

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3892

SCRA

HB 327

768



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

10/31/89
Date

H B

5 2 7

3/19/86

Spoke w/ Merle Akers (265-2521) told him I would send him by telecopier to Ana LIO a cy of latest version of bill & also attempt to arrange for him to testify at tomorrow's Comi mtg. ~~if possible~~ Arranged to call him back tomorrow 8:15 AM.

✓ Could not arrange teleconference for Akers to speak at Comi Mtg - did send him the bill... Next Comi of referral is Senate Judiciary

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

Senate Community & Regional Affairs

3/13/86, 3:35pm

3/20/86

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY

2/20/86

Date 5-6-86

Mr. President

The Committee on C&RA considered CSHB 327(Jud) am
relating to protection for public employees.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt S CS for C.S. for HB327 (C&RA)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Arthur Stangorinski
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

Edna De Vries
Chairman

Do Pass
Chairman recommendation

Original sponsors: Koponen, Thompson,
Marrou, et al

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 327 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for public employees."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 39.51 is amended by adding new sections to read:

9 ARTICLE 2. PROTECTION FOR PUBLIC EMPLOYEES.

10 Sec. 39.51.100. EMPLOYEES PROTECTED. (a) A public employer may
11 not discharge, threaten, or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, conditions, location, or
13 privileges of employment because

14 (1) the employee, or a person acting on behalf of the
15 employee, reports to a public body or is about to report to a public
16 body, reasonably believing the report to be true:

17 (A) a violation of a state, federal, or municipal law,
18 regulation or ordinance;

19 (B) a substantial and specific danger to public health
20 or safety; or

21 (C) mismanagement, a gross waste of funds, or an abuse
22 of authority;

23 (2) the employee is requested by a public body to partici-
24 pate in a court action or in an investigation, hearing, or inquiry
25 held by that public body.

26 (b) This section does not require an employer to compensate an
27 employee for participation in an investigation, hearing, or inquiry
28 held by a public body.

29 (c) This section and AS 39.51.110 do not apply if the report

1 made under (a)(1) of this section discloses information that is legal-
2 ly required to be confidential.

3 (d) A person who alleges a violation of this section may bring a
4 civil action for appropriate injunctive relief, actual damages, or
5 both, within 90 days after the occurrence of the alleged violation.

6 (e) The person must show by clear and convincing evidence that
7 the employer violated (a) of this section.

8 (f) The provisions of AS 39.51.100 - 39.51.120 do not diminish
9 or impair the rights of a person under a collective bargaining agree-
10 ment.

11 (g) An employer shall post notices and use other appropriate
12 means to inform employees of their protections and obligations under
13 AS 39.51.100 - 39.51.120.

14 Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order
15 an employer to reinstate the employee, pay the employee back wages,
16 reinstate fringe benefits and seniority rights, and pay actual dam-
17 ages.

18 (b) A public body may not disqualify a person who alleges a
19 violation of AS 39.51.100 - 39.51.120 from eligibility to

20 (1) bid on contracts with the public body;

21 (2) receive land under a law of the state or an ordinance
22 of the municipality;

23 (3) receive another right or benefit to which the person is
24 entitled.

25 (c) A person who violates AS 39.51.100 - 39.51.120 is liable for
26 a civil fine of not more than \$10,000.

27 (d) A person who attempts to prevent another person from making
28 a report or participating in a matter under AS 39.51.100(a) with
29 intent to impede or prevent a public inquiry on the matter is liable

1 for a civil fine of not more than \$10,000.

2 Sec. 39.51.120. DEFINITIONS. In AS 39.51.100 - 39.51.120,

3 (1) "employee" or "public employee" means a person who
4 performs a service for wages or other remuneration under a contract of
5 hire, written or oral, express or implied, for a public employer;

6 (2) "employer" or "public employer" includes the state, a
7 public or quasi-public corporation or authority established by law,
8 the University of Alaska, a municipality, and a political subdivision
9 of the state;

10 (3) "public body" includes a federal, state, or municipal
11 officer or agency.
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Sen. Devries
MAY 08 1986

REPRESENTATIVE NILO KOPONEN
POUCH V
JUNEAU, AK. 99811

MAY 5, 1986

ATTN: DOUGX YATES

GENTLEMEN:

ENCLOSED IS A COPY OF JUDGE SOUTER DECISION OF 4/30/86 DENYING MY REQUEST FOR REINSTATEMENT TO MY POSITION. THE FOLLOWING IS SOME OF THE BACK GROUND ON THE CASE. OUR BELIEF WAS AND IS THAT THE RAILROADS ACTIONS WERE INITIALLY IN RETALIATION FOR MY PARTICIPATION IN THE PUBLICATION OF A DOCUMENT TITLED R.A.I.L.S. ISSUED MID DECEMBER OF 1984. HOWEVER WE WERE UNSUCCESSFUL IN OUR ATTEMPT TO CONVINC THE JURY, THAT THAT WAS THE REASONS FOR THE RAILROADS ACTIONS.

FROM JULY OF 1965 THROUGH JANUARY 10, 1985 SOME 19 1/2 HOURS I WAS EMPLOYED BY THE ALASKA RAILROAD IN ITS REAL ESTATE OFFICE. FROM MARCH OF 1969 THROUGH JANUARY 10, 1985 I WAS THE MANAGER OF THE OFFICE. IN THE THOSE 19 1/2 YEARS I NEVER RECEIVED LESS THAN A SATISFACTORY PERFORMANCE EVALUATION. IN THE PERIOD 1981 TO 1983, I RECEIVED A CASH PERFORMANCE AWARD: A MERIT AWARD. AND IN NOVEMBER 1983 RECEIVED A U.S. DEPARTMENT OF TRANSPORTATION SUPERIOR ACHIEVEMENT AWARD. IN JULY OF 1984 APPROXIMATELY SIX (6) MONTHS PRIOR TO DATE OF TRANSFER, JANUARY 5, 1985, I RECEIVED A STEP PAY INCREASE. FOR THE PERIOD JULY 1984 THROUGH DECEMBER 12, 1984, WHILE ASSIGNED FULL TIME TO THE LAND TRANSFER COMMITTEE, I RECEIVE MY LAST PERFORMANCE EVALUATION WHICH WAS A BETTER THAN AVERAGE EVALUATION.

ON JANUARY 20TH, 1985 FOUR (4) WORKING DAYS AFTER DATE OF TRANSFER, MR. JOHN GRAY, THE MANGER OF MARKETING, MY SUPERVISOR VERBALLY ACCUSED ME OF PLACING MY HAND ON MRS. YONLEY SHOULDER AN ACTING IN A UNPROFESSIONAL MANNER TOWARDS HER, AND ORDERED ME TO PACK MY THINGS AND LEAVE THE PREMISES. MR. GRAY DID NOT ASK FOR OR GIVE ME THE OPPORTUNITY TO DISCUSS THE MATTER WITH HIM.

IN HIS MEMORANDUM OF THE SAME DATE HE CHARG'D ME WITH HAVING PLACED MY HAND ON THE SHOULDER OF A SUBORDINATE, MARILYN YONLEY FORCING HER TO REMAIN IN HER CHAIR. THIS INCIDENT HE SAID OCCURRED WHILE I WAS ARGUING WITH THIS SUBORDINATE AND IN THE PRESENCE OF A WITNESS WHO HAS CONFIRMED THE REPORT OF MY CONDUCT. MR. GRAY FURTHER STATES THAT I WAS VERBALLY ABUSIVE TO THIS EMPLOYEE AND CONDUCTED CONVERSATIONS WITH HER DURING WHICH MY CONDUCT WAS OF A POTENTIALLY VIOLENT NATURE INCLUDING SHAKING OF HAND IN THE AIR, STOMPING OF FEET AND YELLING LOUDLY.

ACCORDING TO MR. GRAY THIS INCIDENT HAPPENED THE MORNING OF JANUARY 9TH, AND WAS REPORTED TO HIM BY MRS. YONLEY AT NOON ON THE FOLLOWING DAY JANUARY 10.

ON MARCH 22, 61 DAYS AFTER BEING RELIEVED OF DUTY ON JANUARY 10TH, I RECEIVED THE FORMAL WRITTEN CHARGES. THE CHARGES ALONG WITH THE PROPOSED DISCIPLINARY ACTION WERE SET FORTH IN A 4 PAGE MEMORANDUM DATED MARCH 21, EXECUTED BY MR. JOHN GRAY. ATTACHED TO THIS MEMORANDUM WERE 22 OTHER DOCUMENTS A VAST NUMBER OF WHICH APPEAR TO HAVE NO RELEVANCE TO THE ISSUES. ONE OF THE DOCUMENTS WAS A UNSIGNED MEMORANDUM TO THE FILE DATE JUNE 22, 1982, FROM THE CHIEF OF ADMINISTRATION JAMES B. BLASINGAME. ANOTHER ONE WAS THE STATEMENT BY THE RAILROADS WITNESS, MRS. BETTY HUMPHREY. WHICH DID NOT SAY SHE SAW ME PUSH SHOVE OR RESTRAIN MRS. YONLEY.

MR. GRAYS MEMORANDUM OF MARCH 21 EXPANDED THE CHARGES FROM THOSE MADE IN HIS JANUARY 10TH MEMORANDUM TO INCLUDE CONSIDERATION OF MR. BLASINGAMES' MEMORANDUM TO THE FILE OF JUNE 22, 1982, REFERRING TO UNSUPPORTED ACCUSATION MADE BY MRS. YONLEY IN JUNE OF 1982, WHILE THE RAILROAD WAS UNDER FEDERAL OWNERSHIP.

ON APRIL 11, 1985 I SUBMITTED MY WRITTEN RESPONSE TO ALL THE CHARGES, INCLUDING THE ISSUES RAISED BY MR. BLASINGAMES MEMORANDUM, TO MR. LEWIS DICKINSON, BOARD MEMBER OF THE ALASKA RAILROAD CORPORATION, THE PERSON APPOINTED BY THE RAILROAD AS ITS HEARING OFFICER.

TO THE CHARGE: THAT I PHYSICALLY RESTRAINED MRS. YONLEY IN HER CHAIR: I PROVIDED TO THE HEARING OFFICER A SWORN STATEMENT FROM THE RAILROADS WITNESS, MRS. BETTY HUMPHREY, WHO MR. GRAY SAID, BOTH IN HIS MEMORANDUM OF JANUARY 10TH AND HIS STATEMENT ATTACHED TO HIS MEMORANDUM OF MARCH 21ST WITNESSED THE PURPORTED INCIDENT. MRS. HUMPHREY SWORN STATEMENT STATES AS FOLLOWS. "I DID NOT SEE MERLE AKERS PUT HIS HAND ON MARILYN YONLEY'S SHOULDER NOR DID I SEE MR. AKERS PUSH, SHOVE OR RESTRAIN MS. YONLEY." IN ADDITION I PROVIDED A SWORN STATEMENT FROM THE OTHER LADY PRESENT IN THE OFFICE AT THE TIME, WHICH STATES IN PART: "I DID NOT SEE MR. AKERS SHOVE MS. YONLEY, KEEP HER IN HER CHAIR, OR IN ANY OTHER WAY TOUCH HER OR RESTRAIN HER. I HAVE NEVER OBSERVED MR. AKERS PUSH, TOUCH, RESTRAIN OR OTHERWISE BE PHYSICAL WITH ANY OF HIS EMPLOYEES." I PROVIDED THE ABOVE STATEMENTS EVEN THOUGH THE RAILROADS WITNESSES MS. HUMPHREY IN HER STATEMENT TO JOHN GRAY NEVER SAID SHE SAW ME PLACE MY HAND ON MRS. YONLEYS' SHOULDER OR SHOVE, PUSH, OR RESTRAIN MRS. YONLEY IN HER CHAIR. THE ONLY PEOPLE WHO SAID I DID ANY OF THE ABOVE WERE JOHN GRAY, WHO WAS NOT PRESENT AND MRS. YONLEY.

MR. BLASINGAME'S MEMORANDUM TO THE FILE DATED JUNE 22, 1982 REFERS TO AN INCIDENT IN 1982 WHERE I ALLEGEDLY MISS TREATED MRS. YONLEY WHEN I DENIED HER REQUEST FOR LEAVE. I HAD NEVER SEEN THIS MEMORANDUM AND

DID NOT KNOW OF ITS EXISTENCE UNTIL I RECEIVE IT AS AN ATTACHMENT TO THE RAILROADS MEMORANDUM OF MARCH 21, 1985. THERE IS GOOD REASON FOR ME NOT KNOWING OF THIS MEMORANDUMS EXISTENCE, AS MR. BLASINGAME WILL TESTIFY IN TRAIL, THE MEMORANDUM WAS NOT TYPED UNTIL TWO (2) YEARS LATER, SOME TIME IN 1984 THE EXACT DATE HE COULD NOT RECALL FOR THE COURT. (See Article on Privacy Act)

I RECEIVED THE FINDINGS OF THE HEARING OFFICER ON MAY 10, 1985 THIRTY ONE (31) DAYS AFTER I MADE MY ORAL PRESENTATION. THE HEARING OFFICER FINDINGS DID NOT ADDRESS OR RESPOND TO ANY OF THE ISSUES WE HAD RAISED. ON THE VARIOUS ISSUES HE DID NOT STATE HOW HE CAME TO HIS CONCLUSION OF FACT. EXAMPLE MR. BLASINGAMES' JUNE 22, 1982 MEMORANDUM: HE DID NOT STATE HOW OUR REBUTTAL OF FACTS WERE CONSIDERED. DID HE FIND THEM FACTUAL OR NOT? DID HE DISCOVER THEN THAT THE MEMORANDUM HAD NOT BEEN TYPED IN 1982? WHAT DID HE FIND OUT ABOUT THE MEMORANDUM?

MR. LEWIS DICKINSON FOUND ME GUILTY AS CHARGED. HE ORDERED ME PLACED ON FOUR (4) DAYS LEAVE WITHOUT PAY, AND DEMOTED FROM A GSE 14 POSITION AT A BASE SALARY OF \$56,278.00 PER YEAR TO A GSE 11 POSITION AT A BASE SALARY OF \$34,292.00 PER, FOR A \$21,986.00 PER YEAR CUT IN PAY, AND REASSIGNED TO A NEWLY CREATED POSITION OF REALTY SPECIALIST IN THE ENGINEERING BRANCH.

IN JUNE OF 1985 I FILED SUITE IN SUPERIOR COURT STATE OF ALASKA. IN SEPTEMBER 1985 THE JURY FOUND THAT THE ALASKA RAILROAD ACTED IN BAD FAITH. AS THE ALASKA RAILROAD CAN NOT ACT, ONLY ITS PERSONNEL CAN TAKE A ACTION, THE THE JURY FOUND THAT THE ALASKA RAILROADS PERSONNEL ACTED IN BAD FAITH.

THE RAILROAD PERSONNEL INVOLVED IN MAKING THE CHARGES AGAINST ME, AND DECISIONS FOR THE RAILROAD IN MY CASE WHO TESTIFIED BEFORE COURT FOR THE RAILROAD WERE; LEWIS DICKINSON, ALASKA RAILROAD CORPORATION BOARD MEMBER; FRANK TURPIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER; ARNOLD POLANCHEK, VICE PRESIDENT OPERATIONS; JAMES BLASINGAME, DIRECTOR OF ADMINISTRATION; DONALD HARVEY, PERSONNEL OFFICER; JOHN GRAY, MANAGER OF MARKETING; MARILYN YONLEY SECRETARY TO MANAGER INDUSTRIAL DEVELOPMENT AND REAL ESTATE OFFICE.

THE TRIAL ISSUES WERE BASED ON SUSPECTED REASONS FOR THE RAILROADS' ACTIONS FOR FAILING TO FOLLOW IT'S OWN RULES AND REGULATIONS. I WAS PROHIBITED BY A RULING OF THE JUDGE FROM TRYING THE CHARGES MADE BY MRS. YONLEY AND PRESENTING ANY EVIDENCE AS TO HER CHARACTER, OR PAST PERFORMANCE. THE JURY HOWEVER DID REALIZE THAT MRS. YONLEY CHARGES HAD AN OBVIOUS FLAW. THAT IS BY HER ACCOUNT OF WHAT HAPPENED SHE WOULD HAVE HAD TO LEAVE FOR LUNCH ON JANUARY 9TH BY NOT LATER THAN 10:00 A.M. AND NOT RETURNED UNTIL ABOUT 12:45 P.M., MAKING FOR A TWO AND HALF (2 1/2) HOUR LUNCH PERIOD. WE WERE ABLE TO SHOW THRU

TESTIMONY OF WITNESS THAT SHE WENT TO LUNCH AT HER NORMAL ASSIGNED TIME OF 11:30 A.M.. IN ADDITION THE RAILROAD COULD NOT PRODUCE A WITNESS WHICH IT CLAIMED IT HAD, THAT SAW ME PLACE MY HAND ON MRS. YONLEY SHOULDER.

THE ALASKA RAILROAD ATTORNEYS NEW OF THESE OBVIOUS FLAWS IN THEIR CASE MONTHS BEFORE GOING TO COURT. THE LACK OF WITNESS WAS POINTED UP IN MY RESPONSE TO HEARING OFFICE LEWIS DICKINSON IN APRIL, 1985. THE FLAW IN MRS. YONLEY CHARGES WAS POINTED OUT IN HER PRE-TRIAL DEPOSITION. AS THE RAILROADS' LEGAL STAFF NEW OF THESE FACTS ONE HAS TO PRESUME THAT THE ALASKA RAILROAD CORPORATION NEW THESE FACTS ALSO.

IN MY WRITTEN AND ORAL PRESENTATION TO THE HEARING OFFICER I CALLED ATTENTION TO A PROBABLE PROBLEM WITH MR. JAMES BLASINGAME MEMORANDUM TO THE FILE OF JUNE 22, 1982. IN MR. BLASINGAME PRE-TRIAL DEPOSITION, AND THE PRE-TRIAL DEPOSITION OF HIS SECRETARY MRS. IONE WYDRA, IT WAS MADE CLEAR THAT THIS MEMORANDUM WAS A SHAM. IT HAD NOT BEEN TYPED IN 1982 AS REPRESENTED BUT SOME TIME IN 1984 ACCORDING TO MRS. WYDRA AND MR. BLASINGAME THE EXACT DATE THEY COULD NOT RECALL.

THE ALASKA RAILROAD CORPORATION KNOWING THERE WERE SUBSTANTIAL PROBLEMS WITH THEIR CASE AGAINST ME, WENT TO TRIAL. WHY? ONE OF THE REASONS IS THAT THE PERSONS WHO MADE THE DECISION TO GO TO TRIAL HAD NOTHING PERSONNEL TO LOOSE. THE TRIAL AND ALL COSTS TO THE RAILROAD WOULD BE PAID FOR WITH PUBLIC MONEY. IF THOSE WHO ACTED IN BAD FAITH WERE FACED WITH PAYING THE RAILROADS COURT COST, ATTORNEY FEES AND FINES THEMSELVES, WOULD THEY HAVE FORCED THIS INTO A EXPENSIVE TRIAL? IF THIS HAD BEEN YOUR OWN BUSINESS WOULD YOU ALLOW A LIKE SITUATION TO HAPPEN IN YOUR COMPANY?

A JURY OF OUR PEERS FOUND THOSE MEMBERS OF THE ALASKA RAILROAD CORPORATION ACTED IN BAD FAITH. WHAT DISCIPLINARY ACTION IS THE CORPORATION BOARD GOING TO TAKE AGAINST THESE INDIVIDUALS WHO ACTED IN BAD FAITH? WHEN DOES THE RAILROAD PLAN TO ACT? IT HAS BEEN OVER SIX (6) MONTHS SINCE THIS DECISION OF THE JURY WAS ENTERED.

THE ALASKA RAILROAD CORPORATION IS EXEMPTED FROM COMPLIANCE WITH A NUMBER OF REQUIREMENTS IMPOSED BY LAW ON OTHER STATE AGENCIES AND CORPORATIONS. AS AN EXAMPLE THE STATE PROCUREMENT REGULATIONS AND THE RAILROAD IS TRYING TO BE EXEMPTED FROM THE ETHICS BILL, AND THE WHISTLE BLOWERS BILLS.

THE ALASKA RAILROADS CORPORATION ACTIONS IN MY CASE, CERTAINLY IS NOT JUSTIFICATION FOR EXEMPTING ITS MEMBERS FORM THE PROVISIONS OF THESE BILLS, ON THE PRESUMPTION THAT THE RAILROAD BOARD AND ITS PERSONNEL WILL ACT IN GOOD FAITH. IN FACT THE ACTIONS OF THE RAILROAD IN MY CASE WOULD APPEAR TO MAKE IT INCUMBENT UPON THE LEGISLATURE TO MAKE

SURE THE RAILROAD IS SUBJECT TO PROVISIONS OF THE ABOVE BILLS AND PARTICULARLY THE PENALTY PROVISIONS.

THE ALASKA RAILROAD CORPORATION ATTEMPT TO FRAME ME FOR SOMETHING THEY NEW I DID NOT DO, DOES NOT INDICATE THAT THEY CAN BE TRUSTED TO BE TRUTHFUL IN THEIR DEALINGS AND TO ACT IN A FAIR AND IMPARTIAL MANNER. UNTIL SUCH TIME AS THE ALASKA RAILROAD CORPORATION HAS DEMONSTRATED IT HAS THE CAPACITY TO DO SO, I SEE NO REASON FOR THEM TO BE EXEMPTED FROM LAWS AND PENALTIES WHICH ARE DESIGNED TO INSURE FAIR, HONEST AND EQUAL TREATMENT OF THE GENERAL PUBLIC AND ITS EMPLOYEES.

THE FACT THE ALASKA RAILROAD CORPORATION BOARD OF DIRECTORS AND PERSONNEL WHO ARE PUBLIC EMPLOYEES, ARE BY LAW PERMITTED TO EXPEND PUBLIC MONEY TO ATTEMPT TO BRING FRAUDULENT CHARGES AGAINST A CITIZEN OF THE STATE OF ALASKA, IN TOTAL DISREGARD FOR THAT PERSONS CONSTITUTION RIGHTS, AND TO ATTEMPT TO EMBARRASS AND DISCREDIT PEOPLE AS THIS CORPORATION HAS DONE IN MY CASE, SHOULD BE A CRIMINAL ACTION. IF NOTHING ELSE YOU WOULD THINK THAT THEY WOULD BE DISCIPLINE OR PENALIZE AT LEAST EQUAL TO THAT DISCIPLINED OR PENALTY THAT HAS BEEN IMPOSED ON ME. HOWEVER AS YOU CAN SEE THE LAW ALLOWS FOR THEM TO GET OFF SCOT FREE.

JUDGE SOUTER DECISION WILL BE USED TO KEEP ANY WHISTLE BLOWER WHO IS RETALIATED AGAINST FROM BEING RETURNED TO HIS/HE POSITION. ONE OTHER THING THAT HIS DECISION DOES IS SHOULD SOMEONE IN PUBLIC OFFICE WISH TO HAVE SOMEONE REMOVED FROM HIS/HE JOB, A PERSON CAN FRAME THE PERSON IN SOME MANNER, AND GET THE PERSON FIRED OR OTHERWISE REMOVED, AND IT WILL ALL BE LEGAL. EVEN IF THE PERSON WHO WAS ACTED AGAINST CLEARC THEM SELF OF THE CHARGES THEY WILL NOT GET REINGATED. IN ADDITION THEY WILL NOT BE ABLE TO GET BACK ALL OF THERE ATTORNEY FEES AS 100% OF THESE CAN NOT BE AWARDED BY LAW.

SINCERELY

Merle W. Akers

MERLE W. AKERS

3031 Bennett St.

Dineenoy AK 99517

cc: SENATOR EDNA DEVIRES
POUCH V
JUNEAU AK. 99811

MAY 01 1986

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MERLE AKERS,)
)
 Plaintiff,)
)
 vs.)
)
 ALASKA RAILROAD CORPORATION,)
)
 Defendant.)

Case No. 3AN-85-7707 Civil

MEMORANDUM OF DECISION

Plaintiff Merle Akers has been an employee of the Alaska Railroad for approximately twenty years. From March of 1969 until May of 1985 he served as the Railroad's Manager of Industrial Development and Real Estate. On May 15, 1985, as a result of an unfavorable decision by the Railroad's management in a disciplinary proceeding against him, plaintiff was involuntarily transferred to the non-managerial position of Realty Specialist within the Railroad's Engineering Department. The Realty Specialist position calls for an employee with a service grade of GSE-11, as contrasted with the GSE-14 grade which plaintiff's previous position called for. However, when the Railroad transferred plaintiff to this lower position it specifically ordered that he would retain his GSE-14 grade and salary.

The disciplinary proceeding which resulted in plaintiff's transfer began with a complaint being made against him by his secretary, Marilyn Yonley. Ms. Yonley's complaint alleged that plaintiff had screamed at her in the office and had forcibly held her in her chair during the course of a dispute which had arisen regarding the manner in which she was preparing a document. After an initial investigation into the complaint the Railroad charged plaintiff with conduct unbecoming a management official and placed him on involuntary, paid sick leave while it investigated the matter further. Following the completion of this additional investigation the decision to transfer plaintiff to the lesser position was issued, and plaintiff was also suspended from employment for four days. Shortly thereafter plaintiff

instituted the instant lawsuit, and the court, recognizing the seriousness of the issues for both plaintiff and the Railroad, granted the joint request of both sides for an early trial date.

At the conclusion of the trial the jury issued special verdicts finding that the defendant's suspension and transfer of plaintiff was motivated, in whole or in substantial part, by malice or bad faith and that plaintiff is consequently entitled to recover \$7,000.00 for past mental and emotional distress and \$30,000.00 for punitive damages, but that he is not entitled to recover anything for alleged future wage and retirement pay losses and alleged future mental and emotional distress. Based on these special verdicts and on the evidence which was presented during the trial, plaintiff has now moved for further relief. Specifically, he seeks an order: 1) invalidating his four day suspension from work; 2) requiring defendant to restore plaintiff to his previous managerial position or its present equivalent; 3) requiring the defendant to purge all references in its records to the incident with Ms. Yonley that resulted in the disciplinary proceedings question; 4) requiring the defendant to purge its records of all statements reflecting the disciplinary action which the defendant imposed against the plaintiff as a result of the complaint by Ms. Yonley; 5) prohibiting the defendant from referring to the subject incident and its resultant disciplinary action when communicating with persons outside the Alaska Railroad Corporation; 6) prohibiting the defendant from placing any reliance on the subject incident and its resultant disciplinary action when evaluating plaintiff for any and all employment purposes; 7) prohibiting the defendant from retaliating or otherwise interfering with the plaintiff's employment rights because of the subject incident and resulting disciplinary action; and 8) requiring defendant to restore to plaintiff the annual leave which plaintiff consumed to prepare for and attend the trial in this case.

The court has no doubt as to the appropriateness of any

of the relief sought by plaintiff except for the restoration to him of his previous management position (item #2 above) and the restoration to plaintiff of the annual leave he used in connection with this litigation (item #8 above). Except for these two requests for relief, to grant plaintiff the relief requested would do no more than to effect a nullification of the Railroad's improper disciplinary action against the plaintiff and ensure that it will have no future effects. On the other hand, to deny plaintiff these items of relief would be to afford him less than complete relief and to raise the spectre of irreparable harm to plaintiff at some future time. Accordingly, the equitable balance tips decidedly in favor of plaintiff with respect to these items of relief. Therefore, plaintiff shall be granted the relief sought by him in items #1,3,4,5,6 & 7 above.

With respect to item #8 of plaintiff's requests for relief, the court is persuaded by the two cases cited by plaintiff, namely Sebastian v. Texas Dept. of Corrections, 541 F.Supp. 970, 978 (S.D.Tex.1982) and Kyriazi v. Western Electric Co., 469 F.Supp. 672, 674 (D.N.J.1979). Not to restore to plaintiff the annual leave he reasonably took to pursue this litigation would, in effect, enable the railroad to discriminatorily impose a penalty on plaintiff for having brought a successful case against the Railroad to obtain redress for an injustice perpetrated against him by the Railroad. A court of equity need not and should not countenance such a result. Accordingly, the annual leave in question must be restored to plaintiff. In the event that plaintiff and the Railroad are unable to resolve the question of how many days of annual leave should be restored, plaintiff may move for the court to determine the same.

Plaintiff's remaining request for relief seeks reinstatement to his former position. The court is convinced that reinstatement is ordinarily appropriate in cases of wrongful discharge of an employee. See, e.g., Matanuska-Susitna Borough v. Lum, 538 P.2d 994 (Ak. 1975); Allen v. Antanaga County Bd. of Ed.,

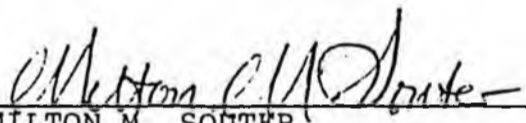
Smith v. Hampton Training School for Nurses, 360 F.2d 577, 581 (4th Cir. 1966); and Taylor v. Teletype Corp., 648 F.2d 1129, 1138 (8th Cir. 1981). However, reinstatement is not appropriate for managerial positions in which the manager and his superiors must have a close working relationship involving mutual trust and cooperation unless the mutual trust and ability to cooperate exist. Francoeur v. Carroon and Black Company, 552 F.Supp. 403 (S.D.N.Y.1982). In the instant case the evidence clearly showed that plaintiff's former managerial position was indeed one which called for a close working relationship between the holder of the position and his superiors, a relationship of mutual trust and confidence, and an ability to work cooperatively with one another. The evidence also showed that plaintiff's superiors at the Railroad do not have confidence in his ability to perform the managerial position in an acceptable manner, that they do not trust him to act always in the best interests of the Railroad as they conceive those best interests, and that they cannot work in a cooperative fashion with plaintiff. Plaintiff likewise has evidenced that he is not confident of management, and it is this court's opinion that plaintiff would find it difficult, if not impossible, to bend his will to that of management's, particularly on matters involving policy formulation. Finally, it is clear that substantial mutual hostility exists between plaintiff and the Railroad management. Accordingly, the court can only conclude that it should not order plaintiff reinstated to his former management position. Said request for relief is therefore denied.

Finally, plaintiff has moved to hold the Railroad in civil contempt of this court's June 4, 1985 preliminary injunction which forbade the Railroad from filling plaintiff's previous position with another employee on a permanent basis. The evidence at trial established, however, that the Railroad created a new position different from and superior to that of plaintiff's former position and that the Railroad filled it with a permanent employee, Mr. Larry Houle. Plaintiff's former position remained

in existence and was filled, on only a temporary basis with Ms. Jeanne Riley. The motion to hold the Railroad in contempt must therefore be denied on the factual basis that the Railroad did not violate it. In addition it must be denied for the reason, as discussed above, that the court cannot order plaintiff reinstated to his former position. Thus, the legal basis to support the preliminary injunction fails, and it must be regarded as having been improvidently entered. It therefore cannot serve as the basis for a contempt order. The contempt motion is accordingly denied.

The Railroad's counsel is directed forthwith to prepare, serve and lodge a final judgment and decree implementing the jury's special verdicts and this court's decisions on plaintiff's equitable claims as set forth in this memorandum. Because of the court's factual findings and conclusions of law are set forth in this Memorandum of Decision, counsel is directed not to prepare Findings of Fact and Conclusions of Law.

SO ORDERED this 30th day of April, 1986.


MILTON M. SOUTER
SUPERIOR COURT JUDGE

I Certify that on 1 May 1986
a copy of the above was mailed to each
of the following at their address of
record:
Lou Ellis Tim Stearns
T. Owens
Secretary

The First Line

A Newsletter for Federal Supervisors and Midmanagers

Volume 1, Number 8

August-September 1977

Supervisor's Notes and Personnel Records

Revisiting the Privacy Act

Last year, the first issue of The First Line carried a story on how the Privacy Act affects supervisors. The Privacy Act continues to be an important element in many of the activities that you are involved in. The following article briefly reviews some of the more important points you will need to keep in mind when you keep informal notes, maintain formal records, or ask for information from your employees.

Personal notes or records that you may keep as memory aids regarding the performance, conduct, and development of employees you supervise are not prohibited by the privacy Act as long as certain conditions are met, according to the Civil Service Commission's top personnel information official.

Nicholas J. Suszynski, Jr., Director of CSC's Bureau of Manpower Information Systems, said that for supervisors' notes to remain outside of the Privacy Act they must:

- Be kept and maintained only for the personal use of the supervisor who wrote them,
- Not be circulated to anyone, even the supervisor's secretary or another supervisor of the same employee,
- Not be under the control of the agency, or required by the agency, and are kept or destroyed as the supervisor who wrote them sees fit.

Such notes, Suszynski said, may be helpful as memory aids when discussing employees' performance and training needs, but shouldn't be regarded as a "secret file" to use against employees. Notes can help you focus on issues when counseling employees, and foster constructive dialog throughout the year, but it is essential that they be kept under your

strict control and not shared with anyone.

The Act covers any information about an individual maintained by an agency and which can be retrieved by name or other personally identifying number or symbol. This includes—but is not limited to—information on education, financial transactions, medical

See Privacy Act, p. 6



"Did you know that Jack never finished high school? It was on the form I was typing today . . ."

Intentionally releasing information protected by the Act could cost you or your employees up to \$5,000 in fines.

Route to: _____

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Privacy Act

continued from p. 1

history, and criminal or employment history.

If you collect, keep, or handle information about individuals, Suszynski said, you are responsible under the Act for safeguarding the information and protecting it from unauthorized disclosure.

Intentionally releasing information protected by the Act could cost you or your employees up to \$5,000 in fines. If you have any doubt about the exact procedures for handling information on individuals, seek advice through your personnel officer or general counsel.

Remember that whenever you collect personal information from individuals, your employees for example, you must tell them by what authority you are requesting the information, what uses will be made of the information, whether it is voluntary or mandatory that they give the information, and what will happen if they do not give you the information.

In sum, be cautious whenever you handle personal information. The Privacy Act was designed to protect an individual's right to privacy, and the law has teeth. Keep yourself informed of your agency's procedures, and keep your employees informed too.

CSC Stresses Supervisory Training

In a Civil Service Commission Bulletin released at press time, the Commission reminded agencies that special attention must be given to training needs when employees first take on supervisory duties.

CSC Bulletin 410-93, dated August 8, 1977, points out that the supervisory training requirement for newly selected first-level supervisors is *not* for a fixed number of training hours, "but for assurance of proficiency in performance of supervisory tasks."

"Sending a new supervisor to 80 hours of supervisory training," the bulletin stressed, "does not relieve agency management of the responsibility of initially determining the training needs of newly-appointed competitive service supervisors or of subsequently evaluating the effectiveness of training in meeting those needs."

The bulletin guides personnel offices in identifying first-level supervisory positions to which the requirement applies, tracking the movement of employees into those positions, and recording and reporting training which meets the requirements.

It also urges agencies to provide supervisory training to everyone exercising supervisory authority, even though they may not technically fall within the definition of "supervisor" contained in position classification or job grading standards. □


The First Line

The First Line is published bimonthly by the U.S. Civil Service Commission. Editorial inquiries should be sent to the U.S. Civil Service Commission, First Line Editor, Don Dillon, Office of Public Affairs, Room 5351, 1900 E Street, N.W., Washington, D.C. 20415. Telephone (202) 632-5496.

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U.S. Civil Service Commission

First Line Wins Award

The First Line won one of the top awards among the 444 publications judged in the 15th annual Blue Pencil Awards program June 15.

The National Association of Government Communicators, sponsors of the program, awarded First Line second prize in the newsletter category.

A panel of eight government publications experts judged entries in 14 publications categories.



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

C&RA Committee Meeting -- 3/20/86

SB 411 -- An Act relating to road maintenance service areas

CS for HB 327 (Jud) Am -- An Act relating to the disclosure of information

SB 411 would make changes to the Road Maintenance Service Areas Program, AS 19.30.260 through AS 19.30.320, to provide road improvement funds only to those outlying districts which do not have access to such funds.

CS for HB 327 (Jud) was considered by the Committee on March 13th. The Committee agreed the bill needed more work with reference to unclear wording and punctuation. Revisions to the bill are indicated on a marked up copy of the House version of the bill. A Committee Substitute work draft, containing the revisions has been prepared.

Information attached on the bills:

- (1) Memo dtd 3/11/86 from Sen. Faiks on SB 411.
- (2) Copy of current law AS 19.30.260 - 19.30.320 re. SB 411.
- (3) Fiscal Note from DOT&PF on SB 411.
- (4) POM from Wayne Wiersium on HB 327.
- (5) Staff memo to Sen. DeVries re. msg from Merle Akers on SB 327.

Cramer ✓
3/17/86

Original sponsors: Koponen, Thompson,
Marrou, et al

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 327 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to protection for public employees."

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

8 * Section 1. AS 39.51 is amended by adding new sections to read:

9 ARTICLE 2. PROTECTION FOR PUBLIC EMPLOYEES.

10 Sec. 39.51.100. EMPLOYEES PROTECTED. (a) A public employer may
11 not discharge, threaten, or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, conditions, location, or
13 privileges of employment because

14 (1) the employee, or a person acting on behalf of the
15 employee, reports to a public body or is about to report to a public
16 body, reasonably believing the report to be true:

17 (A) a violation of a state, federal, or municipal law,
18 regulation or ordinance;

19 (B) a substantial and specific danger to public health
20 or safety; or

21 (C) mismanagement, a gross waste of funds, or an abuse
22 of authority;

23 (2) the employee is requested by a public body to partici-
24 pate in a court action or in an investigation, hearing, or inquiry
25 held by that public body.

26 (b) This section does not require an employer to compensate an
27 employee for participation in an investigation, hearing, or inquiry
28 held by a public body.

29 (c) This section and AS 39.51.110 do not apply if the report

1 made under (a)(1) of this section discloses information that is legal-
2 ly required to be confidential.

3 (d) A person who alleges a violation of this section may bring a
4 civil action for appropriate injunctive relief, actual damages, or
5 both, within 90 days after the occurrence of the alleged violation.

6 (e) The person must show by clear and convincing evidence that
7 the employer violated (a) of this section.

8 (f) The provisions of AS 39.51.100 - 39.51.120 do not diminish
9 or impair the rights of a person under a collective bargaining agree-
10 ment.

11 (g) An employer shall post notices and use other appropriate
12 means to inform employees of their protections and obligations under
13 AS 39.51.100 - 39.51.120.

14 Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order
15 an employer to reinstate the employee, pay the employee back wages,
16 reinstate fringe benefits and seniority rights, and pay actual dam-
17 ages.

18 (b) A public body may not disqualify a person who alleges a
19 violation of AS 39.51.100 - 39.51.120 from eligibility to

20 (1) bid on contracts with the public body;

21 (2) receive land under a law of the state or an ordinance
22 of the municipality;

23 (3) receive another right or benefit to which the person is
24 entitled.

25 (c) A person who violates AS 39.51.100 - 39.51.120 is liable for
26 a civil fine of not more than \$10,000.

27 (d) A person who attempts to prevent another person from making
28 a report or participating in a matter under AS 39.51.100(a) with
29 intent to impede or prevent a public inquiry on the matter is liable

1 for a civil fine of not more than \$10,000.

2 Sec. 39.51.120. DEFINITIONS. In AS 39.51.100 - 39.51.120,

3 (1) "employee" or "public employee" means a person who
4 performs a service for wages or other remuneration under a contract of
5 hire, written or oral, express or implied, for a public employer;

6 (2) "employer" or "public employer" includes the state, a
7 public or quasi-public corporation or authority established by law,
8 the University of Alaska, a municipality, a political subdivision of
9 the state, and the Alaska Railroad;

10 (3) "public body" includes a federal, state, or municipal
11 officer or agency.
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3-20-86

PLEASE NOTE REVISIONS MARKED
WITH ~~BLUE~~ INK.

Offered: 2/17/86
For Today's Calendar

Original sponsors: Koponen, Thompson,
Marrou and Jenkins

THESE REVISIONS ALTER THE BILL
& BECOME SENATE CS for CS for
HB 327 (C&RA), THE BILL NOW
BEFORE THE COMMITTEE.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

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16 body, reasonably believing the report to be true;

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18 regulation or ordinance; or

19 (B) a substantial and specific danger to public health
20 or safety; (c)

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22 pate in a court action or in an investigation, hearing, or inquiry
23 held by that public body; or

24 ~~(3) the employee, or a person acting on behalf of the~~
25 ~~employee, reports to a public body or is about to report to a public~~
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27 ~~gross waste of funds, or an abuse of authority.~~

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29 employee for participation in an investigation, hearing, or inquiry

1 held by a public body.

2 (c) This section and AS 39.51.110 do not apply if the report
3 made under subsections (a)(1) ~~or (a)(3)~~ of this section discloses
4 information ~~which~~ ^{that} is legally required to be confidential.

5 (d) A person who alleges a violation of this section may bring a
6 civil action for appropriate injunctive relief, actual damages, or
7 both, within 90 days after the occurrence of the alleged violation.

8 (e) The person must show by clear and convincing evidence that
9 the employer violated (a) of this section.

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11 or impair the rights of a person under a collective bargaining agree-
12 ment.

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7 hire, written or oral, express or implied for a public employer;

8 (2) "employer" or "public employer" includes the state, a
9 public or quasi-public corporation or authority established by law,
10 the University of Alaska, a municipality, a political subdivision of
11 the state, and the Alaska Railroad;

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13 officer or agency.



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Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 9981*

March 20, 1986

MEMORANDUM

TO: Senator DeVries

FROM: Trudie Alford
Legislative Aide

SUBJECT: HB 327 An Act relating to the disclosure of
information -- 3/20/86 Phone Call from
Merle Akers

After receiving a copy of Senate C&RA's work draft Committee Substitute, Mr. Akers called and asked me to give you a message.

Mr. Akers said the version of HB 327 which passed the House and came to the Senate C&RA Committee moved the bill from AS 23 to AS 39. The Alaska Railroad is exempted from compliance with the provisions of AS 39. He asked that you call the C&RA Committee's attention to AS 42.40.710 CORPORATION EMPLOYEES.

"Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation."

Mr. Akers has sued the Alaska Railroad as a result/retaliation ^{of alleged} to a "whistle blower" incident.

Atch - Cy of AS 42.40.710

Sec. 42.40.700. Limitation on personal liability. A board member or employee of the corporation is not subject to personal liability or accountability because of the execution or issuance of bonds. (§ 2 ch 153 SLA 1984)

Article 8. Personnel and Labor Relations.

Section	Section
705. Political activities	820. Regulations
710. Corporation employees	830. Penalty for violation of order or decision
720. Collective bargaining rights	840. Mediation
730. Railroad labor relations agency	850. Strikes
740. Collective bargaining unit	860. Agreements
750. Representatives and elections	870. Organization dues and employee benefits, deduction and authorization
760. Unfair labor practices	880. Exemption
770. Investigation and conciliation of complaints	885. Prohibited acts
780. Complaint and accusation	890. Definitions
790. Orders and decisions	
800. Enforcement by injunction	
810. Power to investigate and compel testimony	

Cross references. — For transitional provisions relating to personnel and collective bargaining, see § 5, ch. 153, SLA 1984 in the Temporary and Special Acts.

Sec. 42.40.705. Political activities. (a) Money, assets, or property of the corporation may not be used for political activities. However, board members and employees may communicate with and appear before committees of Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

(b) A board member or employee who violates the provisions of this section is personally subject to a civil penalty assessed by a judge of the superior court in an amount not to exceed \$5,000. An action to enforce this section may be brought by any person. (§ 2 ch 153 SLA 1984)

Sec. 42.40.710. Corporation employees. Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation. (§ 2 ch 153 SLA 1984)



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Senator V. Fischer

Pouch V

Juneau, Alaska 99811

COMMITTEE MEETING -- May 6, 1986

CS HB 15 (C&RA) - An Act relating to advisory elections
on certain annexation proposals

CS HB 327 (Jud) am -- An Act relating to protection for
public employees

Materials attached:

- (1) Fiscal Note from Division of Elections dtd 1-31-86
on CSHB 15 (C&RA).
- (2) Position Paper from Dept. of C&RA dtd ~~3-27-85~~⁵⁻⁶⁻⁸⁶ on
CSHB 15 (C&RA).
- (3) Bill History on CSHB 15 (C&RA).

Cramer
5/2/86✓

Original sponsors: Koponen, Thompson,
Marrou, et al

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9 of the state;

10 (3) "public body" includes a federal, state, or municipal
11 officer or agency.

3/20/86 C+RA Mtg

~~2/20/86~~

SB 411 Rd Maint Soc Areas

- Fuika explained background and purposes for the bill
- Stung mod adpt v Cmi sub & asked unan C+
- Stu mod bl w/ idio necs - w/o obj, no rdch.

SB 327

Koponen as sponsor of 'bl explained its background & ppos.

Stung mod amend Pt ^{be added to title} ~~to~~ ^{AK} ~~to~~ ^{Post} ~~to~~ ^{in D}
Railroad w/ be coded U ~~to~~ ^{Post} ~~to~~ ^{in D}
~~Act~~ Act only.

Kogonen said "reasonable level" w/ by
for and by Rep Pettigrew.

Cozhill wanted to hold. esp rep & some
constituents for the input of the

Fischer said some 2 applies
2 Hwy Dept for other

part of 2 prod ~~was~~ w/ ^{It} mismanagement
& other abuses ~~to~~ to no ^{+ cost} ^{split}

Strong withdrew around bus. Sen.
Cozhill said to be held.

AK Housing ALDA, Poor Audit

Cozhill - "But ^{Would he expansion} ^{in employer definition}
me ^{or} ^{long} ^{street}
It receives 25 funds

Fischer - agrees

Cozhill moved & asked unan Cd
It to be held until e gets
input

Fischer - ne loss wd obya
2 Ds - ops At wd mt 6 e
ole Coidras -

DeVries ~~was~~ l of fm leaf
evra, Cld U bl

Mty adjnd - 404p.

Grants Overview

~~State funds would look for:~~

req definition as to
eligibility

non-profit who receives
at least 50% (?) of its
operating budget from state



Alaska State Legislature
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Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

March 21, 1986

Mr. Merle Akers
3031 Bennett Street
Anchorage, Ak 99517

Dear Mr. Akers:

Subject: HB 327 An Act relating to
disclosure of information

The C&RA Committee considered this bill at its meeting yesterday afternoon as per our telephone conversation.

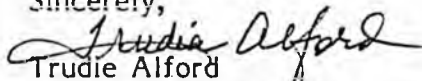
No Committee action was taken on the Senate C&RA substitute bill I sent you. The Committee agreed at the request of Senator Coghill, a member of Senate C&RA Committee, to continue hearing on the bill until he had heard from constituents in his election district who were submitting a position on the bill.

When the bill is ready for rescheduling I will make every effort for you to receive adequate notice so you may testify by teleconference, if you desire to do so.

As regards Alaska Railroad employees being exempted from compliance with provisions of Title 39. The Committee decided when they are ready to work with amendments to the bill, that impediment can be taken care of by removing the exemption as far as the bill is concerned.

I hope this information has been helpful.

Sincerely,


Trudie Alford

Legislative Aide to Senator DeVries

3/20/86 Protection for Public Employees
CS for HB 327 (Jud) am

Spoke with Jerry Cramer, Legl. Sec
re. amendments ^{she} wants prepared.

- ① Definition of "mismanagement"
~~is~~ ~~period~~
- ② ✓ ✓ "reasonably believing"
- ③ Amendment to Title 42, Sec 40.710
which will make AK Railroad
subject to provisions in bill.
- ④* Amendment to "employer" definition
to include any organization or
corporation that receives state
funds, directly or indirectly

~~Respectfully~~

~~Do you want mis-
mgmt restricted if so
perhaps you might want to change
totally to - violate the law~~

3/27

Told Jerry Cramer to hold any
amendments until she hears from me again.
Sen DeVries does not want to proceed further at this time

~~This being worked on after I talked
with EDV - Jim to check grant req
for a more restrictive definition~~

What kind of state funds -
would this include contractors - or
municipal grants with state funds

~~Need def of~~ Mtg Money
Loans

Definitions

~~mismanagement~~ mismanagement
reasonably believing the report to be true

Amendments

Which sets forth that Alaska
Railroad is not exempted from
the provisions of A 39.51.100 - 120
as presently included in A^s 42.40.710

Grants Overview

~~State funds would look for:~~

resp definition as to
eligibility

non-profit who receives
at least 50% (?) of its
operating budget from States

Offered: 2/17/86
For Today's Calendar

ORDER A CS

Original sponsors: Koponen, Thompson,
Marrou and Jenkins

*Terry Cramer
Drafter*

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25 employee, reports to a public body or is about to report to a public
26 body, reasonably believing the report to be true, mismanagement, a
27 gross waste of funds, or an abuse of authority. ↓

28 (b) This section does not require an employer to compensate an
29 employee for participation in an investigation, hearing, or inquiry

*had to
who
talking
about*

1 held by a public body.

2 (c) This section and AS 39.51.110 do not apply if the report
3 made under subsections (a)(1) or (a)(3) of this section discloses
4 information which is legally required to be confidential.

5 (d) A person who alleges a violation of this section may bring a
6 civil action for appropriate injunctive relief, actual damages, or
7 both, within 90 days after the occurrence of the alleged violation.

8 (e) The person must show by clear and convincing evidence that
9 the employer violated (a) of this section.

10 (f) The provisions of AS 39.51.100 - 39.51.120 do not diminish
11 or impair the rights of a person under a collective bargaining agree-
12 ment.

13 (g) An employer shall post notices and use other appropriate
14 means to inform employees of their protections and obligations under
15 AS 39.51.100 - 39.51.120.

16 Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order
17 an employer to reinstate the employee, pay the employee back wages,
18 reinstate fringe benefits and seniority rights, and pay actual dam-
19 ages.

20 (b) A public body may not disqualify a person who alleges a
21 violation of AS 39.51.100 - 39.51.120 from eligibility to

22 (1) bid on contracts with the public body;

23 (2) receive land under a law of the state or an ordinance
24 of the municipality;

25 (3) receive another right or benefit to which the person is
26 entitled.

27 (c) A person who violates AS 39.51.100 - 39.51.120 is liable for
28 a civil fine of not more than \$10,000.

29 (d) A person who attempts to prevent another person from making

1 a report or participating in a matter under AS 39.51.100(a) with
2 intent to impede or prevent a public inquiry on the matter is liable
3 for a civil fine of not more than \$10,000.

4 Sec. 39.51.120. DEFINITIONS. In AS 39.51.100 - 39.51.120,

5 (1) "employee" or "public employee" means a person who
6 performs a service for wages or other remuneration under a contract of
7 hire, written or oral, express, or implied for a public employer;

8 (2) "employer" or "public employer" includes the state, a
9 public or quasi-public corporation or authority established by law,
10 the University of Alaska, a municipality, a political subdivision of
11 the state, and the Alaska Railroad;

12 (3) "public body" includes a federal, state, or municipal
13 officer or agency.

or quasi-public
political body
political
are these two different,
what is an BEAA -

*
* DELIVER TO: JPOM *
*
* ORIGINAL *
* SENT: 03/14/86 TIME: 14:20 *
* FROM: BARBARA NOBLELL *
* SUBJECT: POM *
* PRINT DATE: 03/14/86 TIME: 14:22 *
*

5

TO: SENS. DEVRIES AND KERTTULA
REPS. HURLEY AND LARSON

FROM: LOU PITMAN, P.O. BOX 8, PALMER, AK 99645

SUBJECT: NEW TELECOPIER FOR MAT-SU BOROUGH

MAT-SU BOROUGH NOW HAS A 295 TELECOPIER AND THE NUMBER IS
745-0886.

PLEASE NOTE REVISIONS MARKED WITH BLUE INK.

Offered: 2/17/86
For Today's Calendar

Original sponsors: Koponen, Thompson,
Marrou and Jenkins

THESE REVISIONS ALTER THE BILL & BECOME SENATE CS for CS for HB 327 (C&RA), THE BILL NOW BEFORE THE COMMITTEE.

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 327 (Judiciary) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to protection for public employees."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 39.51 is amended by adding new sections to read:

9 ARTICLE 2. PROTECTION FOR PUBLIC EMPLOYEES.

10 Sec. 39.51.100. EMPLOYEES PROTECTED. (a) A public employer may
11 not discharge, threaten, or otherwise discriminate against an employee
12 regarding the employee's compensation, terms, conditions, location, or
13 privileges of employment because

14 (1) the employee, or a person acting on behalf of the
15 employee, reports to a public body or is about to report to a public
16 body, reasonably believing the report to be true;

17 (A) a violation of a state, federal, or municipal law,
18 regulation or ordinance; or

19 (B) a substantial and specific danger to public health
20 or safety; (c)

21 (2) the employee is requested by a public body to partici-
22 pate in a court action or in an investigation, hearing, or inquiry
23 held by that public body; or

24 ~~(3) the employee, or a person acting on behalf of the~~
25 ~~employee, reports to a public body or is about to report to a public~~
26 ~~body, reasonably believing the report to be true, mismanagement, a~~
27 ~~gross waste of funds, or an abuse of authority.~~

28 (b) This section does not require an employer to compensate an
29 employee for participation in an investigation, hearing, or inquiry

1 held by a public body.

2 (c) This section and AS 39.51.110 do not apply if the report
3 made under subsections (a)(1) or ~~(a)(3)~~ of this section discloses
4 information ~~which~~ ^{that} is legally required to be confidential.

5 (d) A person who alleges a violation of this section may bring a
6 civil action for appropriate injunctive relief, actual damages, or
7 both, within 90 days after the occurrence of the alleged violation.

8 (e) The person must show by clear and convincing evidence that
9 the employer violated (a) of this section.

10 (f) The provisions of AS 39.51.100 - 39.51.120 do not diminish
11 or impair the rights of a person under a collective bargaining agree-
12 ment.

13 (g) An employer shall post notices and use other appropriate
14 means to inform employees of their protections and obligations under
15 AS 39.51.100 - 39.51.120.

16 Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order
17 an employer to reinstate the employee, pay the employee back wages,
18 reinstate fringe benefits and seniority rights, and pay actual dam-
19 ages.

20 (b) A public body may not disqualify a person who alleges a
21 violation of AS 39.51.100 - 39.51.120 from eligibility to

22 (1) bid on contracts with the public body;

23 (2) receive land under a law of the state or an ordinance
24 of the municipality;

25 (3) receive another right or benefit to which the person is
26 entitled.

27 (c) A person who violates AS 39.51.100 - 39.51.120 is liable for
28 a civil fine of not more than \$10,000.

29 (d) A person who attempts to prevent another person from making

1 a report or participating in a matter under AS 39.51.100(a) with
2 intent to impede or prevent a public inquiry on the matter is liable
3 for a civil fine of not more than \$10,000.

4 Sec. 39.51.120. DEFINITIONS. In AS 39.51.100 - 39.51.120,

5 (1) "employee" or "public employee" means a person who
6 performs a service for wages or other remuneration under a contract of
7 hire, written or oral, express or implied for a public employer;

8 (2) "employer" or "public employer" includes the state, a
9 public or quasi-public corporation or authority established by law,
10 the University of Alaska, a municipality, a political subdivision of
11 the state, and the Alaska Railroad;

12 (3) "public body" includes a federal, state, or municipal
13 officer or agency.

*
* DELIVER TO: JPOB
*
* ORIGINAL
* SENT: 02/20/86 TIME: 09:21
* FROM: BARB HASTY
* SUBJECT: POM
* PRINT DATE: 02/20/86 TIME: 09:22
*

21

MAR 20 1986

TO: ALL SENATORS

FROM: WAYNE WIERSUM
9016 LONGRUN DRIVE
JUNEAU, AK 99801
465-2957

RE: HB 327 - PROTECTION FOR PUBLIC EMPLOYEES - "BLOW THE WHISTLE BILL"

I SUPPORT THIS PIECE OF LEGISLATION. IT'S VERY BADLY NEEDED IN ALASKA.

Alaska State Legislature

Senate

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer



Official Business

Committee on Community and Regional Affairs

Pouch V
Juneau, Alaska 99811

March 20, 1986

MEMORANDUM

TO: Senator DeVries

FROM: Trudie Alford
Legislative Aide

SUBJECT: HB 327 An Act relating to the disclosure of
information -- 3/20/86 Phone Call from
Merle Akers

After receiving a copy of Senate C&RA's work draft Committee Substitute, Mr. Akers called and asked me to give you a message.

Mr. Akers said the version of HB 327 which passed the House and came to the Senate C&RA Committee moved the bill from AS 23 to AS 39. The Alaska Railroad is exempted from compliance with the provisions of AS 39. He asked that you call the C&RA Committee's attention to AS 42.40.710 CORPORATION EMPLOYEES.

"Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation."

Mr. Akers has sued the Alaska Railroad as a result/retaliation ^{of alleged} to a "whistle blower" incident.

Atch - Cy of AS 42.40.710

Sec. 42.40.700. Limitation on personal liability. A board member or employee of the corporation is not subject to personal liability or accountability because of the execution or issuance of bonds. (§ 2 ch 153 SLA 1984)

Article 8. Personnel and Labor Relations.

Section	Section
705. Political activities	820. Regulations
710. Corporation employees	830. Penalty for violation of order or decision
720. Collective bargaining rights	840. Mediation
730. Railroad labor relations agency	850. Strikes
740. Collective bargaining unit	860. Agreements
750. Representatives and elections	870. Organization dues and employee benefits, deduction and authorization
760. Unfair labor practices	880. Exemption
770. Investigation and conciliation of complaints	885. Prohibited acts
780. Complaint and accusation	890. Definitions
790. Orders and decisions	
800. Enforcement by injunction	
810. Power to investigate and compel testimony	

Cross references. — For transitional provisions relating to personnel and collective bargaining, see § 5, ch. 153, SLA 1984 in the Temporary and Special Acts.

Sec. 42.40.705. Political activities. (a) Money, assets, or property of the corporation may not be used for political activities. However, board members and employees may communicate with and appear before committees of Congress, the state legislature, and municipal governing bodies in connection with matters directly affecting the corporation.

(b) A board member or employee who violates the provisions of this section is personally subject to a civil penalty assessed by a judge of the superior court in an amount not to exceed \$5,000. An action to enforce this section may be brought by any person. (§ 2 ch 153 SLA 1984.)

Sec. 42.40.710. Corporation employees. Employees of the Alaska Railroad are employees of the corporation and not of the state. The provisions of AS 39 do not apply to employees of the corporation. (§ 2 ch 153 SLA 1984)

CARA - 3/13/86

HB 329 - Rep. Koponen
employed fired, was protected by Title 39 -
so law has been clarified and
rewritten —

expanded to include private workers,
but this has been taken out —

Fischer - good bill - have seen waste uncovered
by Pentagon uncovered by employees

Coghill Can employee go to press

Koponen - Has to believe, have reasonable certainty

Coghill - Does this allow employee to go thru proper
channels - can't just make noise to
press

Sturgis - Employee of I C (E 6) he did / a
former Senator was so enraged, he had
PCN number removed

DeVries - Merle Akers problems —
\$10,000 fine would be paid by employer if government

Kop - civil means person who acted individually is liable

DeVries - tighten up sections regarding retaliation

Koponen - I'm not an attorney, but —

Coghill - can't take redress against managers because an employee is demoted.

Koponen - very punitive law lacks enforcement

Coghill - bill is too far reaching, want to hold it and go over it.

Fischer - must have clear and convincing evidence
"use of" Lines 14 & 15 Lines 24, 25

Coghill - if we include school districts aren't we going to get into a lot of trouble - confusion

Fischer - the principle should over-ride harassment

1930

DeLozies -- Disarm bill w/ Aleman
work on and bring back



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99911

C&RA Meeting -- March 13, 1986

CSHB 327 (Jud) am

An Act relating to protection for public employees

Information attached relative to bill:

- 1) Sectional Analysis
- 2) Press Release from bill sponsor
- 3) Ltr from Mike Oden who was personally affected by the proposed legislation
- 4) Ltr and backup material from Mr. Merle Akers who has brought a lawsuit against the Alaska Railroad due which he characterizes as due to his "whistle-blowing" activities
- 5) Bill history

SB 356 (C&RA CS)

Campaign Financing

Burke & Gross will present

APOC staff will be listening via teleconference

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1986

SUBJECT: Sectional Analysis of CSHB 327 (Jud) amended
Protection for public employees

TO: Representative Niilo Koponen

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of CSHB 327 (Judiciary) amended.

Section 1 enacts new sections as part of AS 39.51, the chapter containing miscellaneous provisions concerning public officers and employees.

Sec. 39.51.100(a) prohibits a public employer from taking various actions against an employee because the employee reported certain information to a public body or was requested by a public body to participate in certain proceedings. Subsection (b) makes clear that an employer is not required to compensate an employee for time spent in the proceeding before the public body.

Subsection (c) limits the protections to public employees if the employee disclosed information legally required to be confidential. Subsection (d) permits a person to bring a civil action. Subsection (e) requires proof by clear and convincing evidence. Subsection (f) leaves in place any collective bargaining agreement provisions. Subsection (g) requires an employer to post notices.

Sec. 39.51.110 sets out the damages an employee may receive, limits actions a public body may take against someone who alleged a violation of the Act, and permits imposition of civil fines of not more than \$10,000.

Sec. 39.51.120 defines "public employee," "public employer," and "public body."

If I may be of further assistance, please advise.

TC:mkr
m3/127

Alaska State Legislature
Representative Niilo Koponen
District 21, Democrat

S.R. 10059
Fairbanks, Alaska 99701
479-6782

Pouch V
Juneau, Alaska 99811
465-4992

FOR RELEASE MARCH 27, 1985

Representative Niilo Koponen, Co-chair of the House Health, Education and Social Services Committee, today introduced two bills which grew out of testimony earlier this session concerning Alaska's asbestos problem. The first forbids the use of materials containing hazardous asbestos in the construction and renovation of public buildings. The second, a "whistleblower bill" clarifies the right of public employees to testify before legislative committees and provides penalties to public employers who discipline workers for exercising their right to free speech.

Koponen began work on the new asbestos bill, HB 334, when he learned from testimony that asbestos-containing materials were to be used in the new publically funded Fairbanks South Side Community Center. That building will be, in part, a daycare center.

"During our hearings on HB 5, the bill which would remove hazardous asbestos in schools, we learned that asbestos materials are still being used in new construction," Koponen said. "These materials are typically quite safe once they are in place, but release carcinogenic fibers when they are cut. So they're dangerous to work with, and may also harm people who use the building, since the fibers stay in the air for a long time. If the building is remodeled, the renovation workers may not be aware that they are dealing with asbestos-containing materials. There is a great possibility that hazardous fibers would be released during even a small remodel."

The "whistleblower bill", HB 335, arose from the same January 25 hearing. At that hearing Fairbanks North Star Borough Safety Officer Mike Oden described unsafe removals of asbestos in the FNSB school district to support of his position that asbestos workers should be trained and certified to remove asbestos safely. "At one time the workers were outside playing with the asbestos, throwing it up in the air," Oden told the committee. We must now advise our children they have been exposed to asbestos." Oden was subsequently dismissed from his job, in part for his "unauthorized testimony", but recently reached an out of court settlement with the Borough which includes reinstatement and back pay.

"To do its job, the Legislature must have free access to information," Koponen said. "This bill clarifies the Legislature's right to information from the administration and protects a public employee's right to testify before the Legislature. Open government becomes impossible if workers must risk losing their jobs in order to provide needed information."

J. Mila Oden
Safety Coordinator

**Fairbanks
North
Star
Borough**

P.O. Box 1267

452-4761

Fairbanks, Alaska 99707

FAIRBANKS NORTH STAR BOROUGH
SCHOOL DISTRICT
SCHOOL BOARD
SCHOOL BOARD BUILDING

DEAR MRS. ODEN:

I testified before you and your committee concerning the health training of asbestos workers. I am pleased to see that the bill passed.

As you know, after my testimony, I was terminated for giving you and your committee false information. Mrs. Aldermeppen called me several times to try and verify the information. However, I was not able to do so. Shortly thereafter, the Environmental Protection Agency started an investigation. On October 1, 1980, they released their official report. The results of that report verified "exactly" what I testified. Not only did E.P.A. verify my testimony, they even added to the report saying "some members of the staff and the students have been exposed to asbestos, caused by improper removal".

I have enclosed a copy of the official report. Maybe somewhere down the line it will help you. I really do appreciate your help and your faith. Sincerely appreciated.

J. Mila Oden

WK phone
265-2521
home 243-4802

Merle W. Akers
3031 Bennett Avenue
Anchorage, Alaska, 99517
Home Phone: 243-4802

March 10, 1985

Senator Edna DeVires
Chairperson, Community & Regional Affairs Committee
Senate Office Building
Juneau, Alaska

Subject: HB 327 - An Act Relating to Protection for Employees

Dear Senator:

Less than six months ago I sued the State of Alaska Railroad Corporation for retaliation involving a whistle blowing incident which took place in December of 1984, prior to the State taking over the Railroad on January 5, 1985. I was removed from the managerial position I held with the Alaska Railroad for 20 years on January 10, 1985, four working days after the date of transfer, and was demoted to a non-managerial tech job. To date I have been through a year of litigation and have spent over \$60,000 in attorney fees and related costs. I feel I have acquired some expertise on the subject of retaliation and the law and because of my experience I do not wish to see HB 327 pass into law in it's present form. I fully support the need for legislation to revamp the present laws and regulations on employee retaliation for whistle blowing. I feel that HB 327, in it's present form, will not accomplish what it intends - if the intent is to make it more difficult for employers to take retaliatory action against their employees who give testimony against them.

I feel there are three major issues which need to be addressed.

1. Should the employee who gives testimony against his/her employer lose their job? If it is the intent of this bill that they should not, then the law should require that they be reinstated. Section 23.10.510(a) of HB 327 leaves this to the discretion of the Court. All the Court cases I have researched resulted in the person not being returned to his/her job.
2. What should be the standard of proof of retaliation which the Court must accept? Section 23.10.510(d) is the same standard that is now required under present rules and is all but impossible to meet. Most evidence offered to a

Court in support of a retaliation claim will be circumstantial. In my case where I have been removed from my job, the Alaska Railroad successfully defended against the retaliation charges by claiming I was discharged for poor performance and conduct unbecoming a manager. The evidence I presented in my defense opposed this claim: in twenty years with the Alaska Railroad I had never had a less than satisfactory performance evaluation; had received two cash awards for superior performance in the five years prior to January, 1985; had received a superior achievement award from the U. S. Department of Transportation in November of 1984 for my outstanding work on transfer issues and the land evaluation; and had received a pay increase in July of 1985. During the period of July, 1985, through December 12, 1985, I was on a detailed assignment to work with the Land Review Committee, comprised of State and Railroad personnel. The person in charge of this Committee was the Railroad's own Chief Counsel, who gave me a high performance rating. With this information, the Jury during trial could not find clear and convincing evidence of retaliation, but did find that the Railroad acted in "bad faith" and awarded \$7,000 plus an additional \$30,000 in punitive damages.

What additional evidence would have been required to meet the standard - clear and convincing? Perhaps testimony from one of the persons who conspired to retaliate against me, or a memorandum or letter from one of the conspirators acknowledging a plan of retaliation? I believe you will agree, it is very unlikely that kind of evidence could ever be obtained.

3. Punishment and penalties? I know of no person who ever lost a job as a result of retaliation where the court orderd the employer to return the employee to his/her job. On the other hand, I know of no person involved in retaliation who ever lost their job for taking a retaliatory action against an employee. How can this be fair?

HB 327 like the Federal Government Whistle Blowers' Regulations creates an atmosphere for retaliation to a whistle blower, instead of providing safeguards and meaningful deterrents. Both require that the whistle blower, if retaliated against, fund his/her own lawsuit against the employer. If the employer is other than a private corporation, public funds will be used for defense. The employer knows it is going to cost the whistle blower a large amount of money to pursue his/her case. The employer knows the whistle blower will have to pay his/her attorney as the case is prepared ... no attorney I have talked with will take such a case based on a contingency fee due to the difficulty of proving the retaliation issue.

If an employer is going to retaliate against the whistle blower, one approach would be to fire him/her, which would cut off the employees income and lessen his ability to sue. If the whistle blower appears to be in a position to sue, another approach would be to demote the employee until after the trial, knowing the courts historically do not return whistle blowers back to their job. The employers tactic then would be to reorganize the work force and the whistle blower's job then becomes an excess and the employee can be layed off. If the employer is a public agency and has had to pay out some damages with it's public monies, the employer is not concerned as the objective in the end, for them is achieved - the whistle blower is out of a job. If the whistle blower is successful in proving his case, he will be entitled to receive back a portion of his/her attorney fees and costs. In my case, I have spent \$60,000 to date and according to my attorney I cannot expect to receive more than 85% of my costs - about \$51,000. The average award is more in the neighborhood of 50%.

HB 327 provides a penalty of a civil fine for violation of the law, of not more than \$10,000. My unrecoverable cost to date is estimated to be between \$9,000 and \$30,000. If this is representative of the average out of pocket cost a whistle blower can expect to pay, along with the loss of his/her job, I feel a possible maximum fine of \$10,000 levied against a public body and paid for with public funds amounts to a non penalty. Even if the fine is levied against the employees who participated in the retaliatory act, a possible maximum find of \$10,000 appears insignifigant and even moreso if the whistle blower lost his/her job and those that took the retaliatory action did not lose theirs.

HB 327 states a violator of the law is subject to a civil fine. Who is going to prosecute the violator? I appears it would have to be a seperate trial from the one the whistle blower initiated. If it is the intent of HB 327 that the whistle blower must bring a separate action, at his/her own expense, we again have the problem of it costing the whistle blower more in attorney fees than he/she can recover along with having financial ability to even fund another trial to prosecute the offenders. This brings up the issue of to whom the fine is paid ... the State or the whistle blower?

If it is the intent of HB 327 to have the State prosecute violators then the Bill should so state.

The fine of \$10,000 poses yet another problem for the person who pursues retaliation action. Will the Courts grant punitive damages to the plaintiff, or will it reduce the punitive damages to allow for a possible future fine?

I recommend HB 327 be amended to do one of the following:

1. If HB 327 is to be passed in it's present form it should contain an in-depth explanation of the problems facing a person considering reporting any unlawful or unfavorable action of an employer to any public body. The explanation should make it clear it is up to the person making the report to prove retaliation and that it is very hard to do so unless one has an admission by the person(s) who retaliated, or written documentation clearly stating same; that present law, including HB 327, does not prohibit them from losing their job; that most whistle blowers who are retaliated against do lose their job; that they do not receive back 100% of attorney fees/costs, even if they are successful. If it is up to the person to fund prosecution of the civil fine, that should also be explained.
2. Amend the present bill as follows:
 - A. SECTION 23.10.500(c); set forth in detail (using examples if necessary) what type of evidence constitutes "clear and convincing" evidence. It should consider the following: Is it required evidence that a witness testify in court he/she took retaliatory action against another? Is the evidence required to be a written document clearly stating or instructing one to take a retaliatory action?
 - B. SECTION 23.10.510(a): Delete the word "may" and insert the word "shall", and require the employer to pay 150% of employees attorney fees and 100% of court costs.
 - C. SECTION 23.10.510(c); Delete all of the present section and substitute a new subsection (c) for the following reasons: 1) I am not sure how a whistle blower can pursue an action to insure that a "civil fine" is imposed. 2) A \$10,000 fine when it is not your own money paying the bill will not deter many employers or organizations from taking retaliatory action against an employee. Anyone contemplating retaliatory action will realize the difficulty of proving such a charge and knows it would be at least five (5) years before a fine would be due.

NEW SECTION 23.10.510 (c) The Attorney General for the State of Alaska shall prosecute 1) any person who violates HB 23.10.500-23.10.520. Any employee convicted of violating HB 23.10.500 - 23.10.520 shall be sentenced to a jail term not to exceed six (6) months but not less than 30 days, and be fined a minimum of \$10,000, pay 100% of all the State's attorney fees and court costs. 2) Any person who had prior knowledge of the proposed retaliatory action

who either failed to stop it or report it in writing to the State Attorney General, shall be charged as an accessory and subject to the penalties set forth in (1) above.

- D. NEW SECTION 23.10.510 (e); Any private or public corporation convicted of violating HB 23.10.500 - 23.10.520 shall be liable for minimum civil fine equal to three times the total cost of the State's and Plaintiff's attorney fees and court costs. This fine is in addition to any award made to plaintiff in Section 23.10.510 (a)(c).
- E. NEW SECTION 23.10.510 (f) Where employees of the State or State owned corporations violate HB 23.10.500 - 23.10.520, including Boards of Directors of said State Corporations, said employees and Board of Directors' employment or appointment shall be terminated and they shall not be eligible for rehire by the State or it's corporations nor for appointment to a State Board for a period of five (5) years.
- F. NEW SECTION 23.10.510 (g) Nothing in HB 23.10.500-23.10.520 shall preclude a person who's other rights provided by law were also violated in a retaliatory action from being awarded separate relief and damages from the Courts for any such violations in addition to those received under provisions of HB 23.10.510 - 23.10.520.

Honest people find it hard to believe that some will lie under oath, falsify documents, knowingly violate the Federal And State constitutional rights of people. Many recognize this happens all the time, especially attorneys, and in particularly it happens in retaliation cases involving whistle blowing. The average person cannot anticipate things like this happening in the Courts. The reality is that it happens all the time. What the defendant is trying to do is win by default. Defendants have more resources, money, political power, attorneys, and time. The defendant knows that very few, if any, whistle blowers can, or are prepared to, pursue the issue for five or more years in Court. Even if they did do so and won, at the present time no Court is going to order the person returned to his/her job after five years - even if the people who have done the retaliation have left, moved or been transferred elsewhere.

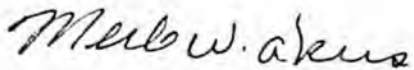
When the person cannot or is not returned to his position, the Courts have difficulty with the amount of damages that should be awarded, as there are no guidelines for making calculations.

Pg. 6

If I had known in December of 1984 what I know now I would never have been a whistle blower. If anyone were to ask my advice on making public a violation of the law or of State or Municipal regulations, I would advise them against it. I would advise them against testifying before any legislative committee that might be seeking information about violations, as the penalty for failure to testify would be less than the penalty they would have to pay if they do. If we as citizens truly believe in the benefit whistle blowers provide to us, then lets give them some meaningful protection.

I hope the information contained herein can be helpful to you and your committee. If I can be of any service, please do not hesitate to contact me.

Sincerely,



Merle W. Akers

cc:

Representative Nilo Koponen

THIRD JUDICIAL DISTRICT AT ANCHORAGE

MERLE AKERS,)
)
 Plaintiff,)
)
 vs.)
)
 ALASKA RAILROAD CORPORATION,)
)
 Defendant.)
)

Case No. 3AN-85-7707 Civil

SPECIAL VERDICTS

We, the jury in the above-entitled case, find the following Special Verdicts on the following questions submitted to us:

1. Was the suspension of Plaintiff and transfer from his former position as Manager, Industrial Development & Real Estate to his new position as Realty Specialist in the Engineering Department motivated, in whole or in substantial part, by malice or bad faith?

ANSWER: Yes (Answer "yes" or "no")

2. Was the suspension of Plaintiff and transfer from his former position to his new position motivated, in whole or in substantial part, by a desire to retaliate against or penalize Plaintiff for his participation in the R.A.I.L.S. Report?

ANSWER: No (Answer "yes" or "no")

If your answer is "yes" to Question No. 1, Question No. 2 or both, then answer Question No. 3 below. If your answer is "no" to both Question No. 1 and Question No. 2, do not answer any further questions, but do have the jury foreperson sign and date this Special Verdicts form.

3. What is the amount of damages, if any, you find Plaintiff is entitled to recover from Defendant in each of the following categories:

- a. Future wage & retirement pay losses: \$ 0
 - b. Mental and emotional distress to date: \$ 7,000
 - c. Future mental and emotional distress: \$ 0
 - d. Punitive damages: \$ 30,000
- TOTAL DAMAGES: \$ 37,000

DATED this _____ day of September, 1985 at Anchorage, Alaska.

FOREPERSON OF THE JURY

BILL HISTORY

HOUSE CALENDAR: 2-17-86

HB 327

BILL HB0327
PAGE 00721
DATE 03/27/85
CHAMBER HOUSE
TEXT HOUSE BILL NO. 327 by Koponen, Thompson and Marrou,
entitled:
"An Act relating to the disclosure of
information."
was read the first time and referred to the State Affairs
and Judiciary Committees.

BILL HB0327
PAGE 01091
DATE 04/25/85
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TEXT Representative Jenkins added his name as co-sponsor to
HOUSE BILL NO. 327 (relating to the disclosure of
information).

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TEXT The State Affairs Committee has considered HOUSE BILL NO.
327 (relating to the disclosure of information), recommends
it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO.
327 (State Affairs) (same title) and reports it back as
follows: Hurley (Chairman), Navarre, M.M. Miller, Jenkins,
Cato and Boucher recommend do pass. A zero fiscal note
with analysis was attached.
HB 327 was referred to the Judiciary Committee.
The zero fiscal note with analysis appears in House Journal
Supplement No. 57.

Disclosure of HOUSE BILL NO. 327, by Reps. Koponen, Thompson and Marrou.
Information The "Findings" section of the bill states that the Legisla-
ture finds free access to information at all levels of state
government is critical to the exercise of legislative
responsibilities under the state constitution. The Legislature
also finds that retaliation for testifying before a legislative
committee impairs the people's right to free speech and to petition
the government under the state constitution.

Adds a new section to AS 39.51 (Public Officers and Employees.
Miscellaneous Provisions), requiring a public employee to cooperate
with a legislator's request for information or a public record
under Civil Code provisions relating to public records (AS
09.25.110 - 120). Violation would be a class A misdemeanor.

Also adds a new section prohibiting retaliation. States the public employer of a person who testifies before a legislative committee may not dismiss, demote, suspend, lay off, or otherwise subject the employee to disciplinary action for communicating to the committee information relevant to a legislative inquiry unless disclosure is prohibited by law. Employee may request a legislative investigation if the employee believes disciplinary action has been taken. The legislative committee could refer violations to the Attorney General. Does not provide effective date (takes effect 90 days after Governor signs bill).

Introduced March 27 and referred to State Affairs, Judiciary.

Disclosure of Information — HOUSE BILL NO. 327, (see page 530). Reported back to the House April 26 by State Affairs recommending it be replaced with a substitute and that it do pass. Concurring: Hurley (Chair), Navarre, M. M. Miller, Jenkins, Cato and Boucher. To Judiciary.

The Judiciary substitute deletes the definition of "public employee" found in original version. Adds a new subsection stating a public agency may not impose restrictions on the release of information to a legislator or legislative committee unless those restrictions apply equally to the release of information to other members of the public.

Changes section relating to retaliation. Under this version a public agency is prohibited from dismissing, demoting, suspending, laying off, or otherwise subjecting an employee to disciplinary action for communicating to a legislator or committee information relevant to a legislative inquiry unless disclosure is prohibited by law. The employee may be required to state clearly that the communication is not on behalf of the public agency, and the employee may be prohibited from communicating during his working hours, but the agency could not unreasonably deny the employee's request for leave.

A public agency would be allowed to discipline an employee who has principal responsibility for determining policy or implementing policy for communicating an opinion which is contrary to the agency's official opinion about a job-related matter. The agency could not discipline the employee for communicating information about a violation of law or regulation.

An employee who believes disciplinary actions have been taken in violation of this law may request a legislative investigation. A committee investigation is not a public record and may be held in executive session. The matter may be referred to the Attorney General, and the AG must report the results of the investigation to the legislative committee.

If an employee is disciplined within 90 days the public agency is required to provide information to the committee and justification of the action if the committee requests the information. A public agency may not disclose personnel records that are confidential unless the disciplined employee waives the confidentiality in writing.

An employee who has been disciplined in violation of the law has a private cause of action against the agency for reinstatement, lost wages, other compensation and damages, and for reasonable attorneys fees. A public agency shall advise an employee in writing at the time of hiring of employee's rights under this law. The protections of this law do not apply to an employee if the employee knowingly communicates false information, or if a law is violated making the communication. A violation is a class A misdemeanor.

Defines "public agency" as a public or quasi-public corporation or authority established by law, the U of A, a political subdivision of the state, and the Alaska Railroad.

Disclosure of Information HOUSE BILL NO. 327, (see page 530). On April 25 Rep. Jenkins added his name as co-sponsor.

COMMITTEE REPORT
HOUSE

2/17

Rules

(7)

FURTHER:

4/26/85

Date: _____

The Committee on JUDICIARY has had HB 327

"An Act relating to the disclosure of information."

under consideration and recommends:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 327 (JUD) same tit
 new titl

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note

reports it back without recommendation Zero Fiscal Note Attached

referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Mark L. ...
...
ROSE P...
...
Robin L. Taylor
...
...
...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

... no use
...
...
...

...
CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 327
 Title: "An Act relating to the disclosure of information."
 Sponsor: Rep. Koponen
 Requestor: House State Affairs
 Date of Request: April 19, 1985

FISCAL DETAIL

Agency Affected: Law
 Program Category Affected: General Government Admin. of Justice
 BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary
 Enactment of this bill will probably result in some additional legal work on the part of Department of Law staff. It does not appear that any increase in workload will be significant enough to warrant fiscal note costs. However, when considered in conjunction with other similar measures, bills of this nature divert the department's existing resource from other more pressing assignments because of their cumulative effect.

Prepared By: Richard I. Regues, Director
 Division: Administrative Services

Phone: 465-3672

Date: April 19, 1985

Approved by Commissioner: Norman C. Gorsuch
 Agency: Department of Law

Date: April 19, 1985

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

HB 327

CSHB 327(JUD) MOTION

Yeas: 33 Adams, Cato, Clocksin, Cotten,
Davis, Duncan, Fuller, Goll,
Gruenberg, Grussendorf, Hanley,
Herrmann, Hurley, Jenkins,
Koponen, Larson, Martin,
Miller, M.M., Navarre, Pearce,
Pettyjohn, Phillips, Pignalberi,
Pourchot, Rieger, Ringstad,
Shultz, Sund, Szymanski, Taylor,
Thompson, Uehling, Wallis

Nays: 3 Frank, Furnace, Marrou

Excused: 4 Binkley, Boucher, Collins,
Miller, M.W.

Absent: 0

And so, CSHB 327(Jud) was adopted.

CSHB 327(Jud)

Amendment No. 1 by Clocksin:

Page 2, line 3:

Insert a new subsection (c) and reletter accordingly:

"(c) This section and AS 23.10.510 do not apply if the report made under subsections (a)(1) or (a)(3) of this section discloses information which is legally required to be confidential."

Representative Clocksin moved and asked unanimous consent that Amendment No. 1 be adopted. There being no objection, it was so ordered.

CSHB 327(Jud)am

Amendment No. 2 by Marrou:

Page 1, lines 17-20:

Delete:

"(A) a violation of state, federal, or municipal law, regulation or ordinance; or

(B) a substantial and specific danger to public health or safety;"

Representative Marrou moved and asked unanimous consent that Amendment No. 2 be adopted.

CSHB 327(Jud)am

Representative M.M. Miller objected.

The question being: "Shall Amendment No. 2 be adopted?"
The roll was taken with the following result:

CSHB 327(JUD)AM AM2

Yeas: 10 Frank, Furnace, Hanley, Jenkins,
Marrou, Martin, Pearce, Pettyjohn,
Ringstad, Shultz

Nays: 24 Cato, Clocksin, Cotten, Duncan,
Fuller, Goll, Gruenberg,
Grussendorf, Herrmann, Hurley,
Koponen, Larson, Miller, M.M.,
Navarre, Phillips, Pignalberi,
Pourchot, Rieger, Sund, Szymanski,
Taylor, Thompson, Uehling, Wallis

Excused: 4 Binkley, Boucher, Collins,
Miller, M.W.

Absent: 2 Adams, Davis

And so, Amendment No. 2 was not adopted.

Representative Clocksin moved and asked unanimous consent that CSHB 327(Jud)am be considered engrossed, advanced to third reading and placed on final passage.

Representative Clocksin withdrew his motion.

Amendment No. 3 by Pettyjohn:

Page 1:

Line 16, before "believing", insert "reasonably"

Line 26, before "believing", insert "reasonably"

Representative Pettyjohn moved and asked unanimous consent that Amendment No. 3 be adopted. There being no objection, it was so ordered.

Representative Clocksin moved and asked unanimous consent that CSHB 327(Jud)am be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 327(Jud)am was read the third time.

CSHB 327(Jud)am

The question being: "Shall CSHB 327(Jud)am pass the House?"
The roll was taken with the following result:

CSHB 327(JUD)AM

Yeas:	32	Adams, Cato, Clocksin, Cotten, Davis, Duncan, Frank, Fuller, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Hurley, Jenkins, Koponen, Larson, Miller, M.M., Navarre, Pearce, Pettyjohn, Phillips, Pignalberi, Pourchot, Rieger, Ringstad, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis
Nays:	4	Furnace, Marrou, Martin, Shultz
Excused:	4	Binkley, Boucher, Collins, Miller, M.
Absent:	0	

And so, CSHB 327(Jud)am passed the House.

Representative Furnace gave notice of reconsideration of his vote on CSHB 327(Jud)am.

SECOND READING OF HOUSE RESOLUTIONSHJR 51

HOUSE JOINT RESOLUTION NO. 51 (relating to Coast Guard user fees) was read the second time with the State Affairs Committee report (page 2125).

Representative Clocksin moved and asked unanimous consent that HJR 51 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HJR 51 was read the third time.

The question being: "Shall HJR 51 pass the House?" The roll was taken with the following result:

WK phone
265-2521
home 243-4802

Merle W. Akers
3031 Bennett Avenue
Anchorage, Alaska, 99517
Home Phone: 243-4802

March 10, 1985

Senator Edna DeVires
Chairperson, Community & Regional Affairs Committee
Senate Office Building
Juneau, Alaska

Subject: HB 327 - An Act Relating to Protection for Employees

Dear Senator:

Less than six months ago I sued the State of Alaska Railroad Corporation for retaliation involving a whistle blowing incident which took place in December of 1984, prior to the State taking over the Railroad on January 5, 1985. I was removed from the managerial position I held with the Alaska Railroad for 20 years on January 10, 1985, four working days after the date of transfer, and was demoted to a non-managerial tech job. To date I have been through a year of litigation and have spent over \$60,000 in attorney fees and related costs. I feel I have acquired some expertise on the subject of retaliation and the law and because of my experience I do not wish to see HB 327 pass into law in it's present form. I fully support the need for legislation to revamp the present laws and regulations on employee retaliation for whistle blowing. I feel that HB 327, in it's present form, will not accomplish what it intends - if the intent is to make it more difficult for employers to take retaliatory action against their employees who give testimony against them.

I feel there are three major issues which need to be addressed.

1. Should the employee who gives testimony against his/her employer lose their job? If it is the intent of this bill that they should not, then the law should require that they be reinstated. Section 23.10.510(a) of HB 327 leaves this to the discretion of the Court. All the Court cases I have researched resulted in the person not being returned to his/her job.
2. What should be the standard of proof of retaliation which the Court must accept? Section 23.10.510(d) is the same standard that is now required under present rules and is all but impossible to meet. Most evidence offered to a

Court in support of a retaliation claim will be circumstantial. In my case where I have been removed from my job, the Alaska Railroad successfully defended against the retaliation charges by claiming I was discharged for poor performance and conduct unbecoming a manager. The evidence I presented in my defense opposed this claim: in twenty years with the Alaska Railroad I had never had a less than satisfactory performance evaluation; had received two cash awards for superior performance in the five years prior to January, 1985; had received a superior achievement award from the U. S. Department of Transportation in November of 1984 for my outstanding work on transfer issues and the land evaluation; and had received a pay increase in July of 1985. During the period of July, 1985, through December 12, 1985, I was on a detailed assignment to work with the Land Review Committee, comprised of State and Railroad personnel. The person in charge of this Committee was the Railroad's own Chief Counsel, who gave me a high performance rating. With this information, the Jury during trial could not find clear and convincing evidence of retaliation, but did find that the Railroad acted in "bad faith" and awarded \$7,000 plus an additional \$30,000 in punitive damages.

What additional evidence would have been required to meet the standard - clear and convincing? Perhaps testimony from one of the persons who conspired to retaliate against me, or a memorandum or letter from one of the conspirators acknowledging a plan of retaliation? I believe you will agree, it is very unlikely that kind of evidence could ever be obtained.

3. Punishment and penalties? I know of no person who ever lost a job as a result of retaliation where the court ordered the employer to return the employee to his/her job. On the other hand, I know of no person involved in retaliation who ever lost their job for taking a retaliatory action against an employee. How can this be fair?

HB 327 like the Federal Government Whistle Blowers' Regulations creates an atmosphere for retaliation to a whistle blower, instead of providing safeguards and meaningful deterrents. Both require that the whistle blower, if retaliated against, fund his/her own lawsuit against the employer. If the employer is other than a private corporation, public funds will be used for defense. The employer knows it is going to cost the whistle blower a large amount of money to pursue his/her case. The employer knows the whistle blower will have to pay his/her attorney as the case is prepared ... no attorney I have talked with will take such a case based on a contingency fee due to the difficulty of proving the retaliation issue.

If an employer is going to retaliate against the whistle blower, one approach would be to fire him/her, which would cut off the employees income and lessen his ability to sue. If the whistle blower appears to be in a position to sue, another approach would be to demote the employee until after the trial, knowing the courts historically do not return whistle blowers back to their jobs. The employers tactic then would be to reorganize the work force and the whistle blower's job then becomes an excess and the employee can be layed off. If the employer is a public agency and has had to pay out some damages with it's public monies, the employer is not concerned as the objective in the end, for them is achieved - the whistle blower is out of a job. If the whistle blower is successful in proving his case, he will be entitled to receive back a portion of his/her attorney fees and costs. In my case, I have spent \$60,000 to date and according to my attorney I cannot expect to receive more than 85% of my costs - about \$51,000. The average award is more in the neighborhood of 50%.

HB 327 provides a penalty of a civil fine for violation of the law, of not more than \$10,000. My unrecoverable cost to date is estimated to be between \$9,000 and \$30,000. If this is representative of the average out of pocket cost a whistle blower can expect to pay, along with the loss of his/her job, I feel a possible maximum fine of \$10,000 levied against a public body and paid for with public funds amounts to a non penalty. Even if the fine is levied against the employees who participated in the retaliatory act, a possible maximum find of \$10,000 appears insignifigant and even moreso if the whistle blower lost his/her job and those that took the recaliatory action did not lose theirs.

HB 327 states a violator of the law is subject to a civil fine. Who is going to prosecute the violator? I appears it would have to be a seperate trial from the one the whistle blower initiated. If it is the intent of HB 327 that the whistle blower must bring a separate action, at his/her own expense, we again have the problem of it costing the whistle blower more in attorney fees than he/she can recover along with having financial ability to even fund another trial to prosecute the offenders. This brings up the issue of to whom the fine is paid ... the State or the whistle blower?

If it is the intent of HB 327 to have the State prosecute violators then the Bill should so state.

The fine of \$10,000 poses yet another problem for the person who pursues retaliation action. Will the Courts grant punitive damages to the plaintiff, or will it reduce the punitive damages to allow for a possible future fine?

I recommend HB 327 be amended to do one of the following:

1. If HB 327 is to be passed in it's present form it should contain an in-depth explanation of the problems facing a person considering reporting any unlawful or unfavorable action of an employer to any public body. The explanation should make it clear it is up to the person making the report to prove retaliation and that it is very hard to do so unless one has an admission by the person(s) who retaliated, or written documentation clearly stating same; that present law, including HB 327, does not prohibit them from losing their job; that most whistle blowers who are retaliated against do lose their job; that they do not receive back 100% of attorney fees/costs, even if they are successful. If it is up to the person to fund prosecution of the civil fine, that should also be explained.
2. Amend the present bill as follows:
 - A. SECTION 23.10.500(c); set forth in detail (using examples if necessary) what type of evidence constitutes "clear and convincing" evidence. It should consider the following: Is it required evidence that a witness testify in court he/she took retaliatory action against another? Is the evidence required to be a written document clearly stating or instructing one to take a retaliatory action?
 - B. SECTION 23.10.510(a): Delete the word "may" and insert the word "shall", and require the employer to pay 150% of employees attorney fees and 100% of court costs.
 - C. SECTION 23.10.510(c); Delete all of the present section and substitute a new subsection (c) for the following reasons: 1) I am not sure how a whistle blower can pursue an action to insure that a "civil fine" is imposed. 2) A \$10,000 fine when it is not your own money paying the bill will not deter many employers or organizations from taking retaliatory action against an employee. Anyone contemplating retaliatory action will realize the difficulty of proving such a charge and knows it would be at least five (5) years before a fine would be due.

NEW SECTION 23.10.510 (c) The Attorney General for the State of Alaska shall prosecute 1) any person who violates HB 23.10.500-23.10.520. Any employee convicted of violating HB 23.10.500 - 23.10.520 shall be sentenced to a jail term not to exceed six (6) months but not less than 30 days, and be fined a minimum of \$10,000, pay 100% of all the State's attorney fees and court costs. 2) Any person who had prior knowledge of the proposed retaliatory action

who either failed to stop it or report it in writing to the State Attorney General, shall be charged as an accessory and subject to the penalties set forth in (1) above.

- D. NEW SECTION 23.10.510 (e); Any private or public corporation convicted of violating HB 23.10.500 - 23.10.520 shall be liable for minimum civil fine equal to three times the total cost of the State's and Plaintiff's attorney fees and court costs. This fine is in addition to any award made to plaintiff in Section 23.10.510 (a)(c).
- E. NEW SECTION 23.10.510 (f) Where employees of the State or State owned corporations violate HB 23.10.500 - 23.10.520, including Boards of Directors of said State Corporations, said employees and Board of Directors' employment or appointment shall be terminated and they shall not be eligible for rehire by the State or it's corporations nor for appointment to a State Board for a period of five (5) years.
- F. NEW SECTION 23.10.510 (g) Nothing in HB 23.10.500-23.10.520 shall preclude a person who's other rights provided by law were also violated in a retaliatory action from being awarded separate relief and damages from the Courts for any such violations in addition to those received under provisions of HB 23.10.510 - 23.10.520.

Honest people find it hard to believe that some will lie under oath, falsify documents, knowingly violate the Federal And State constitutional rights of people. Many recognize this happens all the time, especially attorneys, and in particularly it happens in retaliation cases involving whistle blowing. The average person cannot anticipate things like this happening in the Courts. The reality is that it happens all the time. What the defendant is trying to do is win by default. Defendants have more resources, money, political power, attorneys, and time. The defendant knows that very few, if any, whistle blowers can, or are prepared to, pursue the issue for five or more years in Court. Even if they did do so and won, at the present time no Court is going to order the person returned to his/her job after five years - even if the people who have done the retaliation have left, moved or been transferred elsewhere.

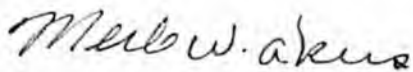
When the person cannot or is not returned to his position, the Courts have difficulty with the amount of damages that should be awarded, as there are no guidelines for making calculations.

Pg. 6

If I had known in December of 1984 what I know now I would never have been a whistle blower. If anyone were to ask my advice on making public a violation of the law or of State or Municipal regulations, I would advise them against it. I would advise them against testifying before any legislative committee that might be seeking information about violations, as the penalty for failure to testify would be less than the penalty they would have to pay if they do. If we as citizens truly believe in the benefit whistle blowers provide to us, then lets give them some meaningful protection.

I hope the information contained herein can be helpful to you and your committee. If I can be of any service, please do not hesitate to contact me.

Sincerely,



Merle W. Akers

cc:

Representative Nilo Koponen

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MERLE AKERS,)
)
Plaintiff,)
)
vs.)
)
ALASKA RAILROAD CORPORATION,)
)
Defendant.)
_____)

Case No. 3AN-85-7707 Civil

SPECIAL VERDICTS

We, the jury in the above-entitled case, find the following Special Verdicts on the following questions submitted to us:

1. Was the suspension of Plaintiff and transfer from his former position as Manager, Industrial Development & Real Estate to his new position as Realty Specialist in the Engineering Department motivated, in whole or in substantial part, by malice or bad faith?

ANSWER: Yes (Answer "yes" or "no")

2. Was the suspension of Plaintiff and transfer from his former position to his new position motivated, in whole or in substantial part, by a desire to retaliate against or penalize Plaintiff for his participation in the R.A.I.L.S. Report?

ANSWER: No (Answer "yes" or "no")

If your answer is "yes" to Question No. 1, Question No. 2 or both, then answer Question No. 3 below. If your answer is "no" to both Question No. 1 and Question No. 2, do not answer any further questions, but do have the jury foreperson sign and date this Special Verdicts form.

3. What is the amount of damages, if any, you find Plaintiff is entitled to recover from Defendant in each of the following categories:

- a. Future wage & retirement pay losses: \$ 0
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- TOTAL DAMAGES: \$ 37,000

DATED this _____ day of September, 1985 at Anchorage, Alaska.

FOREPERSON OF THE JURY

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HB 327

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Adds a new section to AS 39.51 (Public Officers and Employees.
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Also adds a new section prohibiting retaliation. States the public employer of a person who testifies before a legislative committee may not dismiss, demote, suspend, lay off, or otherwise subject the employee to disciplinary action for communicating to the committee information relevant to a legislative inquiry unless disclosure is prohibited by law. Employee may request a legislative investigation if the employee believes disciplinary action has been taken. The legislative committee could refer violations to the Attorney General. Does not provide effective date (takes effect 90 days after Governor signs bill).

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Changes section relating to retaliation. Under this version a public agency is prohibited from dismissing, demoting, suspending, laying off, or otherwise subjecting an employee to disciplinary action for communicating to a legislator or committee information relevant to a legislative inquiry unless disclosure is prohibited by law. The employee may be required to state clearly that the communication is not on behalf of the public agency, and the employee may be prohibited from communicating during his working hours, but the agency could not unreasonably deny the employee's request for leave.

A public agency would be allowed to discipline an employee who has principal responsibility for determining policy or implementing policy for communicating an opinion which is contrary to the agency's official opinion about a job-related matter. The agency could not discipline the employee for communicating information about a violation of law or regulation.

An employee who believes disciplinary actions have been taken in violation of this law may request a legislative investigation. A committee investigation is not a public record and may be held in executive session. The matter may be referred to the Attorney General, and the AG must report the results of the investigation to the legislative committee.

If an employee is disciplined within 90 days the public agency is required to provide information to the committee and justification of the action if the committee requests the information. A public agency may not disclose personnel records that are confidential unless the disciplined employee waives the confidentiality in writing.

An employee who has been disciplined in violation of the law has a private cause of action against the agency for reinstatement, lost wages, other compensation and damages, and for reasonable attorneys fees. A public agency shall advise an employee in writing at the time of hiring of employee's rights under this law. The protections of this law do not apply to an employee if the employee knowingly communicates false information, or if a law is violated making the communication. A violation is a class A misdemeanor.

Defines "public agency" as a public or quasi-public corporation or authority established by law, the U of A, a political subdivision of the state, and the Alaska Railroad.

Disclosure of HOUSE BILL NO. 327, (see page 530). On April 25 Rep.
Information Jenkins added his name as co-sponsor.