ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2611 SLC SB 154 (FILE 4)
2611

MSG 83-00014049 PRTY 1 03/09/83 12:38:59 ORIG: LF02 IN= 0004 OUT= 0065
FROM: GAIL/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POM

MSG #1. FBX 3/9/83

ALL OF THE BELOW MESSAGES WILL GO TO THE SENATE LABOR & COMMERCE CMTE.
SEN'S [redacted] MULCAHY, BENNETT, SACKETT, RODEY & SEN. FAHRENKAMP '

FR: DAVID L. GLENN, 656 7TH AVE, FBX 99701 PH 479-2073 (H) 452-1557 (W)

RE: SB 154

MSG: I HAVE BEEN A FBKS. FIREFIGHTER FOR OVER FOURTEEN YEARS AND ENJOY THE BENEFITS OF OUR LABOR UNION. NOW THE CITY WANTS TO TAKE A STEP BACKWARDS AND NOT NEGOTIATE A NEW LABOR CONTRACT. I URGE YOU TO SUPPORT SENATE BILL 154. WHY SHOULD FIREFIGHTERS OR POLICEMEN BE SECOND CLASS CITIZENS IN THE LABOR FIELD?

----------EOM

MSG #2: FBX 3/9/83 GL 14049

FR: RONALD LENEAR, P.O. BOX 81566, FBX 99708 PH 452-2360 (W)

RE: SB 154

MSG: I SUPPORT BILL 154.

----------EOM

MSG #3: FBX 3/9/83 GL 14049

FR: STEVEN K V AMMASI, P O BOX 74122, FBX 99707 PH 456-5194 (H)
452-2360 (W)

RE: SB 154

MSG: I SUPPORT THIS BILL #154.

----------EOM

MSG #4: FBX 3/9/83 GL 14049

FR: EDITH TILMAN, 3711 ERICKSON, FBX 99701

RE: SB 154

MSG: HOPE YOU WILL DO EVERYTHING POSSIBLE TO GET THIS SB 154 PASSED.

----------EOM

MSG #5: FBX 3/9/83 GL 14049

FR: WILLIAM TILMAN, 3711 ERICKSON, FBX 99701 PH 479-2692 (H) 452-2322 (W)

RE: SB 154

MSG: WOULD LIKE TO SEE THIS BILL PASS.

----------EOM

MSG #6: FBX 3/9/83 GL 14049

FR: BILL MITTCHELL, 3.5 MI CHENA PUMP, P.O. BOX 81455, COLLEGE 99708
PH 479-5597 (H)

RE: SB 154

MSG: I SUPPORT SENATE BILL 154.

MSG #7: FBS 3/9/83 GL 14049

FR: HELEN BLACKBURN, P O BOX 80632, FBX 99708 PH 479-0033(H), 456-1000 (W)

RE: SB 154

MSG: I SUPPORT SENATE BILL 154. THANK YOU SENATOR FAHRENKAMP.

MSG #8: FBS 3/9/83 GL 14049

FR: FORREST D. REED, S R BOX 50948, FBX 99701 PH 488-6872 (H)

RE: SB 154

MSG: I SUPPORT S.B. 154.

----------EOM

MSG #9: FBX 3/9/83 GL 14049

FR: RAY ROWE, P O BOX 81043, COLLEGE 99708 PH 452-2360 (W)

RE: SB 154

MSG: I SUPPORT BILL 154. I FEEL THAT THE KOSLOSKY AMENDMENT HAS LED TO DISCRIMINATION.

MSG #10: FBX 3/9/83 GL 14049

FR: DONALD R. ALLMOND, SR., P O BOX 10112, FBX 9971(
PH 452-5421 (H), 452-2334 (W)

RE: SB 154

MSG: I URGE YOU TO SUPPORT SENATOR FAHRENKAMP'S SB-154 RELATING TO REPEAL OF THE KOSLOSKY AMENDMENT. THIS HAS BEEN A VERY UNFAIR OBSTACLE TO MUNICIPAL EMPLOYEES. THE AMENDMENT HAS EFFECTIVELY TAKEN THE BACKBONE OUT OF THE INTENT OF "PERA".

MSG 03-00013996 PRTY 1 03/09/83 11:25:40 ORIG: LF01 IN= 0002 OUT= 0041
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: FOM

TO: SENATE LABOR AND COMMERCE: SENATORS ELIASON, MULCAHY, BENNETT, SACKETT, AND RODEY AND SENATOR FAHRENKAMP

RE: SENATE BILL 154

FROM: WAYNE GREGORY, 2030 MCCULLAM, FAIRBANKS 99701 HOME 456-1397

I SUPPORT COLLECTIVE BARGAINING FOR ALL GOVERNMENT AND PUBLIC EMPLOYEES. I SUPPORT SB154, TO ATTEND A FAIRBANKS CITY COUNCIL MEETING AND OVER SEE ITS ACTION CLEARLY EXEMPLIFIES THE NEED FOR THIS BILL.

EOM**********

MSG 83 00013979 PRTY 1 03/09/83 11:05:51 ORIG: LF20 IN= 0002 OUT= 0032
FROM: LYNDA/FBX TO: JNU INFO
TARGET: LJHL SUBJ: POMS

TO: SEN. L & C CMTE (SENS [redacted], MCLCAHY, BENNETT, SACKETT, RODEY)
AND SEN. FAHRENKAMP

FROM: ANDREA J. FULTON, 2008 ESQUIRE AVE., FBX. 99701 #456-7430

RE: SB154

MSG: I SUPPORT SB 154 AND I SUPPORT THE RIGHT TO COLLECTIVE BARGAINING FOR ALL GOVERNMENT AND/OR PUBLIC EMPLOYEES.

----------EOM

MSG 83-00014235 PRTY 1 03/09/83 18:16:12 ORIG: LF00 IN= 0011 OUT= 0145
FROM: MAXINE/FBX TO: JUNO INFO
TARGET: LJHL SUBJ: POM'S CONCERNING SB 154 TO SEN. L & C

FBX 3/9/83 MSG #1 GL 14235
ALL THE FOLLOWING POM'S GO TO SENATE L & C CMTE & SEN. FAHRENKAMP
TO: SENATE LABOR & COMMERCE CMTE
SEN'S ELIASON, MULCAHY, BENNETT, SACKETT, RODEY & SEN. FAHRENKAMP

MSG#7 FBX 3/9/83 GL# 1423[illegible]

FR: FRED M KONECZNY, 102 SLATER DR. E., FBX 99701 PH. W)452-2360
H)452-6648

RE: SB 154

MSG: I FEEL SEN. FAHRENKAMP'S BILL SHOULD REPLACE THE KOSLOSKY AMENDMENT. THIS BILL GIVES THE GOVERNMENT EMPLOYEE THE RIGHTS TO SPEAK AND BE HEARD. BETTYE'S BILL ALSO WILL IMPROVE GOVERNMENT BY OPENING THE LINES OF COMMUNICATION BETWEEN LABOR & MANAGEMENT. SB 154 WILL ALSO RESTORE A CHECK AND BALANCE SYSTEM FOR ALL THE PARTIES INVOLVED.

----------EOM

MSG 8 FBX 3/9/83 GL#14235

FR: JOHN J GILLETTE, RT 1, NENANA 99760 PH. W) 452-2360

RE: SB 154

MSG: I WOULD URGE YOU ALL TO PASS THIS BILL BECAUSE WE NEED TO CHANGE THE KOSLOSKY AMENDMENT WHICH GIVES TOO MUCH POWER TO GOVERNMENT EMPLOYEES. IT SEEMS UNFAIR TO HAVE BARGAINING RIGHTS LEFT TO THE WHIMS OF ANY PARTICULAR CITY COUNCIL FOR EXAMPLE. IT APPEARS TO DENY A BASIC CONSTITUTIONAL RIGHT.

---------- ----------EOM

MSG 83-00014237 PRTY 1 03/09/83 18:14:40 ORIG: LF01 IN= 0010 OUT= 0146
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET: LJHL SUBJ: POM

----------EOM

January 20, 1977

Mr. Benny Joy
Wage & Hour Division
650 W. International Airport Road
Anchorage, Alaska 99502

Dear Mr. Joy:

As per our telephone conversation of today, enclosed is a copy of Resolution 72-17 of the Soldotna City Council which exempts Soldotna from the Public Employees Relations Act.

If any other documentation or information is necessary, please advise.

Sincerely,

Frank Mielke
Assistant Administrator

enclosure
FM/rf

City of Soldotna

RESOLUTION NO. 72-17

A RESOLUTION REJECTING APPLICATION OF THE ALASKA PUBLIC EMPLOYMENT RELATIONS ACT CH 113, SLA 1972 TO THE CITY OF SOLDOTNA

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA:

WHEREAS, CH 113, SLA 1972 creates a state public employment relations systems which would be applicable to local governments, and

WHEREAS, Section 4 of CH 113 permits individual local governments to eliminate themselves from the application of the act, and

WHEREAS, there appears to be no benefit to the City of Soldotna or its employees to be covered by a state public employment relations act,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA:

The applicability of the provisions of CH 113 to the City of Soldotna are rejected.

Adopted by the City Council of the City of Soldotna this 24th day of August, 1972.

Mayor

ATTEST:

Barbara H. Erickson
City Clerk

The undersigned hereby certifies that this document entitled Resolution 72-17 is a true and correct copy of the official record of the City of Soldotna on file in the City Clerk-Treasurer's office.

Signed at Soldotna, Alaska this 20th day of January, 1977.

Barbara H. Erickson
City Clerk-Treasurer

Chapter 3.70

EMPLOYEE RELATIONS

Sections:

3.70.010 Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

M. "Employer" means the Municip[illegible] Anchorage, Alaska. Such term does not in[illegible]e numerous citizen advisory boards and cor[illegible] which exist under the authority of Article V of [illegible]ter.

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

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

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

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

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

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

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

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

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

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

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

3.70.020 Declaration of policy.

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

3.70.030 Rights of municipal employees.

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

3.70.040 Management rights.

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

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

B. Determine the standards of selection for employment;

C. Direct its employees;

D. Take disciplinary action;

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

F. Maintain the efficiency of governmental operations;

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

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

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

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

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

3.70.050 Employee Relations Board.

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

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

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

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

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

2. conduct of representation elections;

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

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

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

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

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

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

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

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

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

3.70.060 Collective bargaining unit.

A. The Assembly shall decide in each case the unit appropriate for the purpose of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining and the desires of the employees. Bargaining units shall be as large as reasonable, and unnecessary fragmenting shall be avoided.

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

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

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

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

3. the Office of the Mayor;

4. the personal staff of the manager;

5. the staff of the municipal attorney;

6. the staff of the internal auditor;

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

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

9. the staff of the Department of Human Resources;

10. confidential employees who in the normal course of their duties have access to or assist in the preparation of labor relations data used in negotiations, arbitrations, grievances and board hearings. (AO 69-75, AO 77-94 and AO 247-76, am AO 78-82, AO 78-113, AO 78-166, AO 79-27, AO 81-82, AO 82-49).

3.70.070 Recognition and certification of employee organizations.

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

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

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

3.70.080 Certification of bargaining representative.

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

A. Representation election for certification. Bargaining representatives shall be determined by election of employees within the bargaining unit by secret written ballot or by consent of the parties and approval by the board. An election on representation may be initiated by presentation to the board of authorization cards containing the signatures of at least 30% of the employees within the bargaining unit requesting that the applicant be certified to represent the members of the bargaining unit. No petition shall be entertained by the board if there has been an election in the unit during the preceding 12 months. No election may be directed by the Employee Relations Board in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 180-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement, if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

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

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

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

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

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

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

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

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

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

3.70.090 Collective bargaining.

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

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

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

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

3.70.100 Mediation and fact-finding.

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

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

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

3.70.110 Impasse resolutions.

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

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

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

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

B. The class in A.1 of this section is composed of police, fire protection and emergency medical services. The class in A.2 is composed of sewer and water treatment, electrical generation and port operation. Employees in this class for a limited time may engage in a strike after mediation and fact-finding. The limit is determined by the interests of the health, safety and welfare of the public. The board may apply to the superior court for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to threaten the health, safety or welfare of the public. A court in deciding whether or not to enjoin the strike shall consider the total equities in the particular class. "Total equities" includes not only the impact of the strike on the public but also the extent to which employee organizations and public employers have met their obligations under this chapter. All other employees fall within category A.3. If there are extraordinary circumstances under which the health, safety or welfare of the public is threatened, the board may also apply to the superior court for an order enjoining a strike by this class.

C. Arbitration.

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

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

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

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

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

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

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

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

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

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

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

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

3.70.120 Strike.

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

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

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

C. Board determination. At any time that the board is notified of an illegal strike, the board shall convene as soon as possible to determine the existence of such strike. The board shall give notice to the employer and the bargaining representative for the bargaining unit of their right to appear and be heard in the course of the board's determination. If the board determines that a strike in violation of Section 3.70.110A.1 is in course, or that a strike of employees within categories under Section 3.70.110A.2 and/or A.3 endangers the public health or safety, the board may apply to the superior court for an order enjoining the strike. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their obligations under this chapter.

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

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

3.70.130 Agreement.

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

3.70.140 Unfair labor practices.

A. The municipality or its agents may not:

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

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

3. discriminate in regard to hire, tenure, employment or a term or condition of employment for the purpose of encouraging or discouraging membership in an organization;

4. discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under the provisions of this chapter;

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

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

1. restrain or coerce:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.70.150 Dues checkoff.

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

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

3.70.160 Arbitration.

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

3.70.170 Personnel Regulations.

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

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

3.70.180 Transition and application.

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

ANCHORAGE MUNICIPAL EMPLOYEES ASSOCIATION, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, Appellee.

No. 4562.

Supreme Court of Alaska.

Oct. 31, 1980.

Municipal employees association brought suit seeking declaration that municipality was governed by Public Employment Relations Act and an order requiring municipality to bargain collectively over disputed items. The Superior Court, Third Judicial District, J. Justin Ripley, J., denied association's motion for summary judgment and awarded summary judgment in favor of municipality, and association appealed. The Supreme Court, Connor, J., held that: (1) municipality and both of its predecessors had option to reject coverage under the Act and engage in collective bargaining on local level; (2) predecessor of municipality, City of Anchorage, validly adopted the Act when it passed resolution rejecting the Act during 90-day interim period between Act's enactment and its effective date; (3) successor of municipality, Greater Anchorage Area Borough, timely and effectively enacted exemption from the Act; (4) municipality validly exempted from requirements of the Act; and (5) municipality which had validly rejected Act was free to develop local scheme of collective bargaining which varied from state scheme as provided in Act.

Affirmed.

1. Labor Relations ⇐367

Rejection of Public Employment Relations Act by municipality, which had previously engaged in collective bargaining with its employees, in order to avoid recognizing a particular employee organization or in order to gain an undue advantage in a labor dispute or negotiation of new collective bargaining agreement constitutes a deliberate interference with right of employees to organize and bargain collectively in derogation of Act's express declaration of such policy. AS 23.40.070 et seq.

2. Labor Relations ⇐52

Municipality newly formed after passage of Public Employment Relations Act has option to reject the Act so long as it does so promptly after its formation and without interfering with municipal employees' exercise of their established rights. AS 23.40.070 et seq.

3. Statutes ⇐184

The Supreme Court will not construe a statutory provision in a manner which is inconsistent with express objective of that very legislation.

4. Labor Relations ⇐52

Municipality and both of its predecessor government bodies had option to reject coverage under the Public Employment Relations Act and engage in collective bargaining with its employees on local level, even though municipality and its predecessors had already engaged in collective bargaining with employees. AS 23.40.070 et seq.

5. Municipal Corporations ⇐85

City resolution rejecting Public Employment Relations Act was not ineffective, although resolution was adopted prior to effective date of the Act, since State Constitution provided that laws passed by legislature became effective 90 days after enactment, resolution was passed in 90-day interim period, and such delay provided opportune time for those governments which chose to reject the Act to do so promptly and before their employees had commenced exercising their rights under the Act. AS 23.40.070 et seq.; Const. Art. 2, § 18.

6. Labor Relations ⇐52

Local government which adopted resolution rejecting the Public Employment Relations Act approximately seven months after effective date of the Act exercised its option to reject Act in sufficiently timely fashion as there was nothing to indicate that local government acted less than conscientiously and diligently in rejecting Act, personnel director of local government contacted state on several occasions regarding applicability of Act and procedures to be followed in rejecting it and was never informed of any time limitations, there was general agreement in local government that labor relations would be controlled on local level but that no action should be taken to reject Act until local ordinance on labor relations was adopted, and resolution rejecting Act was passed immediately upon enactment of local labor ordinance. AS 23.40.070 et seq.

7. Labor Relations ⇐52

Municipality was validly exempted from requirements of Public Employment Relations Act both as legal successor of exemptions made by its predecessors, City of Anchorage and Greater Anchorage Area Borough, and by virtue of its own independent act of rejecting the Act. AS 23.40.070 et seq.

8. Municipal Corporations ⇐111(2)

A municipal ordinance is not necessarily invalid because it is inconsistent or in conflict with state statute.

9. Labor Relations ⇐52

Municipality which had validly rejected the Public Employment Relations Act was free to develop local scheme of collective bargaining which varied from state scheme as provided in the Act. AS 23.40.070 et seq.

Fredric R. Dichter, Teamsters Union Local 959, Anchorage, for appellant; Joe P. Josephson, Howard S. Trickey, and Ronald W. Lorensen, Josephson, Trickey & Lorensen, Inc., Anchorage, of counsel.

Theodore D. Berns, Municipal Atty., Anchorage, for appellee.

* This case was submitted to the court for decision prior to Justice Boochever's resignation.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER,* BURKE and MATTHEWS, JJ.

CONNOR, Justice.

In this case we are once again asked to interpret Section 4 of the Public Employment Relations Act (PERA), ch. 113, SLA 1972, which authorizes the legislative body of any political subdivision to reject application of the Act to its public employees. The specific question presented for review is whether the Municipality of Anchorage is governed by the provisions of PERA, despite the attempt by it and its governmental predecessors to exempt themselves from the Act. The superior court held that PERA did not apply, and granted summary judgment in favor of the Municipality. We affirm.

In 1972 the legislature enacted the Public Employment Relations Act, AS 23.40.070–.260, which conferred upon public employees the right to organize and bargain collectively with their employers. Simultaneously with the enactment of the PERA, the legislature repealed former AS 23.40.010 which permitted but did not require public employers to recognize and bargain collectively with labor organizations representing their employees. PERA was signed by the Governor on June 7, 1972, and became effective on September 5, 1972.

Both the City of Anchorage (the City) and the Greater Anchorage Area Borough (GAAB), the governmental predecessors of appellee, the Municipality of Anchorage, recognized and engaged in collective bargaining with various labor organizations elected by their employees under former AS 23.40.020. On August 8, 1972, one month before the effective date of the PERA, the City by resolution exercised its option under Section 4 to reject application of the Act. The GAAB Assembly passed its resolution rejecting coverage under PERA in April of 1973 and at the same time enacted a com-

prehensive local employee relations ordinance which was supported by representatives of various labor organizations.

Both GAAB and the City continued to bargain collectively with labor organizations elected by their employees, under their local procedures, after their respective exemptions from PERA.

In September of 1975, the GAAB and the City merged into a single home rule municipality. On October 14, 1975, the new Municipality of Anchorage, the appellees here, passed a resolution formally rejecting application of PERA to its employees. The Municipality's labor relations were governed under GAAB's labor ordinance until April, 1976, at which time the Municipal Assembly adopted its own comprehensive labor relations ordinance.

It is a provision of this ordinance which has sparked the present controversy. As originally adopted, the ordinance stated that "[t]he provisions of the Personnel Rules and Regulations may not be varied by negotiation except as expressly so authorized therein."[1] On January 10, 1978, the Assembly adopted ordinance 77-376[2] (substitute) which amended the above section of former AO 69-75 to provide that provisions of the "Personnel Rules and Regulations *may be substituted by negotiated agreements*," (emphasis added) with the exception of three specified areas which are still nonnegotiable.[3] When the Municipality refused to bargain over certain of the items removed from collective bargaining by AO 77-376, the Anchorage Municipal Employees Association (AMEA) brought suit in the superior court seeking a declaration that the Municipality is governed by PERA and an order requiring the Municipality to bargain collectively over the disputed items. AMEA appeals from the superior court's denial of its motion for summary judgment and award of summary judgment in favor of the Municipality.

AMEA presents three alternative theories in support of its assertion that the Municipality is bound by the requirements of PERA despite its explicit exemption pursuant to Section 4. First, it contends that the authority to opt out of PERA under Section 4 is not applicable to the Municipality or its predecessors. Next, AMEA argues that, assuming the availability of Section 4, the Municipality and its predecessors did not effectively exercise their exemption thereunder. Lastly, AMEA contends that even if there has been a properly executed exemption, the Municipality may not conduct its labor relations in a manner which is inconsistent with state policy as expressed in PERA.

I

The argument advanced most forcefully by AMEA is that the option to reject PERA pursuant to Section 4 is not applicable to local governments such as the Municipality or its predecessors.

Central to our resolution of this issue is the proper interpretation of Section 4, Chapter 113, SLA 1972, which provides with relation to PERA:

> "Each collective bargaining agreement made after the effective date of this chapter shall incorporate by reference the then current Personnel Regulations of Anchorage. The provisions of the Personnel Regulations may be substituted by negotiated agreements except Rule 12.7, Length of Service; Rule 14, Holidays, and Rule 15, Leave, which shall not be negotiable."

AO 77-376 is codified as Anch.Mun.Cd. § 3.70.-170.

1. Former AO 69-75 provided:

> "Each collective bargaining agreement made after the effective date of this ordinance shall incorporate by reference the then current Personnel Rules and Regulations of Anchorage in their entirety. The provisions of the Personnel Rules and Regulations may not be varied by negotiation except as expressly so authorized therein. Any changes made to the Personnel Rules and Regulations during the term of any collective bargaining agreement shall not be applicable to that agreement."

2. AO 77-376 (substitute) provides in relevant part:

3. Although AMEA alleges that the amended ordinance diminished employee rights, in fact it *expanded* the items that were to be subject to collective bargaining.

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

AMEA interprets this section as basically a "grandfather clause" designed to permit local governments, which were in existence at the time PERA took effect and were not already engaged in collective bargaining with their employees, to maintain the status quo and to avoid having collective bargaining suddenly imposed upon them with the adoption of PERA. In light of this interpretation, AMEA urges us to construe Section 4 as authorizing rejection of PERA for only a limited period of time after its enactment and then only by those local governments which had not yet undertaken collective bargaining with their employees.[4] An adoption of this construction would render the exemptions of all three government entities involved here ineffective, since at the time the statute was enacted, the Municipality was three years from existence, and both of its predecessors were already engaged in collective bargaining with their employers.

The Municipality contends that there is nothing in the legislative history or other extrinsic evidence to support AMEA's interpretation of Section 4. In the absence of any clear evidence indicating that the legislature intended otherwise, the Municipality submits, Section 4 should be construed consistently with its plain meaning, as "a simple local option provision" allowing municipalities to reject coverage by PERA and regulate their labor relations matters on a local level.

While acknowledging that there is no legislative history shedding light on the meaning of Section 4, AMEA contends that its interpretation is supported by our decision in *State v. Petersburg*[5] and other provisions of PERA. In *Petersburg*, we first construed Section 4 in the context of the entire Act. There we found the most clear expression of the legislature's intent in adopting PERA in the portion of the Act's statement of policy which reads:

"The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

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

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment. . . ."[6]

In light of such a strong statement in favor of public employees' right to organize and bargain collectively, we declined to construe Section 4 in a manner which would substantially interfere with the employees' assertion of these rights. Thus we held that "the right and power of the City to reject the Act become[s] subordinated to the rights of the employees granted by the same legislation" once the public employer becomes "aware of substantial organizational activity" on the part of its employees 538 P.2d at 267.

AMEA argues that the limitation imposed in *Petersburg* upon a public employer's ability to reject PERA is applicable to those governments already engaged in collective bargaining with their employees pursuant to a local scheme. A municipality

4. AMEA argued a quite different interpretation of Section 4 before the superior court: that it was intended to cover municipalities which were in existence at the time PERA was enacted and had already developed or were in the process of developing their own local labor relations ordinance. Although we will not generally address an argument raised for the first time on appeal, we have decided to consider appellant's present interpretation of Section 4 because it is within the general realm of arguments presented to the superior court, and because the issue is one of public importance involving no factual disputes.

5. 538 P.2d 263 (Alaska 1975).

6. AS 23.40.070.

is "aware of organizational activity" by virtue of having bargained with representatives of its employees, AMEA maintains, and is thus precluded from rejecting PERA. This argument misconstrues our holding in *Petersburg* by taking it out of context from the factual setting in that case. The City of Petersburg took no action towards exercising its option to reject PERA until more than six months after the Act's effective date and after it became aware of organizational efforts by its employees to be represented by a particular union. The majority held: "Rejection of the PERA after becoming aware of such activity constitutes a gross and impermissible interference with the employees' freedom to choose which collective bargaining association should represent them." *Id.* The majority's primary concern in *Petersburg* was that, given a broad open-ended construction, the exemption provision could be used as a means of blocking attempts by public employees to pursue the rights granted them by PERA.

There is nothing in the instant case to suggest that the exemptions of the Municipality or its predecessors served to eliminate, diminish, or even affect existing rights of employees. Rather, the rejections of all three government entities merely served to perpetuate the status quo. AMEA itself acknowledges that "from a practical point of view, nothing particularly remarkable or disturbing (in the eyes of the municipality's employees) resulted from these rejections. Collective bargaining between public employer and employee proceeded and was carried out in a manner wholly consistent with labor relations 'models' generally and with the PERA, specifically." In fact, even the Municipality's substitution of the ordinance which sparked this controversy actually expanded rather than diminished the employees' rights.

[1] It would be a different matter if a municipality which had previously engaged in collective bargaining with its employees, upon the enactment of PERA, opted out in order to avoid recognizing a particular employee organization, as in *Petersburg*, or in order to gain an undue advantage in a labor dispute or the negotiation of a new collective bargaining agreement. Rejection of PERA under those circumstances constitutes a deliberate interference with the right of employees to organize and bargain collectively in derogation of the Act's express declaration of policy. Here all evidence indicates that all three governments exempted themselves solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights. *Petersburg* does not prohibit rejection of PERA under these circumstances.

[2] Nor does *Petersburg* set a limited time period of six months after the enactment of PERA during which the exemption must be exercised, thus precluding exemption by newly formed governments such as the Municipality which were not in existence during that period. *Petersburg* merely holds that a public employer which chooses to opt out of PERA must do so promptly, rather than at its leisure, and that under the facts of that case, six months was adequate time for the City to act. The decision does not deprive a newly formed municipality of the option to reject PERA, so long as it does so promptly after its formation and without interfering with the employees' exercise of their established rights. To hold, as AMEA urges, that the exemption option was only intended to be available for a limited period of time after the enactment of PERA would basically rob Section 4 of any continued validity even though it is still printed in the Alaska Statutes.[7] Had the legislature wanted Section 4 to be of temporary duration, we think it would have so indicated.

We are even less persuaded by AMEA's assertion that the legislature intended that

7. We assign no significance to the fact that Section 4 was printed in the Special and Temporary Acts portion of the Alaska Statutes rather than being codified with the remainder of PERA. The language of Section 4 is also printed as an editors note in the body of the Act and it has not been repealed.

collective bargaining within the state be done in accordance with PERA or not at all. AMEA contends that the repeal of the permissive authority in former AS 23.40.010 deprived local governments of the power to engage in collective bargaining on a local level. This argument erroneously assumes that public employers in Alaska are prohibited from engaging in collective bargaining with their employees absent statutory authorization. We have previously recognized the power of local governments to adopt their own system of collective bargaining, despite the repeal of AS 23.40.010,[8] and have even stated that Section 4 of PERA "allows political subdivisions of the state to reject the act's provisions for conduct of labor relations and to substitute their own provisions." *Alaska Public Employees Ass'n v. Municipality of Anchorage*, 555 P.2d 552, 553 (Alaska 1976).

[3, 4] More importantly, we will not construe a statutory provision in a manner which is inconsistent with the express objective of that very legislation. The legislature expressly declared that the state policy of promoting harmonious and cooperative relations in public employment relations can best be effectuated by requiring public employers to bargain collectively with their employees.[9] It is, therefore, most difficult to construe the Act to prohibit local governments, which effectively rejected PERA, from engaging in collective bargaining under their own local ordinances. It is far more likely that Section 4 was added to PERA to give political subdivisions of the state the freedom to fashion their own labor ordinances and systems of collective bargaining. In sum, we find nothing in PERA or our decision in *Petersburg* to support the interpretation of Section 4 proffered by AMEA and thus hold that the Municipality and both of its predecessors had the option pursuant to Section 4 to reject coverage under PERA, and engage in collective bargaining on a local level.

8. In *Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Borough Sch. Dist. Classified Ass'n*, 590 P.2d 437 (Alaska 1979), we acknowledged that the right of non-certified school employees, who are not covered by PERA, arose from the school district's local labor relations policy.

9. AS 23.40.070.

II

Alternatively, AMEA argues that even if Section 4's exemption option is available to governments which are already engaged in collective bargaining, neither the Municipality nor its predecessors effectively exercised their option to reject PERA. AMEA contends that the City acted prematurely, that GAAB acted too late, and that the Municipality acted in violation of its Municipal Charter.

The Municipality's Charter provides that the new government shall be the legal successor to the "rights, titles, actions, suits, franchises, contracts, and liabilities" of the former government. AMEA contends that the City, as the legal successor to the liabilities of its former governments, is subject to PERA by virtue of its predecessors' failure to enact timely exemptions. However, we need not determine what effect the new charter would have on the Municipality's ability to exercise its exemption had the former governments been bound by PERA, since we have concluded that both the City and GAAB did in fact validly opt out of PERA.

[5] There is no merit to AMEA's claim that the City's resolution rejecting PERA was ineffective because it was adopted prior to the effective date of PERA. The City's resolution was passed during the 90 day interim period between the Act's enactment and its effective date. Article II, section 18 of the Alaska Constitution provides that laws passed by the legislature become effective 90 days after enactment. This delay gives those affected by the new legislation notice and an opportunity to prepare for changes which the law makes. It also provides an opportune time for those governments which choose to reject PERA to do so promptly and before their employees have commenced exercising their rights under the Act.

[6] The GAAB adopted its resolution rejecting PERA approximately seven months after the effective date of PERA. AMEA maintains that this exemption was not timely enacted and is thus invalid under *Petersburg*. As previously indicated, we think that whether a local government has exercised its option to reject PERA in a sufficiently timely fashion is best determined by looking at the circumstances of the individual case rather than setting an inflexible deadline. Although seven months may be considered untimely under some circumstances, there is nothing in the present case to indicate that GAAB acted less than conscientiously and diligently in acting to reject PERA. The Personal Director of GAAB contacted the state on several occasions between June, 1972, when the Act was enacted, and December, 1972, regarding the applicability of PERA and the procedures to be followed in rejecting it. He was never informed of any time limitations under Section 4. In January, 1973, the Mayor's recommendation was immediately considered at both a public meeting and special assembly meeting. There was general agreement that labor relations should be controlled on a local level, but that no action should be taken to reject PERA until a local ordinance was adopted.

The resolution rejecting PERA was passed immediately upon enactment of a local labor ordinance. This is clearly not a situation, as in *Petersburg*, where the City dealt with the question of the applicability of PERA at its leisure, while its employees were in the process of undertaking substantial activities in pursuit of their rights under the new Act. Therefore, we conclude that GAAB's exemption was timely and effectively enacted.

[7] We hold that the Municipality is validly exempted from the requirements of PERA both as the legal successor of its predecessors' exemptions, and by virtue of its own independent act of rejecting PERA. Accordingly, the Municipality is free to formulate and apply its own labor relations practices and policies.

III

Finally, AMEA argues that even if the Municipality is free to conduct its labor relations according to its own scheme, it cannot do so in a manner which conflicts with state policy as expressed in PERA. The Municipality's ordinance, AMEA maintains, is inconsistent with PERA's express policy in favor of mandatory collective bargaining insofar as it makes certain terms and conditions of employment non-negotiable.[10]

[8, 9] Although we agree that there is an inconsistency between the state and local law, "a municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute." *Jefferson v. State*, 527 P.2d 37, 43 (Alaska 1974). To hold that a local ordinance, adopted by a municipality which has effectively exempted itself from the requirements of PERA is invalid unless consistent in all respects with the provisions of PERA would basically make Section 4 a meaningless provision. In effect, AMEA is attempting to bring in through the back door the construction of Section 4 which we have already rejected. As long as Section 4 is still part of the Act we cannot conclude that all collective bargaining must be conducted in accordance with the requirements of PERA. Local governments which have validly rejected PERA are free to develop a local scheme of collective bargaining which varies from the state scheme as provided in PERA.

We hold that the Municipality's labor ordinance is valid, and affirm the judgment of the superior court in favor of the Municipality.

AFFIRMED.

10. The non-negotiable items are longevity pay, holidays and leave. See note 2, *supra*.

STATE of Alaska, Petitioner,

v.

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

No. 2341.

Supreme Court of Alaska.

July 24, 1975.

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

Reversed and remanded.

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

1. Appeal and Error ⇐363

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

2. Labor Relations ⇐52

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

3. Labor Relations ⇐52

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

4. Labor Relations ⇐52

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

5. Labor Relations ⇐677

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

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

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

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

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

OPINION

BOOCHEVER, Justice.

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

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

1. AS 23.40.070(1) and (2).
2. SLA ch. 113 (1072).
3. SLA ch. 113, § 4 (1972) provides as follows:
   This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.
4. In view of our holding in the instant case, we do not reach the issue of whether the City could act by means of passage of a resolution rather than by enactment of an ordinance.
5. Only four of six Council members were present at the meeting and only three voted for the resolution. Due to concern that procedural irregularities might have rendered the first resolution invalid, the Council met again on April 11, 1973 and passed a second resolution, 367–R, purportedly exempting the City of Petersburg from the applicability of the PERA.
6. This was indicated by testimony before the labor relations hearing officer. Paul Jones, an employee of the City testified that Councilman Ted Smith was aware that the employees of the power plant had signed pledge cards two or three days after the signing occurred. Doug Welde testified that on the day following the signing of the cards, Councilman Oines asked him "What's this I hear about the IBEW and the Union". Councilman Ted Smith testified that he was aware prior to the March 29, 1973 meeting that the employees of the power plant had signed something indicating that they were interested in a union. Smith further testified that the resolution passed at the March 29 special meeting was in response to the organizational activities at the power plant. Councilman Oines testified to a similar motivation for this meeting and stated that the signing of the IBEW cards could have been discussed at the meeting. Councilman Fred Haltiner admitted that, prior to the March 29 meeting, he had been told that possibly all of the power plant employees had signed pledge cards. However, Mrs. Jerry Van Bleck, the Clerk-Treasurer for the City of Petersburg, testified that at the March 29 meeting there was no mention of the power plant employees having signed authorization cards. In his decision, the hearing examiner deemed the following conclusively proved by the evidence:
   The right of the City to exempt itself from the operation of the PERA had existed and was notice to the world since the Act was signed by the Governor in June of 1972; *but the City took no action to escape from the PERA until it learned that its eight power plant employees had signed pledge cards.* It acted five days later on March 29, 1973, at which time the City passed Resolution 366–R for the purpose of exempting itself from the operation of PERA. (emphasis added)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. AS 23.40.070.

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

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

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

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

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

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

13. The City contends that determination of when it becomes aware of substantial organizational activity is too imprecise a standard. While admittedly difficult factual situations may be conjured up, courts are constantly required to make similarly difficult determinations (as, for example, whether a party has exercised due care in a negligence case). *See also State v. Marathon Oil Co.*, 528 P.2d 203, 207-08 (Alaska 1974); *United States v. Ragen*, 314 U.S. 513, 523, 62 S.Ct. 374, 80 L.Ed. 383, 390 (1942). In any event, it is clear that substantial organizational activity has occurred when all of the employees of a particular unit of government have signed cards authorizing a specific union to represent them.

14. SLA ch. 113, § 5 (1972).

15. SLA ch. 108, § 1 (1959).

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

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

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

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

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

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

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

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

Reversed and remanded.[20]

CONNOR and BURKE, JJ., dissenting separately.

CONNOR, Justice (dissenting).

I must respectfully dissent.

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

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

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

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

18. The state and the IBEW alternatively argued that the trial court erred in the standard of review it applied to the decision of the Department of Labor, contending that the superior court's review of the Department's construction of SLA ch. 113, § 4 (1972) should have been limited to a determination of whether there existed a reasonable basis for the hearing examiner's decision. Here the question presented involved statutory interpretation about which courts have specialized knowledge and experience. Although we disagree with the conclusions reached on the merits by the trial judge, we hold that he did not err in substituting his independent judgment for that of the hearing examiner. The standard applied by the trial court was consistent with the guidelines set forth in *Kelly v. Zamarello*, 480 P.2d 906, 916-17 (Alaska 1971). The appropriate standards of *Kelly* should also be applied upon remand in reviewing other portions of the Department's decision.

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

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

1. § 1, ch. 108, SLA 1959.

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

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

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

BURKE, Justice (dissenting).

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

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

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

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

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

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

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

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

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

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

Opinions of attorney general. — Paragraph (2) of this section and AS 23.40.250(7), standing alone, clearly would make both group life and health insurance benefits and retirement benefits subject to collective bargaining since they both are "fringe benefits." January 23, 1978, Op. Att'y Gen.

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

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

NOTES TO DECISIONS

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

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764-1775.
51 C.J.S., Labor Relations, §§ 20-22, 33.

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

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

Cross references. — For provisions relating to collective bargaining for teachers, see AS 14.20.550 — 14.20.610.
As to nonapplicability of this article to noncertificated employees of regional educational attendance areas, see note to AS 23.40.250.

NOTES TO DECISIONS

Applied in Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Sec. 23.40.090. Collective bargaining unit. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by AS 23.40.070 — 23.40.260, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided. (§ 2 ch 113 SLA 1972)

Cross references. — For provisions relating to collective bargaining for teachers, see AS 14.20.550 — 14.20.610.

Sec. 23.40.100. Representatives and elections. (a) The labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the public employer as bargining representative is no longer the representative of the majority of employees in the bargining unit; or

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

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

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

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

(e) No election may be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later. (§ 2 ch 113 SLA 1972)

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

NOTES TO DECISIONS

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

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

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

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

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under AS 23.40.070 — AS 23.40.260;

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

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

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agency for the expense of representing the members of the bargaining unit.

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

(1) restrain or coerce

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

NOTES TO DECISIONS

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

Sec. 23.40.130. Complaint and accusation. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with AS 23.40.070 — 23.40.260, or, before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62). (§ 2 ch 113 SLA 1972)

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

NOTES TO DECISIONS

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

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

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

NOTES TO DECISIONS

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

Cross references. — As to applicability of this article to ferry personnel, see note following article 2 analysis. As to sentences for misdemeanors, see AS 12.55.135.

NOTES TO DECISIONS

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

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

Sec. 23.40.200. Classes of public employees; arbitration. (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

Effect of amendments. — The 1977 amendment added the present third and fourth sentences.

Editor's notes. — Section 2, ch. 62, SLA 1977, provides: "This Act shall be implemented in the collective bargaining agreements which replace the collective bargaining agreements in effect or being negotiated as of the effective date of this Act."

Legislative history reports. — For report on ch. 62, SLA 1977 (HB 203), see 1977 House Journal, p. 461; 1977 Senate Journal Supplement No. 38.

NOTES TO DECISIONS

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

Sec. 23.40.212. Agreement with the Board of Regents. (a) The Board of Regents of the University of Alaska may delegate to the

Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

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

Sec. 23.40.215. Funding. The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation. (§ 2 ch 113 SLA 1972)

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

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

NOTES TO DECISIONS

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

Cited in Warwick v. State ex rel. Chance, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (1976).

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

Sec. 23.40.225. Exemption from Public Employment Relations Act. Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving union or association shall contribute an equivalent amount of money to a charity of its

choice not affiliated with a religious, labor or employee organization. The union or association shall submit proof of contribution to the labor relations agency. (§ 1 ch 85 SLA 1976)

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

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

NOTES TO DECISIONS

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

Sec. 23.40.230. Assistance by Department of Labor. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conducting elections and investigating unfair labor practices. (§ 2 ch 113 SLA 1972)

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

Cross references. — As to applicability of this article to ferry personnel, see note following article 2 analysis. As to nonapplicability of this article to noncertificated employees of regional educational attendance areas, see note to AS 23.40.250.

NOTES TO DECISIONS

Applied in Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3363), 591 P.2d 1292 (1979).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

Noncertificated school employees are not among those within the ambit of this article. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n, Sup. Ct. Op. No. 1802 (File No. 3800), 590 P.2d 437 (1979).

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

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

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

The legislature did not intend to bind the regional educational attendance areas to the employment contracts of their predecessor, the Alaska State Operated School System. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Although the Alaska State Operated School System, the predecessor to the regional educational attendance areas, was a state agency subject to this article and not a "school district" whose noncertificated employees are exempt under paragraph (5), and therefore did not have a "right" to refuse to bargain which it could waive. Even if the Alaska State Operated School System had waived its right to claim exemption under this article, it does not follow that the regional educational attendance areas also have waived their right to assert the statutory exemption, since the regional educational attendance areas are not simply successors to the Alaska State Operated School System but are independent entities which have been given broad powers to run their individual school districts as they see fit. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

Jurisdiction to determine applicability of collective bargaining agreement. — Because the noncertificated employees of school districts are not employees of the state directly or public employees under this article neither the state personnel board nor the Department of Labor has jurisdiction to determine the applicability of a collective bargaining agreement to the regional educational attendance areas. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

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

Chapter 45. General Provisions.

Section

10. Definitions

Sec. 23.45.010. Definitions. In this title

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

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

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

(A) the basic hourly rate of pay; and

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

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LAWS OF ALASKA

1972

Source: HB 683 am S

Chapter No. 113

AN ACT

Relating to wages, hours and working arrangements.

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

* Section 1. AS 23.10.140 is amended to read:

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

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

ARTICLE 2. PUBLIC EMPLOYMENT RELATIONS ACT.

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

harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

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

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

(3) maintaining merit system principles among public employees.

Sec. 23.40.080. RIGHTS OF PUBLIC EMPLOYEES. Public employees may self organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 23.40.090. COLLECTIVE BARGAINING UNIT. The labor relations agency shall decide in each case, in order to assure to employees the fullest freedom in exercising the rights guaranteed by secs. 70 - 260 of this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided.

Sec. 23.40.100. REPRESENTATIVES AND ELECTIONS. (a) The labor relations agency shall investigate a petition if it is submitted in a manner prescribed by the labor relations agency and is

(1) by an employee or group of employees or an organization acting in their behalf alleging that 30 per cent of the employees of a proposed bargaining unit

(A) want to be represented for collective bargaining by a labor or employee organization as exclusive representative, or

(B) assert that the organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the bargaining unit; or

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

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

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(c) An election may not b
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agency by mutual consent.

(e) No election may be di
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Sec. 23.40.110. UNFAIR LA
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because he has signed or filed
complaint or given testimony un
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(5) refuse to bargai
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representative.

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

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

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

(e) No election may be directed by the labor relations agency in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

Sec. 23.40.110. UNFAIR LABOR PRACTICES. (a) A public employer or his agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in sec. 80 of this chapter;

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

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under secs. 70 - 260 of this chapter;

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

elations between government and the public by assuring effec- of government. These policies

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

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining agent for the expense of representing the members of the bargaining unit.

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

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in sec. 80 of this chapter, or

(B) a public employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of secs. 70 - 260 of this chapter as the exclusive representative of employees in an appropriate unit.

Sec. 23.40.120. INVESTIGATION AND CONCILIATION OF COMPLAINTS. If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by sec. 110 of this chapter, or a written accusation that a person subject to secs. 70 - 260 of this chapter has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

Sec. 23.40.130. COMPLAINT AND ACCUSATION. If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with secs. 70 - 260 of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

Sec. 23.40.140. ORDERS AND DECISIONS. If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative

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

Sec. 23.40.160. POWER TO INVESTIGATE AND COMPEL TESTIMONY. (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of secs. 70 - 260 of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

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

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

(d) If a person refuses to obey a subpoena issued under secs. 70 - 260 of this chapter, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring him to comply with the subpoena.

Sec. 23.40.170. REGULATIONS. The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of secs. 70 - 260 of this chapter.

Sec. 23.40.180. PENALTY FOR VIOLATION OF ORDER OR DECISION. A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than $500.

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

Sec. 23.40.200. ARBITRATION. (a) For purposes of this section, public employees are employed to perform services in one of the three following classes:

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

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

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

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

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

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

(e) Notwithstanding the provisions of (b), (c) and (d) of this section, the employees with the concurrence of the employer may agree in writing to submit a dispute

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(f) The parties to a col may provide in the agreement a to be conducted solely accordi Act (AS 09.43) if the Act is i ment or contract by reference.

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Sec. 23.40.220. LABOR O AND EMPLOYEE BENEFITS, DEDUCT written authorization of a pu ing unit, the public employer of the public employee the mo other employee benefits as ce the exclusive bargaining repr it to the chief fiscal office representative.

Sec. 23.40.230. ASSISTA When state employees are invo shall, if requested by the pe no objection by the organizat personnel board on matters su conducting elections and inve tices.

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Sec. 23.40.250. DEFINI this chapter, unless the con

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arising from interpretation or application of a collective bargaining agreement to arbitration.

(f) The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to the Uniform Arbitration Act (AS 09.43) if the Act is incorporated into the agreement or contract by reference.

Sec. 23.40.210. AGREEMENT. Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement. The agreement may include a term for which it will remain in effect, not to exceed three years. The agreement shall include a grievance procedure which shall have binding arbitration as its final step. Either party to the agreement has a right of action to enforce the agreement by petition to the labor relations agency.

Sec. 23.40.215. FUNDING. The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

Sec. 23.40.220. LABOR OR EMPLOYEE ORGANIZATION DUES AND EMPLOYEE BENEFITS, DEDUCTION AND AUTHORIZATION. Upon written authorization of a public employee within a bargaining unit, the public employer shall deduct from the payroll of the public employee the monthly amount of dues, fees and other employee benefits as certified by the secretary of the exclusive bargaining representative and shall deliver it to the chief fiscal officer of the exclusive bargaining representative.

Sec. 23.40.230. ASSISTANCE BY DEPARTMENT OF LABOR. When state employees are involved, the Department of Labor shall, if requested by the personnel board, and if there is no objection by the organization involved, assist the personnel board on matters such as, but not limited to, conducting elections and investigating unfair labor practices.

Sec. 23.40.240. EFFECT ON EXISTING UNITS, REPRESENTATIVES AND AGREEMENTS. Nothing in this chapter terminates or modifies a collective bargaining unit, recognition of exclusive bargaining representative, or collective bargaining agreement if the unit, recognition, or agreement is in effect at the time this Act becomes effective.

Sec. 23.40.250. DEFINITIONS. In secs. 70 - 260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement and the execution of a written contract incorporating

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an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession;

(2) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in secs. 70 - 260 of this chapter;

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

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

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

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

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

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

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

Sec. 09.43.010. ARBITRATION AGREEMENTS VALID; APPLICATION OF CHAPTER. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or inequity for the revocation of a contract. However, this chapter does not apply to a labor-management contract unless it is incorporated into the contract by reference or its application provided for by statute.

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

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* Sec. 5. AS 23.40.010 is repealed

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

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* Sec. 5. AS 23.40.010 is repealed.

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

For:
Senator
Dick Eliason
Juneau

Chapter 44.10

LABOR RELATIONS

Sections:

44.10.010 DECLARATION OF POLICY. The assembly declares that it is the policy of the city and borough to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring orderly and effective operations of government. These policies are to be effectuated by recognizing the right of employees to organize for the purpose of collective bargaining, negotiating with and entering into written agreement with an employee organization in matters of wages, hours and other terms of employment, and

maintaining merit system principles among city and borough employees. (Serial No. 73-40 § 3 (part), 1974).

44.10.020 RIGHT OF EMPLOYEES. City and borough employees may self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection. (Serial No. 73-40 § 3 (part), 1974).

44.10.030 EMPLOYEE RELATIONS BOARD. There is created the city and borough employee relations board. Such board shall consist of three persons recommended by the mayor and appointed by the assembly for three-year terms, such terms expiring December 31st of each year, except that the initial board shall consist of one person appointed for a one-year term, one person appointed for a two-year term and one person appointed for a three-year term. Three alternate board members shall be appointed in the same manner and for the same terms as regular members. One or more alternate members shall serve on the board during the absence of a regular member.

(1) A member of the board shall not be an employee or spouse of an employee of the city and borough or an employee of any bargaining organization, whether or not such organization represents any city and borough employees.

(2) Staff costs of the board are to be borne by the city and borough. Nonstaff costs in specific disputes for matters such as mediation and fact-finding are to be borne equally by the parties to the dispute. For the purpose of this section, "staff costs" are those costs of consultants, subject to budgetary and funding, and those costs necessary to pay the salaries of city and borough employees who normally serve as staff to the board and to supply those employees with normal overhead support.

(3) In addition to other duties imposed on the board, it shall administer the policy established by this chapter and shall have duties which shall include but are not limited to:

(A) Determining the units appropriate to collective bargaining;

(B) Certification or decertification of employee organizations as exclusive representatives;

(C) Conduct of representation elections;

(D) Resolution of disputes, including mediation and fact-finding;

(E) Determining the extent of and remedy for unfair practices.

(4) The board may conduct hearings, issue cease and desist orders, conduct elections and take affirmative action to effectuate the policies of this chapter.

(5) The board shall propose to the assembly rules and regulations necessary to effectuate the purposes of this chapter. Upon receipt of such recommendations, the assembly may by resolution approve, disapprove, alter, amend or modify such proposed rules and regulations. (Serial No. 81-9 § 2, 1981; Serial No. 76-20 § 2, 1976: Serial No. 76-04 § 2, 1976: Serial No. 75-12 § 6, 1975; Serial No. 73-40 § 3 (part), 1974).

44.10.040 COLLECTIVE BARGAINING UNIT. The board shall determine the unit or units appropriate for the purpose of collective bargaining. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided. The board decision on the appropriateness of the bargaining unit shall be appealable to the assembly as provided by Charter and ordinance. (Serial No. 73-40 § 3 (part), 1974).

44.10.050 EXEMPTIONS FROM COLLECTIVE BARGAINING. The following employees shall not be included within any bargaining unit:

(1) Management employees;

(2) Any group of employees having a community of interest as a group who by a majority vote of the employees in the group elect to be excluded. The board shall determine what

employees constitute a group having a community of interest;

(3) Confidential employees. (Serial No. 75-12 § 3, 1975: Serial No. 73-40 § 3 (part), 1974).

44.10.060 REPRESENTATIVES AND ELECTIONS. (a) The board shall investigate a petition if it is submitted in a manner prescribed by the board and is:

(1) By an employee or group of employees or an organization acting in their behalf alleging that thirty percent of the employees of a bargaining unit which has been determined to be appropriate by the board:

(A) Want to be represented for collective bargaining by a labor, professional or employee organization as exclusive representative, or

(B) Assert that the organization which has been certified by the board as bargaining representative is no longer the representative of the majority of the employees in the bargaining unit; or

(2) By the city and borough manager alleging that one or more organizations have presented to it a claim to be recognized as the representative of the majority of employees in an appropriate unit.

(b) Where a petition is filed under the provisions of subdivision (1) of subsection (a) of this section or where objections are filed under the provisions of Section 44.10.070, it shall provide for an appropriate hearing. Notice of the hearing shall be given by publishing notice in a newspaper of general circulation, at least five days prior to the date set for the hearing, and by mailed notice to the city and borough and to each organization which has presented a claim to be recognized. If the board finds that there is a question of representation, it

shall direct an election by secret ballot to determine whether or by which organization the employees desire to be represented, and shall certify the results of this election. The board shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receive a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest number of ballot votes cast in the election. If an organization receives a majority of the votes cast in the election, it shall be certified by the board as exclusive representative of all the employees in the bargaining unit.

(c) No certification or decertification election may be held in a bargaining unit if a valid election has been held within the preceding twelve months.

(d) Nothing in this chapter prohibits recognition of an organization as an exclusive representative by the city and borough by mutual consent.

(e) No certification or decertification election may be directed by the board in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a ninety-day period preceding the expiration date; however, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit, but not parties to the agreement, if more than three years have elapsed since execution of the agreement or the last annual renewal, whichever was later. (Serial No. 76-18 § 2, 1976; Serial No. 73-40 § 3 (part), 1974).

44.10.070 RECOGNITION BY MUTUAL CONSENT. (a) The city and borough and the labor or employee organization may agree that the employee organization is to be the representative of the employees within a bargaining unit as established by the board. If the labor or employee organization

desires to obtain certification by the board, the recognition agreement shall be filed with the board thirty calendar days

before its effective date. The board shall post the recognition agreement within the established bargaining unit at least twenty calendar days before the effective date of the recognition agreement. If the recognition agreement is not filed as provided by this section, or, if within fifteen calendar days of the posting of the recognition agreement, a labor or employee organization intervenes pursuant to Section 44.10.060, or ten percent of the permanent and probationary employees of the established bargaining unit object to the recognition agreement, the board shall refuse to certify the labor or employee organization recognized by mutual consent. The board shall treat an intervention petition accompanied by a thirty percent showing of interest as a petition filed pursuant to Section 44.10.060.

(b) If no intervention or objection occurs within fifteen calendar days of the posting of the agreement, the board shall, after appropriate investigation and verification of the majority status of the labor or employee organization, certify the labor or employee organization recognized by the agreement as a representative of employees in the agreed-upon bargaining unit.

(c) The times expressed in Section 44.10.060(c) and (e) are inapplicable if the labor or employee organization recognized by mutual consent does not obtain certification from the board. (Serial No. 73-40 § 3 (part), 1974).

44.10.080 COLLECTIVE NEGOTIATION. (a) The city and borough's management representatives and representatives of an organized employee organization have a mutual obligation personally to meet and confer within a reasonable length of time in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation. Requests for meeting or conferring by recognized employee organizations on matters requiring budgetary financing shall be submitted to the city and borough manager in time for adequate discussion and

consideration and action in connection with the budget.

(b) The manager shall keep the assembly apprised of the conditions of the negotiations from time to time during such negotiations, and he shall be guided by the assembly as appropriate or necessary throughout the negotiations. (Serial No. 73-40 § 3 (part), 1974).

44.10.090 MEDIATION AND FACT-FINDING. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between the city and borough and an organization, the board may, either on its own initiative or on the request of one of the parties to the dispute, appoint a competent, impartial, disinterested person to act as mediator in any dispute; alternatively, the parties may also select a mediator to bring the parties together voluntarily under such favorable auspices as would tend to settle the dispute, but neither the mediator nor the board has any power of compulsion in mediation proceedings. With consent of both parties, the board may also appoint a neutral party to determine facts in the dispute and to make public recommendation. (Serial No. 73-40 § 3 (part), 1974).

44.10.100 ASSEMBLY DECISION CONCLUSIVE. If, upon conclusion of negotiation and after use of mediation and fact-finding as appropriate, no agreement is reached, all questions and disputes shall be referred to the assembly for final determination. The assembly shall thereupon hold a hearing upon the matters in controversy on at least seven days' notice unless such notice is waived by the bargaining representative and the management representative, and, after hearing both parties, reach final determination of the issues. This determination shall be final and conclusive and binding upon both parties subject to the requirements of Section 44.10.170. (Serial No. 73-40 § 3 (part), 1974).

44.10.110 STRIKE PROHIBITED. Employees may not engage in strikes. Upon a finding by the city and borough manager that employees are engaging or about to engage in a strike, the assembly may petition or order a petition to the superior court for an injunction, restraining order or such other order as may be appropriate. (Serial No. 75-12 § 5, 1975: Serial No. 73-40 § 3 (part), 1974).

44.10.120 AGREEMENT. Upon completion of negotiations between the city and borough and the bargaining representative, the terms and conditions shall be reduced to writing in agreement form. The agreement shall be presented to the appropriate employee unit for ratification by secret ballot and to the city and borough assembly for ratification by resolution. (Serial No. 73-40 § 3 (part), 1974).

44.10.130 RESERVATION OF MANAGEMENT RIGHTS. (a) The following management functions and responsibilities are reserved to the city and borough government, and the exercise of such functions and responsibilities may not be the subject of any negotiations under this chapter:

(1) Management of the city and borough;

(2) Direction of the city and borough work force;

(3) Determination of the structure and mission of the constituent departments, divisions, agencies, offices and boards of the city and borough;

(4) Determination of the standards and levels of service to be offered to the public;

(5) Exercise of control and direction over city and borough operations;

(6) Taking of disciplinary action for proper cause;

(7) Termination of employees for lack of work or other legitimate reasons;

(8) Consistent with the merit system, determine the method,

means and personnel by which the city and borough's operations are to be conducted, including, but not limited to the rights to:

(A) Recruit, examine, select, promote, transfer and train employees of its choosing and to determine its own methods of such actions,

(B) Assign and direct work, develop and modify class specifications, as well as assignment of salary range for each classification, and allocate positions to these classifications. Determine methods, materials and tools to accomplish the work. Designate duty stations and assign employees those duty stations,

(C) Reduce work force due to lack of work, funding or other causes consistent with efficient management,

(D) Establish reasonable work rules, assign hours of work, and assign employees to shifts of its designation;

(9) To develop and administer an affirmative action program;

(10) All other management functions and responsibilities traditionally exercised within the prerogative of the chief executive officer, chief administrative officer or legislative body of a municipality.

(b) It is the purpose of this section to reserve to management, and to exclude from the bargaining process, those decisions which permit the city and borough to maintain the efficient delivery of uninterrupted service to the community and to take necessary actions to carry out its mission in emergencies; provided, however, that the exercise of these rights does not preclude employees or their representatives from consulting or raising grievances about the practical consequences that decisions on the above matters have on wages, hours and other terms and conditions of employment. (Serial No. 73-40 § 3 (part), 1974).

44.10.140 UNFAIR LABOR PRACTICES. (a) The city and borough or its agents may not:

(1) Interfere, restrain or coerce an employee in the exercise of his rights guaranteed by this chapter;

(2) Dominate or interfere with the formation, existence or administration of an organization;

(3) Discriminate in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization;

(4) Discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint, or given testimony under this chapter;

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

(b) A labor or employee organization or its agents may not:

(1) Restrain or coerce:

(A) An employee in exercise of rights guaranteed in this chapter, or

(B) The city and borough in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances;

(2) Discriminate against any employee because of race, religion, creed, color, sex, national origin or ancestry, or any person with regard to the membership or terms and conditions of membership in an employee organization;

(3) Refuse to bargain collectively in good faith with the city and borough if it has been designated in accordance with the provisions of this chapter as the exclusive representative of the employees in an appropriate unit;

(4) Refuse to meet and confer in good faith at reasonable times, places and frequency with city and borough management representatives on matters which are properly within the scope of representative;

(5) Cause or attempt to cause an employer to discriminate against an employee in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization.

(c) Nothing in this chapter prohibits the city and borough from making an agreement with an organization to require as a condition of employment payment to the exclusive bargaining agent for the expense of representing the members of the bargaining unit; however, such payments shall not exceed that portion of the dues paid by a member which is retained by the organization for local use nor shall any such payment be required of an employee whose normal work week does not exceed half time or an employee employed for work which has a duration of four months or less. (Serial No. 73-40 § 3 (part), 1974).

44.10.150 COMPLAINT AND ACCUSATION. If the board fails to eliminate the prohibited practice by conciliation and fails to obtain voluntary compliance with this chapter, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with procedures adopted by the board. (Serial No. 73-40 § 3 (part), 1974).

44.10.160 ENFORCEMENT BY INJUNCTION. The board may apply to the superior court for an order enjoining the prohibited acts specified in the order or decision of the board. (Serial No. 73-40 § 3 (part), 1974).

44.10.170 FUNDING. The monetary terms of any agreement entered into under this chapter are subject to assembly approval and to funding through budgetary appropriations. (Serial No. 73-40 § 3 (part), 1974).

44.10.180 PAYROLL DEDUCTIONS FOR DUES AND FEES. Upon written authorization of an employee within a bargaining unit, the city and borough may deduct monthly from the payroll of the employee the amount of dues, service fees and other fees as certified by the secretary of the exclusive bargaining representative and delivered to the chief fiscal officer designated by the exclusive bargaining unit representative. If nonstaff costs as set forth in Section 44.10.030(2) are not paid by the exclusive bargaining representative within ninety days after demand has been made by the city and borough for payment, funds withheld under this section may be applied toward satisfying the nonstaff costs. (Serial No. 73-40 § 3 (part), 1974).

44.10.190 DEFINITIONS. In this chapter, unless the context otherwise requires:

(1) "Board" means the city and borough employee relations board.

(2) "City and borough" means the city and borough of Juneau, Alaska, and its classified employees, but excludes the school district and its employees.

(3) "Collective bargaining" means the performance of the mutual obligation of the city and borough or its designated representative and the representatives of the employees to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith in respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement and execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession.

(4) "Election" means a proceeding conducted by the board in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any

other purpose specified in this chapter.

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

(6) "Terms and conditions of employment" means the hours of employment and the compensation and fringe benefits and the employer's personnel policies affecting the working conditions of the employees, but does not include the general policies describing the function, purpose and budget of the city and borough, the management's rights reserved in Section 44.10.130, nor matters regulated by a personnel system adopted pursuant to Section 3.14 of the Charter of the city and borough.

(7) "Confidential employee" means an employee who assists and acts in a confidential capacity to a person who formulates, determines or effectuates management policies.

(8) "Management employee" means an employee classified as within the partially exempt service under Section CBJ 44.05.120; an employee who regularly assumes, or is appointed to assume, a substantial part of the duties of a department head or other partially exempt employee during such employee's absence; and any employee who is responsible for the effectuation or the supervision of the effectuation of management policies.

(9) "Grievance," under the terms of any agreement pursuant to this chapter, means a complaint by an employee in the bargaining unit that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of such agreement concerning wage, hours or terms and conditions of employment. (Serial No. 75-12 § 4, 1975; Serial No. 73-40 § 3 (part), 1974).

23.40.070 et seq., to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the authorization of collective bargaining under this section. Rather, it gives it additional content. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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

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

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

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

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

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

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

Secs. 23.40.045 — 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties.

Repealed by § 55 ch 69 SLA 1970.

Editor's notes. — The repealed sections derived from § 1, ch. 8, SLA 1967; §§ 1-3, ch. 231, SLA 1968.

Article 2. Public Employment Relations Act.

Section

70. Declaration of policy
80. Rights of public employees
90. Collective bargaining unit
100. Representatives and elections
110. Unfair labor practices
120. Investigation and conciliation of complaints
130. Complaint and accusation
140. Orders and decisions
150. Enforcement by injunction
160. Power to investigate and compel testimony
170. Regulations
180. Penalty for violation of order or decision
190. Mediation
200. Classes of public employees; arbitration
210. Agreement
212. Agreement with the Board of Regents
215. Funding
220. Labor or employee organization dues and employee benefits, deduction and authorization
225. Exemption from Public Employment Relations Act

Editor's notes. — Section 4, ch. 113, SLA 1972, provides: "This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply."

Cross references. — As to nonapplicability of this article to noncertificated employees of regional educational attendance areas, see note to AS 23.40.250.

NOTES TO DECISIONS

Right of public employees in Alaska to bargain collectively was created by this article. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

This article confers upon public employees the right to organize and bargain collectively with their employers and requires public employers to recognize collective bargaining units designated pursuant to this article. Northwest Arctic Regional Educ. Attendance Area v. Alaska Pub. Serv. Employees, Local 71, Sup. Ct. Op. No. 1811 (File Nos. 3360, 3362), 591 P.2d 1292 (1979).

This article allows political subdivisions of the state to reject its provisions for conduct of labor relations and to substitute their own provisions. Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

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

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

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

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

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

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

Rejection of this article in order to gain an undue advantage in a labor dispute or

TESTIMONY
SENATE BILL 154

In 1972 when the PERA Act was passed into law, the legislature felt that municipalities should have the option of either adopting the act as their standard for collective bargaining with their employees or "opting out", as it were, in favor of adopting their own labor relations act. The argument at that time was that the local administrations knew their situations and their employees better than another entity might and would be better equipped to deal with most situations that might arise. Anchorage was one of the political subdivisions that chose to formally "opt" out of the PERA. The then Anchorage City Council and the Borough Assembly both stated that they would indeed prefer to write their own acts which they subsequently did. When the merging of the Anchorage governments took place in 1975, the Labor Relations Act was adjusted to accommodate employees of what is now the Municipality of Anchorage.

The Municipality of Anchorage finds several problem areas which will arise should this amendment be incorporated into the Act:

1. Rearrangement of Bargaining Units

   Under the amendment, the State Department of Labor would become the Employee Relations Board for the Municipality and, as such, would be charged with the responsibility of defining and rearranging bargaining units. We feel that this would be done without consideration for local issues and concerns but on the basis of what they have done and decided in other locations. The law as it now reads allows local governments to manage, along with their employees, labor relations in an atmosphere and setting that clearly lends weight to and accommodates local concerns.

2. Disruption

   There are approximately 2,400 represented employees under contract with the Municipality of Anchorage in five (5) separate bargaining units. In going through the process of rearrangement and redefinition of bargaining units, the employee relations environment of the Municipality and its employees would be adversely impacted causing unnecessary disruption of our ability to deliver programs and services to our community, which is, after all our primary mission.

Traditional bargaining unit relationships which we have maintained for years would be altered resulting in chaos. Although our current contracts have heirs and assigns clauses which would come into effect for redefined units until their new agreements would be negotiated, any redefined units which impacted two or more of our current bargaining units would place us in the same difficult position we were in at the time of unification. We would be faced with the APEA-AMEA parity issue all over again, only on a grander scale. As many of you may recall, implementation of the unified bargaining units under Anchorage Ordinance 88-76 was a lengthy, painful, disruptive, and expensive process. The final cost for merging the fire, general government, and general crafts units was in excess of two million dollars.

3. Supervisory & Confidential Employees

Under PERA, supervisory and confidential management positions in the Municipality which are exempted from bargaining under our ordinances would be eligible for inclusion in bargaining units. Only our elected officials, department heads, and division managers would be exempt from bargaining. It is rather ludicrous to conceive of a situation that enables public budget, management, and personnel professionals to organize and negotiate with public employers over wages, hours, and conditions of employment when they are typically the key staff personnel in the development and implementation of policy issues affecting the work force. In 1974, the State of Alaska went through a strike staged by its supervisors that effectively shut down state operations for a short period. Ideally and typically, these people are often used to fill in for bargaining unit members should a strike occur.

4. Department of Labor

In viewing the position paper presented by the Department of Labor, one does not sense an anxiety on the part of the Department to undertake this assignment. The Department is neither staffed or funded to cope with the sudden influx of some 13,000 plus additional public employees into it's domain. The fiscal note accompanying this bill indicates that the Department would require seven (7) new positions at a cost of $479,000 in FY 1984 escalating up to $590,000 in FY 1988. This makes no mention of the training that will be required to qualify those persons hired to set and hold elections, determine and define bargaining units, mediate labor disputes, and do the other things usually associated with collective bargaining. The municipalities would no doubt feel the need to retain their labor relations staffs, which would result in no savings to those entities. The Department concludes it's position paper with the statement: This administration feels that labor relations activities are more effectively maintained at the local level." We wholeheartedly agree.

5. History

Anchorage has a long history of involvement with labor unions, both public and private. As might be well imagined, that history has not always detailed a smooth course, but both labor and management have gained valuable experience over the years. Examples of some of those associations are:

1. International Brotherhood of Electrical Workers - IBEW - 1948 - 35 years

2. Joint Crafts Council (7 crafts) - Recognized by City Council - 1963 - 19-20 years

3. Police and Fire Unions - 15+ years

4. Anchorage Municipal Employees Association - 11 years

As stated earlier, we feel that these associations, along with the attendant high spots and low areas, gives us the background we need to maintain our labor relations activities at the local level, which is exactly what the administration favors.

In closing, let us state that it is obvious that some political subdivisions, Anchorage being one, do indeed have viable labor relations acts that permit and allow their employees to bargain. If there is some difficulty with the "opt out" provision of the PERA, perhaps an amendment that would require only those entities that have no local act and do not bargain in good faith with their employees to come under PERA. Under that arrangement, those who do have their own acts are not also punished.