken into consideration in his analysis. Mr. Humphreys is in the process of completing additional studies which he will make available to the committee.

PUBLIC TESTIMONY

Mary Langan, a freelance writer with Alaska Industrial Magazine, presented her views on the state personnel system. She had experienced working in both clerical and supervisory levels as a temporary with the state. Ms. Langan pointed out five major problems she had faced while employed by the state:

1) In 80 to 90% of government jobs, employee enthusiasm, creativity and initiative are stifled. The ideal employee is one whose attendance is prompt, who does not express new ideas which are contrary to "the system".

2) The recruitment of minorities and women is very limited. In some instances, temporaries are hired for permanent positions to avoid minority hiring.

3) There are inequities in the implementation of rules and federal regulations within both management levels and within the Division of Personnel. One example Ms. Langan mentioned was a delay in receiving her paycheck after termination. Federal law requires payment within three days of employee termination. The state took two weeks in sending out her check, and when

she protested, she was advised that the state was exempt from that provision of the law. Ken Spray explained that the state is not exempt from this federal statute.

4) At the job service office of the state, books on vacancies in state government are not readily available to the public.

5) The promotional ladder and the merit system are subject to misinterpretation and office politics, resulting in discrimination against women and minorities. Ms. Langan suggested that promotions be decided by a committee consisting of objective members not employed by the state.

COMMITTEE REVIEW

Representative Buchholdt directed the committee to consider the possibilities to recommend and refine during the next meeting in Anchorage. Each committee member will prepare a list of ideas for consideration. The staff will provide a summary of information presented to date.

In conclusion, Representative Buchholdt pointed out the advantages of having both the merit system--employee motivation and reward for performance--and the collective bargaining process--mandated by the Legislature to provide a voice to employees.

Niel Thomas presented his opinion that there is a general misunderstanding of the two by the public. He suggests the distinctions and definitions be clarified for the benefit of state employees.

Darlene Howard addressed the problems she sees within the systems--procedural and operational methods at the administrative level.

IN ATTENDANCE

Representative Thelma Buchholdt, Chairperson
Pat Hunt
Lynda McCurry
Ken Spray
Niel Thomas
Ken Humphreys
Darlene Howard (for Pat Murphy)
Bob Mourant (for John Pugh)

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
MERIT SYSTEM/COLLECTIVE BARGAINING SUBCOMMITTEE
Municipality of Anchorage Assembly Chambers
November 30, 1978

MINUTES

The meeting was called to order by Representative Buchholdt, Chairperson. Public testimony was invited.

PUBLIC TESTIMONY

Tom Phillips, an employee with the Department of Transportation, Division of Maintenance and Operation, presented his views on the implementation of Governor Hammond's policy on merit increases by the Department of Transportation and Public Facilities. Deputy Commissioner James O'Sullivan has changed previous departmental policy by requiring that the evaluation of employee performance be "outstanding" or "exceptional" to qualify the employee for a merit increase. The new policy requires that the director of each region review all evaluations. When the employee's performance justifies awarding a merit increase, the evaluation is reviewed by the Deputy Commissioner. As part of the new system, all supervisors were required to attend a training course on "Measuring Job Performance".

Apparently, the Governor's policy is not being applied consistently within state government. Mr. Phillips indicated that in the department across the hall from him, merit increases were being awarded on the basis of "acceptable" evaluations, as well as "outstanding".

Darlene Howard advised the committee that in the APEA supervisory unit contract, the contract language spells out when merit increases may be awarded. These contract provisions are consistent with Personnel Rules.

Mr. Phillips has filed a grievance after being denied a merit increase. (His supervisor, Clyde Dolly, confirmed his position and testified later in the meeting.) Deputy Commissioner Patrick Ryan has received the grievance form submitted by Mr. Phillips, and as of the meeting date had not acknowledged the situation. Mr. Phillips is awaiting further action.

In response to Representative Buchholdt's inquiry as to how many employees within his department could be considered "outstanding", Mr. Phillips replied that a very small percentage of state employees are evaluated as outstanding. He believes that employees deserving merit increases are not receiving them as a direct result of interpretation of the Governor's policy.

Albert Baffone, Business Manager of Public Employees Local No. 71, was next to testify in regard to the merit system. He regards the merit system as counter-productive and inadequate in covering all employees. Mr. Baffone suggests that the merit system be governed by a collective bargaining process. He pointed out that the legislature is burdened with many problems in labor relations and could expedite proceedings by considering solution adopted by unions.

Public Employees Local No. 71 works on a preferential hiring system. When the state calls the local seeking an applicant, the name of a qualified individual is given within 48 hours. The state provides a description of the position, classification, and any particular qualifications necessary. These specifications are taken into consideration by the union in referring an applicant, in accordance with contract guidelines. The employer may reject the applicant referred from the union, in which case another applicant will be recommended. There are no tests given by the union. Applicant are evaluated on the basis of their experience. Mr. Baffone stated that the system has approximately a 95% accuracy rate in placing these applicants. Under current laws, the system could be adopted by the state.

In addition, Mr. Baffone testified that despite the inference made that state employees cannot be fired, Local No. 71 has many cases of employees who were in fact fired. It is their policy to file a grievance on every case which a member brings to them, so that they have standing to investigate the matter. If their research shows that the management action was justified, then they withdraw the grievance, documenting for their own protection their reasons for doing so. Unions are liable to their members for failure to represent.

Clyde Dolly, Manager of the Department of Transportation and Public Facilities, proceeded to testify that he is in favor of employees' associations and merit increases. Merit increases are one of the tools applicable to employees for inspiring and rewarding performance.

Mr. Dolly further indicated that employee morale has declined because of the change in the merit increase policy and the inconsistent application by different departments. Because there is a lack of funding, there is also little opportunity for supervisors to recognize the abilities of their employees by promoting them.

In answer to a question, Mr. Dolly stated that if a supervisor recommends a merit increase, the evaluation form is returned to the supervisor with directions to rewrite it. In Mr. Dolly's opinion, the instructions given on how to evaluate employee performance discourage a supervisor from evaluating an employee

as outstanding or exceptional. This was the basis for Tom Philip's grievance.

Mr. Dolly continued, adding that he is in favor of the register system. Ken Spray asked how long it took him to get employees off the register. Mr. Dolly explained that it takes at least three weeks to hire through the register, but he is given the top five names to consider. As a program manager in a previous position, he had experience working with the preferential hiring system. In hiring from the union, he received a response within three days. However, he was sent one individual at a time, and had to justify not selecting the first person sent. There was no way for the supervisor to know whether the second person would be more qualified for a particular job.

Greg O'Claray asked why it took Mr. Dolly three weeks to be able to hire someone from the register. Mr. Kareen responded that it was probably a result of internal departmental procedures. Lynda McCurry indicated that it takes her department an average of two days to receive a register from the Division of Personnel once requested.

Mr. Dolly concluded that although the register system takes a minimum of three weeks to hire an employee, as opposed to 48 hours when using the preferential hiring system, he would rather be given a choice of five applicants who have been tested for qualifications and experience. With the preferential system, the first candidate to meet minimum qualifications must be hired, and the opportunity to have a choice is not supplied.

Ron Felty, an employee with the Municipality of Anchorage, stated briefly that he was present to observe proceedings because of an interest in the concept of the merit system and the application to the labor environment. Representative Buchholdt explained that the commission is designed to take an overall view of personnel practice within the state and to cover as many topics as possible, including all government entities.

Beverly McCartney, an employee with Community and Regional Affairs Department, was present to observe proceedings and offered a few comments on another problem within the state. She indicated that her department is not filling permanent positions in order to create vacancy funds to use to provide merit increases to remaining employees. For example, the Property Control office has lost staff members who have not been replaced. As a result, none of the new property received has been tagged during the last four months. This vacancy factor has not been articulated in writing, yet it is currently practiced by numerous departments.

Darlene Howard amplified this point. A November memo from

the Governor indicated changes in procedures and funding for merit increases. APEA challenged the provisions of the memo and their contract now specifies how merit increases are to be awarded. In response, Niel Thomas commented that concern over expenditures controls the work force. Budgetary procedures are left to the discretion of divisional management. Misinterpretations of guidelines, insufficient funds and lack of controls lead to manipulation of budgetary allowances.

Ken Kareen pointed out that the process in itself controls the state work force and the amount of money spent. First, there are a set number of positions, designated as "man-months", authorized in the budget. Second, each department is authorized a set amount of money. The department cannot hire more than the combination of what the two permit.

Niel Thomas suggested that better management oversight would be performed by the legislature if the concentration were on the executive performance of tasks and goals set, rather than the structural aspects of the executive branch--how many people are employed and where they are placed. The legislature needs to hold the executive branch accountable for achieving the goals the legislature sets.

Representative Buchholdt questioned Ms. McCartney on whether she felt that her department was providing adequate service. Ms. McCartney indicated that because of vacancies, employees in the department are doing considerably more work and not receiving sufficient compensation for additional responsibilities and a heavier workload. State employees are becoming frustrated with their work, lack of recognition and insufficient funding for increases and promotions. There is a serious decline in employee morale.

John Pugh asked Representative Buchholdt whether, as a legislator, she had been aware that the merit increases for present employees had not been funded for the past two years. She did not recall. He asked because APEA has been castigated for seeking both merit increases and cost-of-living adjustments for its membership, while the administration uses the existence of merit increase possibilities to hold down wage increases.

Representative Eliason suggested that there are two solutions to the inequities in the present system: 1) have a single bargaining unit for all state employees, or 2) repeal the collective bargaining act.

Ken Spray pointed out that there are inequities in the private sector, where different unions representing different trades had negotiated different wages.

Representative Eliason pointed out that it is not the responsibility of the legislature to bring about equal pay scales between unions. Mr. O'Claray explained that unions that grew out of the private industry unions have philosophical problems with the concept of a merit increase system. This comes about because of the control which The Boss exercised over his work force and the resentment felt by workers towards his potentially arbitrary and unchecked discretion. Therefore, unions rely on salary increases for time in service and the promotional ladder as the way to reward competence.

Ken Foot, a State Trooper from the Fairbanks office of the Public Safety Employees Association, indicated that because of personal experiences, he believes there are not sufficient promotional opportunities available to reward service to the state. Therefore, in his opinion, merit increases should be retained to compensate for this lack of upward mobility.

After a brief discussion on possibilities for rewarding deserving employees, John Pugh suggested that President Carter's Productivity Bonus may be worth consideration.

IN ATTENDANCE

Representative Buchholdt, Chairperson
Representative Eliason
Ken Kareen (for Pat Hunt)
Lynda McCurry
Darlene Howard (for Pat Murphy)
Greg O'Claray
John Pugh
Ken Spray
Niel Thomas
Ken Humphreys (for Myrt Charney)

BLUE RIBBON COMMISSION ON THE STATE PERSONNEL ACT
Merit System/Collective Bargaining Subcommittee Minutes
November 30, 1978

ADDENDA

The following is an addenda to the Merit System/Collective Bargaining Subcommittee Minutes of November 30, 1978. The addenda was proposed by Darlene Howard to be included on Page 4, after Paragraph 6. The addenda was adopted at the Full Commission hearing on January 10, 1979:

Darlene Howard spoke on the experience of collective bargaining by state employees who are also subject to the principles of a merit system. The public sector has had a merit system primarily in response to the problems created by political patronage. It is meant to be a way to insure equal treatment of employees. The merit system addresses individual ideas: selection, promotion, increases and career ladders. Any merit system seeks to promote equity and efficiency in the organization. Collective bargaining presents the collective voice of employees in terms of conditions of employment in the decision making process and insures due process.

Merit increases are management's way of rewarding an employee for a job well-done. Public union bargaining sets general salary ranges. Although some perceive a "double dip" for state employees, there is a distinction between the two and the existence of merit increases is taken into account in contract negotiations.

The two systems are not inherently contradictory. Ms. Howard has worked for the state for ten years under both a merit system only and under a merit system supplemented by a collective bargaining union. The combination has, in her experience, led to due process, equity and representation.

One area that needs to be addressed is the situation that arises when contract terms differ from statutes or from Personnel Rules. If a statute prohibits something, can the union and the Division of Personnel bargain on that point?