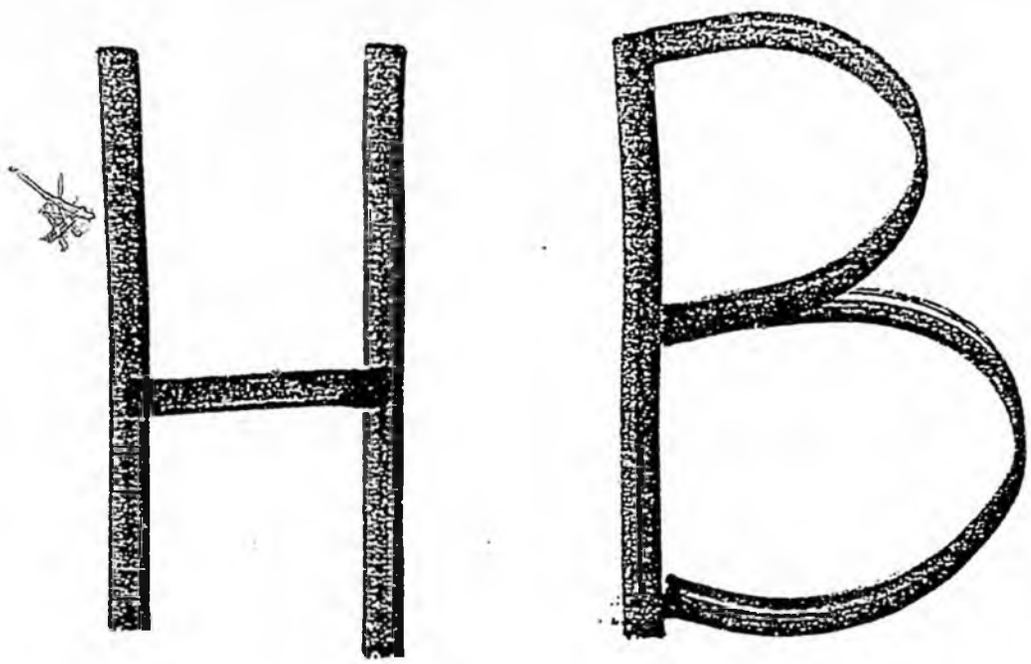
ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672 248
4676 HJUD HB 168 - HB 170



168

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1988

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

Mary Van Nimwegen

H. JUD.	4-23-87	1:30 p.m.
H. JUD.	4-7-87	12:30 p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/18/87

FURTHER REFERRALS:

DATE: 4-23-87

The Judiciary Committee has considered HB 168

"An Act relating to protection for public employees."

RECOMMENDS:

[✓] replace with CS HB 168 (Jud)

[ ] attached amendment(s)

[ ] the same title

[✓] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[✓] same as previous zero fiscal note published 3/18/87

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

MEMORANDUM
4/27/87
TO: Rep. John Sund
FROM: J. Hartle, PA
RE: HB 168 Whistleblowers

HB 168 (Labor & Commerce) An Act relating to protection for public employees

Judiciary Subcommittee: Gruenberg, Taylor

Jud CS Sectional:
1) 39.51.100 PERSONS PROTECTED
a) Application only to public sector. May not discharge or otherwise discriminate against an employee because
1> they report "matter of public concern" (defined Page 3, line 21) to a public body; or
2> They are requested to participate in an action
b) Employer may not disqualify a whistleblower from eligibility to bid on contracts, receive land or other right or benefit.
c) This bill does NOT:
1> require an employer to compensate an employee for participation in an action
2> Prohibit an employer from compensating (this issue was left to collective bargaining)
d) Employer shall post notices
2) 39.51.110 EMPLOYER RGHTS
a) A whistleblower is not entitled to protections UNLESS:
1> reasonable cause to believe the report is true;
2> has made reasonable attempt to ascertain accuracy; and
3> reports in good faith
b) As part of written personnel policy, employer may require that reports be made first to the supervisor. However, the employee may not be required if
1> they resonably believe that the reports will not result in prompt action to remedy the matter;
2> Knows with reasonable certainty that the practice is known to the supervisor;
3> resonably believes that an emergency is involved; or
4> reasonably fears physical harm.
3) 39.51.120 RELIEF AND PENALTIES
a) Whistleblower may bring a civil action and the court may grant "appropriate relief" (injunctive relief, money damages, reinstatement and back wages, declarative relief)
b) Violation or attempted violation carries a civil fine of $10,000. The A.G. MAY enforce this subsection.
4) DEFINITIONS:
a) "Employee or public employee"
b) "Employer or public employer"
c) "Matter of public concern"
1> violation of state, federal, or municipal law or regulation
2> danger to the public health or safety
3> gross mismanagement, substantial waste of funds, clear abuse of authority
d) "Public body"

5-0766B
Cramer
4/21/87

Original sponsor: Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 168 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to protection for certain public employees and certain other persons who report matters of public concern."

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

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

ARTICLE 2. PROTECTION FOR REPORTS OF CERTAIN MATTERS.

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

(1) the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern;

(2) the employee is requested by a public body to participate in a court action or in an investigation, hearing, or inquiry held by that public body.

(b) A public employer may not disqualify a public employee or other person who reports a matter of public concern, or a public employee on whose behalf a matter of public concern is reported, because the employee or person reported the matter, from eligibility to

(1) bid on contracts with the public employer;

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

(3) receive another right or benefit.

(c) The provisions of AS 39.51.100 - 39.51.130 do not

(1) require an employer to compensate an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(2) prohibit an employer from compensating an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;

(3) authorize the disclosure of information that is legally required to be kept confidential; or

(4) diminish or impair the rights of an employee under a collective bargaining agreement.

(d) An employer shall post notices and use other appropriate means to inform employees of their protections and obligations under AS 39.51.100 - 39.51.130.

Sec. 39.51.110. EMPLOYER RIGHTS. (a) An employee or other person is not entitled to the protections under AS 39.51.100 - 39.51.-130 unless the employee or other person

(1) has reasonable cause to believe that the information reported is or is about to become a matter of public concern;

(2) has made a reasonable attempt to ascertain the accuracy of the information before reporting; and

(3) reports the information in good faith.

(b) As part of its written personnel policy, a public employer may require that, before an employee reports a matter of public concern under AS 39.51.100, the employee shall submit a written report concerning the matter to the employer. However, the employer may not require the employee to submit a report if the employee

(1) reasonably believes that reports to the employer will

not result in prompt action to remedy the matter of public concern;

(2) knows with reasonable certainty that the activity, policy, or practice is already known to one or more supervisors;

(3) reasonably believes that an emergency is involved; or

(4) reasonably fears physical harm as a result of disclosure.

Sec. 39.51.120. RELIEF AND PENALTIES. (a) A person who alleges a violation of AS 39.51.100 may bring a civil action and the court may grant appropriate relief.

(b) A person who violates or attempts to violate AS 39.51.100 - 39.51.130 is also liable for a civil fine of not more than $10,000. The attorney general may shall enforce this subsection.

Sec. 39.51.130. DEFINITIONS. In AS 39.51.100 - 39.51.130

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

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

(3) "matter of public concern" means

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

(B) a danger to public health or safety; or

(C) gross mismanagement, a substantial waste of funds, or a clear abuse of authority;

(4) "public body" includes a federal, state, or municipal officer or agency.

LABOR RELATIONS REPORTER®

124 Analysis 25
February 16, 1987

ANALYSIS

Expansion of Statutory Protection For Public-Sector Whistleblowers

DEVELOPMENT: Statutory protection for government-employee whistleblowers continues to grow, according to a report presented at a midwinter meeting of the American Bar Association, January 16 and 17.

The report, which forms the basis for this Analysis, was prepared by Nancy J. Sedmak, co-chairman of the ABA State and Local Government Bargaining Committee's Subcommittee on Special Problems.

Whistleblower Statutes

The newest state whistleblower law was signed in Pennsylvania in December. Michigan passed the first state whistleblower law in 1981; by 1985, there were 19 such laws, and there are now 25 states with some sort of whistleblower law on the books.

In addition to passing new laws, several states have amended ones already on the books. In 1986, New York expanded its 1984 whistleblower law by granting additional protections to public employees.

Most of the state laws cover only state employees. Several, including the new Pennsylvania law, cover state and local employees. Arizona's law covers state and county employees. Connecticut, Louisiana, Maine, Michigan, New Jersey, New York, and Rhode Island protect state, local, and private-sector employees. California's law covers only private-sector employees.

Many of the state whistleblower laws specify that employees will be protected if they report violations of federal, state, or municipal laws, rules, and regulations. Most such laws also protect employees who disclose information regarding waste, mismanagement, or abuse of authority. But Louisiana restricts protected disclosure to violations of state, federal, or local "environmental" laws.

Some states specify that reports must be submitted to a particular individual or agency, e.g. state auditor (Delaware, Oregon,

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Utah, and Washington). Others protect disclosure to any agency or federal entity having authority to investigate, police, manage, or otherwise remedy the violation or act in question (Florida), or disclosure to any appropriate body or authority (Kentucky, Maine, New York, Rhode Island, Texas).

Whistleblowing employees may be required first to submit a report, usually in writing, to their supervisor and give the employer sufficient time to correct the problem (Indiana, Maine, New Jersey, New York, Utah). This requirement does not apply when the employee has specific reason to believe that reports to the employer will not result in prompt remedying of the violation (Maine), or if the employee is reasonably certain that the activity, policy, or practice is known to one or more supervisors, or where an emergency is involved and the employee reasonably fears physical harm as a result of the disclosure (New Jersey). Pennsylvania and Wisconsin provide that employees may report either to a supervisor or an appropriate authority. Kansas and Kentucky specifically state that employees are not required to give prior notice.

Whistleblowing employees may be required to make their disclosures in good faith (Pennsylvania, Texas), to have reasonable cause to believe a violation has or is about to occur (California, Iowa, Maryland, Maine, New Jersey, New York, Rhode Island, Wisconsin), to make reasonable attempts to ascertain the correctness of their information (Indiana), and not to knowingly make false charges (Connecticut, Delaware, Michigan, Utah). Employees who knowingly make false charges may be disciplined (Connecticut).

Remedies and Procedure

Most states provide for civil-suit enforcement, but a few require the employee to exhaust administrative remedies first. A few states have special procedures to handle complaints. Connecticut stipulates that the employee may file an appeal with a review board, or pursue remedies under a collective bargaining contract; Florida's law requires employees to exhaust administrative remedies; Indiana's states that those dismissed may process an administrative appeal, but the law does not impair other legal remedies the employee may have; Maryland provides remedies supplemental to the ordinary state-employee grievance procedure; Oregon's law requires establishment of an administrative appeals procedure; and Wisconsin provides that the employee may file a complaint with a commission. Maine provides for a jury trial.

Some states provide for injunctive relief (Delaware, Florida., Kentucky, Maine, Michigan, New Jersey, New York, Rhode Island, Texas).

Most states provide that reinstatement, back pay, fringe benefits, and seniority may be awarded. Louisiana provides for triple

damages, lost wages, and lost anticipated wages. Kentucky and Texas provide for punitive or exemplary damages. Attorney's fees and costs to the employee are available in Kentucky, Louisiana, Michigan, Rhode Island, Texas, Utah, and Washington, while attorney's fees and costs may be awarded to the prevailing party in Florida, Maine, New Jersey, and New York.

Some states specify civil or criminal penalties for violations of the whistleblower law. Any person who willfully violates the Kentucky law is guilty of a Class A misdemeanor. Maine provides for a civil fine of $10 for each day of willful violation. Michigan and Utah provide for a civil fine of not more than $500. New Jersey provides for a civil fine of not more than $1,000 for the first violation, and not more than $5,000 for each subsequent violation. In Pennsylvania, employers who violate the act may be fined up to $500 and suspended up to six months, except for elected officials. Supervisors in Texas are subject to a civil penalty up to $1,000.

The posting of notices informing employees of their rights is required in several states. New Jersey requires that the notices name the person designated to receive written reports.

Other Protections

In the absence of state laws protecting whistleblowers, or if the laws that do exist do not cover all employees, other protections are sometimes available. Employees may invoke their First Amendment guarantees, or possibly bring wrongful-discharge suits.

The First Amendment protects a government employee from discharge for speech on matters of public concern. (Connick v. Myers, US SupCt, 1983, 1 IER Cases 178) To ascertain whether such matters are involved, the court must focus on the content, form, and context of statements for which protection is sought.

In Wulf v. City of Wichita (DC Kan, 1986, 1 IER Cases 895), a city police officer was terminated after he wrote to the state Attorney General expressing allegations ranging from interference by the police chief with the constitutionally protected right of membership in a union to improper use of public funds, and requesting an official investigation into these matters. The officer sued and was found to have engaged in speech on matters of public concern protected by the First Amendment. His letter, which was submitted through proper channels to appropriate authorities, did not affect the officer's ability to perform his duties; his working relationship with the police chief did not require personal loyalty and confidence; and there was no evidence of any disruption of police-department activities or morale as result of the letter. The court found that even if the police chief had legitimate fears of disruption, the First Amendment balance can hardly be controlled by this factor. Quoting Porter v. Califano (CA 5, 1979, 592 F.2d

770), the court stated: "An employee who accurately exposes rampant corruption in her office no doubt may disrupt and demoralize much of the office. But it would be absurd to hold that the First Amendment generally authorizes corrupt officials to punish subordinates who blow the whistle simply because the speech somewhat disrupted the office."

Officer Wulf was terminated by the City of Wichita in April 1981. Wulf's award from his lawsuit under 42 U.S.C. 1983 totalled $242,465 for back pay, $389,806 for front pay, $250,000 for mental anquish and emotional distress, and $50,000 in punitive damages against the police chief, plus reasonable attorney's fees and expenses.

Kansas enacted a whistleblower law to protect state employees in 1984. Wulf and similarly situated employees would not have been covered, because the law does not cover city employees.

Public-Policy Exceptions

In Wagner v. City of Globe (Ariz SupCt, 1985, 1 IER Cases 501), a probationary city police officer was discharged for what the court characterized as whistleblowing — he had taken affirmative steps to investigate and rectify the illegal detention of an individual and called it to the attention of the police chief and city magistrate. The police officer asserted that he had been wrongfully discharged in violation of the city's personnel rules and therefore in breach of contract.

The court considered whether the public-policy exception to the employment-at-will doctrine applied. The court stated: "The employee who chooses to report illegal or unsafe conduct by his employer differs significantly from the employee forced to choose between his job and actual participation in illegal behavior. The latter is the paradigmatic case of a public policy violation; in contrast the whistleblower faces the arguably less onerous choice of either ignoring the known or suspected illegality or becoming an instrument of law enforcement .... We believe that whistleblowing activity which serves a public purpose should be protected. So long as employees' actions are not merely private or proprietary, but instead seek to further the public good, the decision to expose illegal or unsafe practices should be encouraged."

Further, the court noted, the legislature had recognized in 1985 that whistleblowing is worthy of protection by enacting a law protecting state and county employees. Though this law was not applicable here, it "evinces a legislative expression of public policy fully consonant with our decision," the court said. It summarized by stating: "As we have endeavored to show, all employees who attempt to correct problems of public interest fall within the ambit of the public policy exception to the at-will doctrine."

Introduced: 3/6/87
Referred: Labor & Commerce
and Judiciary

5-0766A

BY THE LABOR AND
COMMERCE COMMITTEE

IN THE HOUSE

HOUSE BILL NO. 168

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

ARTICLE 2. PROTECTION FOR PUBLIC EMPLOYEES.

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

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

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

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

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

(2) the employee is requested by a public body to participate in a court action or in an investigation, hearing, or inquiry held by that public body.

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

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

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

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

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

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

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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Introduced: 3/5/87
Referred: Labor & Commerce
and Judiciary

5-0766A

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

HOUSE BILL NO. 168

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

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

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

(2) the employee is requested by a public body to participate in a court action or in an investigation, hearing, or inquiry held by that public body.

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

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

made under (a)(1) of this section discloses information that is legally required to be kept confidential.

(d) A person who alleges a violation of this section may bring a civil action for appropriate injunctive relief, actual damages, or both, within 90 days after the occurrence of the alleged violation. The person must show by clear and convincing evidence that the employer violated (a) of this section.

(e) The provisions of AS 39.51.100 - 39.51.120 do not diminish or impair the rights of an employee under a collective bargaining agreement.

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

Sec. 39.51.110. RELIEF AND PENALTIES. (a) The court may order an employer to reinstate the employee, pay the employee back wages, reinstate fringe benefits and seniority rights, and pay actual damages.

(b) A public body may not disqualify a person for alleging a violation of AS 39.51.100 - 39.51.120 from eligibility to

(1) bid on contracts with the public body;

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

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

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

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

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

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

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

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

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

4-13-87

AREAS OF CONSIDERATION FOR HB 168

1. Page 1, Line 19, following "a": What are the policy considerations behind requiring that a danger to public health and safety be "substantial and specific" in order than an employee can not be fired with impunity for reporting such a danger?
If this is to prevent frivolous reporting all language in (A), (B), and (C) should track or it should be taken care of in a separate section (See 5).

   Recommendation: Delete "substantial and specific"

2. Page 1, Line 21, following "a".

   What is the policy behind quantifying the amount of waste? (See consideration #1)

   Recommendation: Delete "gross"

3. Page 1, Line 26, Subsection 167:

   APEA would like to delete the entire subsection because they feel it may be used to deny a right to compensation that an employee would otherwise be entitled to.

   Rep. Ulmer suggests inserting "preclude or" after "does not" which would have the same effect without creating the ambiguity and possible grounds for litigation that the APEA amendment may cause, except that grammatically it would be better to delete "require" and insert "create or preclude an obligation that".

   Bob Cooksey would like to delete "This section does not require an employer to compensate an employee" following "(b)" and to insert "A person shall not suffer loss of compensation or benefit".
   This is intended to protect individuals employed by the public employer at the time of the hearing, etc., but not the former employee or employee in layoff status. A better way to accomplish this intent would be to, instead, insert "During a period of actual public employment an employ shall not suffer loss of compensation or benefit."

   Recommendation: If the committee wishes this bill to be neutral in regards to employee's rights to compensation for time spent testifying, then Representative Ulmer's recommendation as amended is probably the best approach.

4. Page 2, Line 1 Bob Cooksey would like to insert "the person knows" after "that". This is intended to prevent penalizing of an employee for disclosures which the employee does not know are confidential.

5. Page 2, Line 1 This may be a good place to insert language that will except frivolous reporting from the protection of the bill, and insert the language Representative Taylor would like to insert requiring the employee to first report the problem to the employer.

   Suggestion: Page 2, Line 1, after "Section": Insert ;"(1)"
   Page 2, Line 2, after "confidential": Delete "." and insert "; or
   (2) is frivolous or malicious; or
   (3) was not first made to their employee and the employer was given sufficient time to remedy the problem, unless the employee has reasonable grounds to believe that the problem is already known to the supervisor, that disclosure will not result in remedying the problem or that disclosure might result in physical harm to the employee or another."

6. Page 5, Line 5; "90 days" may not be enough time to bring an action, especially if administrative remedies must be exhausted. The 90-day limitation is in the model act. It was probably put in to prevent the employee from sitting on their rights and building up damages before a suit is brought.

   Suggestion: Page 2, Line 3, following "may": Insert "without exhausting their administrative remedies" Most states provide for this.

7. Page 2, Line 4 The language of the prayer for relief should trade the language for relief that may be granted.

   Suggestion: Leave this language as it is because it covers everything that the employer would want and make the language on line 14 track.

8. Page 2, Line 6 "Clear and convincing evidence" may be too tough a standard"

   Suggestion: Page 2, Line 2, following "by":
   Delete "clear and convincing" and insert "a preponderance of the"

9. Page 2, Line 14, (See 7)
   Suggestion: Page 2, Line 14 after "order": Insert "injunctive relief, actual damages or both, such relief may include ordering"

Page 2, Line 16, following rights ":"Delete", and pay actual damages"

10. Page 2, Line 25, If we insert "or attempts to violate" after "violates we may not need subsection (d).

11. Page 2, Line 26, Should we specify that the penalty applies on a per employee fixed basis?

    Suggestion: I don't think it is necessary to change this language because it is a violation of the statute to fire "an employee."

12. Page 3, Line 4, Should the definition of employee include suppliers of goods?

    Suggestion: This may expand the scope of the bill substantially and may require more revision than a simple expansion of the definition.

13. Page 3, Line 10, Should "federal" be deleted because it is beyond our jurisdiction?

    Recommendation: Yes, it is probably beyond our jurisdiction to prohibit a federal agency from discriminating aginst past plaintiffs in these actions.

    Query: Should (b) on Page 2, Line 18 prohibit discrimination for alleging a violation under the statute or filing a report under the statute? (Comment (13))

State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
HOUSE JUDICIARY
HOUSE RULES

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

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465-4968/4986

914 CLAY COURT
ANCHORAGE, ALASKA 99503
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April 27, 1987

TO: ALL HOUSE MEMBERS

FROM: MAX F. GRUENBERG, JR.

RE: CSHB 168(JUDICIARY) "Whistleblower's" Bill

HB 168 appears on today's calendar. This bill was passed last year as HB 327. It has been re-introduced this year and was extensively re-written in Judiciary Committee, taking the best "whistleblower's" statutes from several states and the federal model.

The bill protects public employees and other persons reporting "matters of public concern" from retaliation. A public employer (the state and municipalities) may not actually discharge or threaten to discharge or discriminate in any manner against an employee who reports a "matter of public concern" to a governmental agency or who participates in a hearing at the request of the governmental agency. Nor may a person be disqualified from bidding on public contracts, receiving public land, or receiving any other legal right or benefit to which the person is entitled, simply because the person has reported a "matter of public concern."

A "matter of public concern" is defined in the bill to include violations of law, dangers to public health or safety, or gross management, a substantial waste of funds, or a clear abuse of authority. Before reporting the matter of public concern to the governmental agency, the employee must submit a written report concerning the matter to the employer, unless it is an emergency, the problem is already known to the supervisor, the employee reasonably fears physical harm as a

result of the disclosure, or reasonably believes that the report will not remedy the situation promptly.

Only reports made in good faith are protected. The act does not authorize the disclosure of information that is legally required to be confidential. The act does not impair collective bargaining agreements.

An employee who is wrongfully discharged or discriminated against may bring a civil action and obtain money damages, including lost pay and fringe benefits and injunctive relief. This may include reinstatement and any other appropriate relief. The attorney general is empowered to sue violators for a civil fine of up to $10,000.

Public employers must post notices so employees are aware of their protections under the act.

Since 1981, 25 states plus the federal government have passed whistleblower statutes. Most state laws, like HB 168, cover only public employees.

Last year, HB 327 passed the House 37-0. This year, HB 168 was reported out of the House Labor and Commerce Committee with six "Do-Passes" and one "No Recommendation." The House Judiciary Committee passed the bill out with seven "Do-Passes." There is a zero fiscal note.

Your support would be greatly appreciated. If you have any questions, please contact Mark Handley, my legislative assistantat x3718, or myself.

SECTIONAL ANALYSIS
CSHB168 (JUD)
"WHISTLEBLOWER'S BILL"

Section 1

AS 39.51.100(a) Prohibits employment discrimination by public employers for reporting of matters of public concern or for providing information at the request of a public body.

AS 39.51.100(b) Prohibits governmental discrimination against any person otherwise entitled to a right or benefit because that person reported a matter of public concern.

AS 39.51.100(c) Provides that the act does not effect an employer's rights or obligations under a collective bargaining agreement or authorize the disclosure of confidential information.

AS 39.51.100(d) Requires employers to notify employees of their rights under the act.

AS 39.51.110(a) Removes the protection of the act from employees who do not make their report based on good faith belief in facts which they have made reasonable attempts to investigate.

AS 39.51.110(b) Allows an employer to require the employee to first report to the employer unless it would be dangerous or futile to do so.

AS 39.51.120(a) Allows a person injured by a violation of this act to sue the violator.

AS 39.51.120(b) Provides that a civil fine of up to $10,000 may be assessed against violators of the act.

AS 39.51.130 Defines "employee," "employer," "a matter of public concern," and "public body" for the purposes of the act.

Alaska State Legislature

Representative Niilo Koponen

Pouch V
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MEMORANDUM

TO: SENATOR KELLY
CHAIR, SENATE RULES

FROM: REP. KOPONEN

RE: HB 237

DATE: MAY 9, 1986

The Senate Rules Committee is now in possession of HB 237. This bill, known as the "whistleblower" bill, was modeled on Michigan statute and model legislation proposed by the Council of State Governments in 1982.

I am convinced of the need for such legislation after witnessing the retribution dealt by a public employer to an employee who testified in the House HESS Committee last year regarding asbestos in public facilities in Fairbanks. The public must be free to give us, the Legislature, the information we seek if we are to act in a fully informed manner.

I would like you to schedule this bill for the Senate floor at your earliest opportunity. Doug Yates, of my staff, can provide you or your staff with any back-up, should you require it.

Thank you for your assistance on this matter.

CSG INQUIRY LINE

Q. *What are lifeline rates and how many states have them?*

A. Lifeline rates give eligible consumers, usually the elderly and others with low incomes, a price discount on a basic amount of electricity or other utilities. The goal of lifeline rates is to enable low-income consumers to purchase a basic amount of electricity necessary for sustaining a decent standard of living. According to the National Association of Regulatory Utility Commissioners (NARUC), states which have lifeline rates are: Alabama, California, Georgia, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, Oklahoma, Wisconsin, and the District of Columbia. States which are considering lifeline proposals or have test programs are: North Carolina, New York, Maine, Delaware and Arizona, according to NARUC.

Q. *How many states have called for a constitutional amendment for a balanced federal budget?*

A. Thirty-two states, two shy of the 34 needed, have called for a constitutional convention to require a balanced federal budget. There is no constitutional or statutory deadline for the remaining two states to call for a convention. However, a state may revoke its call at any time until 34 states have passed resolutions. Most recently, the Montana and California supreme courts have struck ballot initiatives calling for a convention on the basis the measures infringed on legislative powers. The 32 states which have called for constitutional conventions and the dates of action for each are: Alaska (1982), Arizona (1979, 1977), Arkansas (1979), Colorado (1978), Delaware (1975), Florida (1976), Georgia (1976), Idaho (1979), Indiana (1979), Iowa (1979), Kansas (1978), Louisiana (1979, 1978, 1975), Maryland (1975), Mississippi (1975), Missouri (1983), Nebraska (1976), Nevada (1979, 1977), New Hampshire (1979), New Mexico (1976), North Carolina (1979), North Dakota (1975), Oklahoma (1976), Oregon (1977), Pennsylvania (1976), South Carolina (1978, 1976), South Dakota (1979), Tennessee (1977), Texas (1978), Utah (1979), Virginia (1976), Wyoming (1977).

Q. *Which states have passed whistleblower laws?*

A. Whistleblower laws protect employees who "blow the whistle" on improper practices by their employers. California, Connecticut, Illinois, Kansas, Louisiana, Michigan, Ohio, Oregon, Maine, Michigan, New York, and Rhode Island have some form of whistleblower laws. Courts in California, Connecticut, Indiana, Massachusetts, Michigan, New Hampshire, New Jersey, Oregon, Pennsylvania, and West Virginia have banned retaliatory firings. A model whistleblower law was published in CSG's *Suggested State Legislation* 1982, pp. 155-157.

The States Information Center (SIC) inquiry service can help you locate relevant information quickly and will respond to requests by phone or letter. The SIC maintains statistical information and program documents, as well as lists of resources, on issues of concern to state governments. The service is confidential and free to state officials and staff. Write or call Debbie C. Tillett or Shery Kearney: The Council of State Governments, States Information Center, Iron Works Pike, P.O. Box 11910, Lexington, KY 40578, (606) 252-2291.

calendar EVENTS

April 24-26—Southern Region State Treasurers Annual Meeting, Asheville, N.C., Grove Park Inn, Pohlmann, Lexington.

April 29-May 1—NCLG Spring Meeting, Washington, D.C., Feigenbaum, Lexington.

May 8-10—NCSL State-Federal Assembly, Washington, D.C., Hyatt Regency Capitol Hill, Camden, D.C.

May 8-10—Western Region State Treasurers Meeting, Seattle, Wash., Seattle Sheraton Hotel and Towers, Pohlmann, Lexington.

May 8-11—Southern Conference of Attorneys General, Louisville, Ky., Brown Hotel, Williams, Atlanta.

May 19—NASIS Finance and Executive Committee Meetings, Newport, R.I., Treadway Inn, Parish, Lexington.

May 20-21—NASIS Eastern Regional Meeting, Newport, R.I., Treadway Inn, Parish, Lexington.

June 5-7—Conference of Western Attorneys General Annual Meeting, Juneau, Alaska, Stockholm, San Francisco.

June 6-8—NCSL Executive Committee Meeting, Pittsburgh, Pa., Lake, Denver.

June 9-12—Eastern Region State Treasurers Meeting, Vergennes, Vt., Basin Harbor Club, Hebard, Montpelier.

June 10-12—National State Auditors Association Annual Meeting, Phoenix, Ariz., Pointe Resort, Pohlmann, Schumacher, Lexington.

June 16-20—Leaders' Advanced Management Program, Boston, Mass., Boston University, Lakis, Boston (617) 267-8120.

June 17-21—Western Governors Association Annual Meeting, Waikiki, Hawaii, Sheraton Waikiki, Maddox, Corcoran.

The Council of State Governments

SUGGESTED STATE LEGISLATION®

1982

Volume 41

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Protection of Public Employees Act

This draft act provides protection to employees who report a violation or suspected violation of state, local or federal law. It also protects employees who participate in hearings, investigations, legislative inquiries and court actions. Penalties and remedies are specified.

This draft legislation is based on a Michigan statute.

Suggested Legislation

(Title, enacting clause, etc.)

Section 1. [*Short Title.*] This act may be cited as the [state] Protection of Public Employees Act.

Section 2. [*Definitions.*] As used in this act:

(1) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.

(2) "Employer" means a person who has one or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.

(3) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(4) "Public body" means all of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee or that body.

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary.

Section 3. [*Protection.*] An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's com-

pensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated under the law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

Section 4. [*Relief and Damages.*]

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

(b) An action commenced pursuant to Section 4 (a) may be brought in the circuit court for the county where the alleged violation ocurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(c) As used in Section 4 (a), "damages ' means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

(d) Employees shall show by clear and convincing evidence that they or a person acting on their behalf were about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

Section 5. [*Reinstatement.*] A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

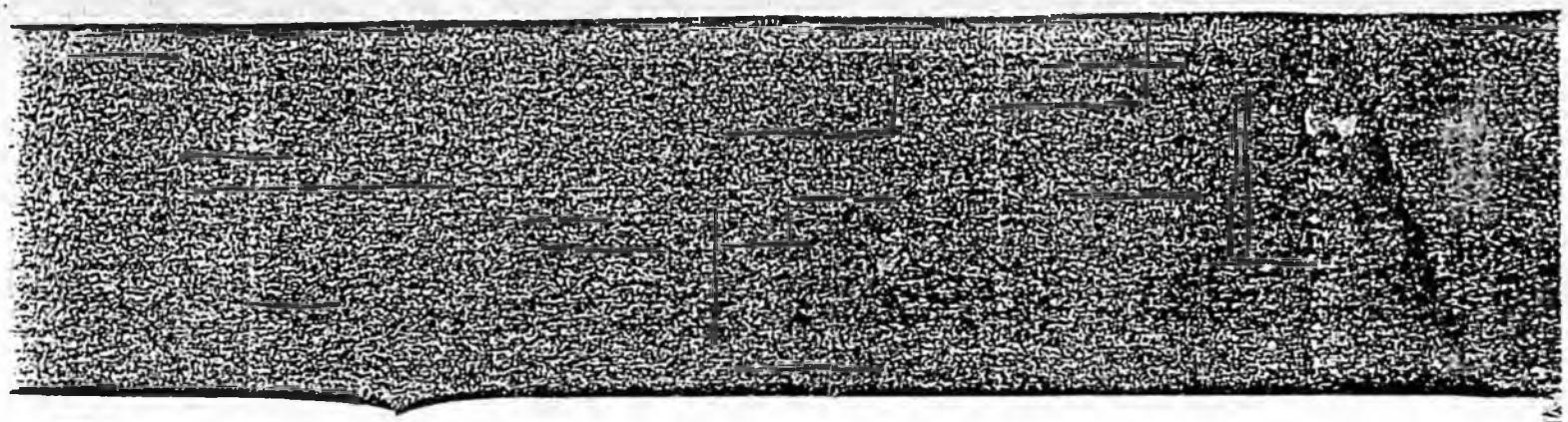
Section 6. [*Fines.*]

(a) A person who violates this act shall be liable for a civil fine of not more than [amount].

(b) A civil fine which is ordered under this act shall be submitted to the state treasurer for deposit in the general fund.

Section 7. [*Collective Bargaining.*] This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

Section 8. [*Exemption.*] This act shall not be construed to require an employer to compensate an employee for participation in an investigation,



rivileges of employment because
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hearing or inquiry held by a public body in accordance with Section 3 of this act.

Section 9. [*Notices Posted.*] An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

Section 10. [*Severability.*] [Insert severability clause.]

Section 11. [*Repeal.*] [Insert repealer clause.]

Section 12. [*Effective Date.*] [Insert effective date.]

Alaska State Legislature

Representative Niilo Koponen
District 21, Democrat

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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 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."

CSd# 805 ALASKA HOUSE OF REPRESENTATIVES

CSHB 327(JUD)AM AM

2ND SESSION 14TH LEG 2/19/86 12:32 PM

26 YEAS 13 NAYS 1 EXC 0 ABS

Y	ADAMS	Y	FULLER	N	LARSON	Y	POURCHOT
Y	BINKLEY	Y	FURNACE	Y	MACLEAN	Y	RIEGER
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N	CATO	Y	GRUENBERG	N	MILLER,M.M.	Y	SHULTZ
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Y	COTTEN	N	HERRMANN	Y	PEARCE	Y	TAYLOR
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Y	FINK	N	LOFGREN	Y	PIGNALBERI	Y	WALLIS

* VOTED FOR

RSN: 803 ALASKA HOUSE OF REPRESENTATIVES

CSHB 327(JUD)AM AM4

2ND SESSION 14TH LEG 2/19/86 12:30 PM

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+ VOTED FOR
* CHANGED VOTE

ODEN CHRONOLOGY

JANUARY 25, 1985

Mike Oden testified to the House HESS Committee about the need for state-certification of asbestos workers. He described to the committee gross mishandling of asbestos removal projects in the Fairbanks North Star Borough School District. (A verbatim transcript is in the packets.)

JANUARY 28, 1985

FNSB School officials denied what Oden said. School officials claimed there was no asbestos in Old Main School.

FEBRUARY 11, 1985

Both Mike Oden and his supervisor Barney Mulligan were fired by Fairbanks North Star Borough Director of Administration, Myrt Charney. Official statements said Oden "had destroyed the relationship he had with the school district," and Mulligan was "not providing the direction necessary for Oden". There was some question about the possibility of Mulligan's altering Oden's safety reports. It appeared possible that Mulligan had deleted Oden's descriptions of the mishandling of asbestos in the school removal projects.

FEBRUARY 15, 1985

Representative Koponen responded with his concern and began to investigate the need for "whistleblower legislation" for Alaska.

FEBRUARY 18. 1985

In an APRN radio interview, Fairbanks North Star Borough Mayor Bill Allen made it clear that Oden's testimony before the House HESS Committee was a factor in his firing.

EARLY MARCH, 1985

A sample taken from the Old Main School furnace room proved to contain asbestos.

MID MARCH, 1985

Michael Oden arranged for Fairbanks labor attorney Will Schendel to represent him. The Fairbanks North Star Borough Assembly voted to give Myrt Charney $6000 for legal fees.

MARCH 24, 1985

Mike Oden was reinstated in his job. The out of court settlement provided that

1) Oden be reinstated with back pay

2) The Borough acknowledge that Oden's safety reports were substantially correct as written

3) Oden agree to testify in any dispute over the firing of his supervisor, Mulligan

AT PRESENT

Mike Oden is back at work as Fairbanks North Star Borough safety inspector. Mulligan has not been reinstated.

Fired in asbestos issue FNM 3/26/85

Borough official back on job

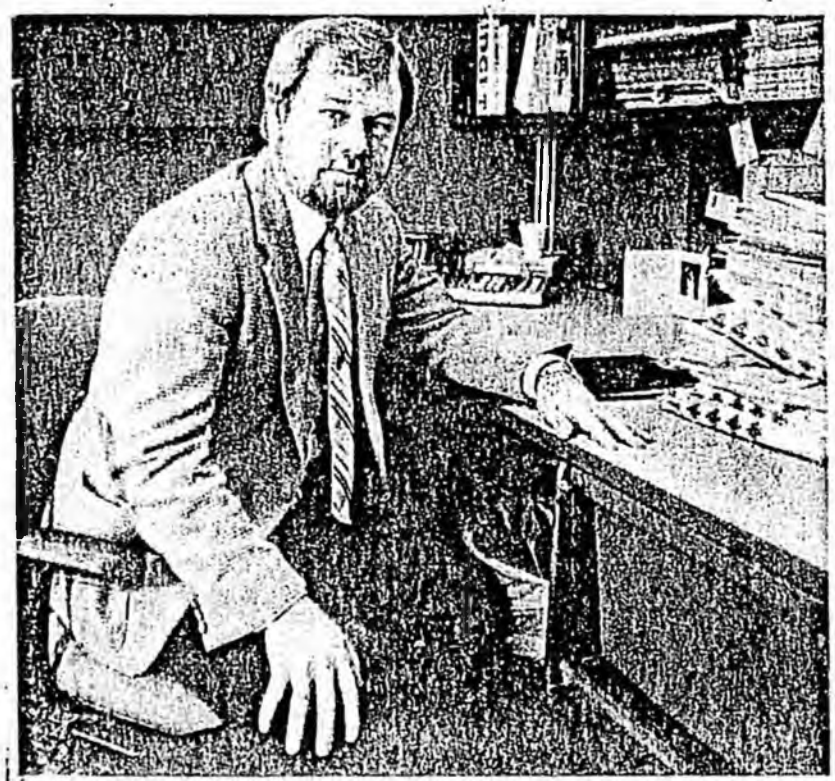
By SUSAN FISHER
Staff Writer

A borough safety coordinator is back on the job today, but his former supervisor has not been reinstated and that position, risk management, could be revamped in the future.

James Michael Oden returned to work as safety coordinator today, without loss of pay and with all legal costs paid. Oden sued the borough after he and Risk Manager Barney Mulligan were fired Feb. 8. On Friday, Oden's attorney, William Schendel, negotiated a settlement with borough attorneys.

Mulligan has not not filed suit nor has he been reinstated.

In a related matter, a sample Oden claimed contained friable (airborne) asbestos from Main Building has proved to contain no asbestos following analysis by a private Anchorage laboratory.



JAMES ODEN
Safety coordinator back at work *(Staff photo by Eric Muehling)*

Oden's firing revolved around several issues, including controversial testimony he gave to a legislative committee earlier this year. Oden said then that asbestos removal from local schools had been mismanaged. He later corrected some of his statements, but stood firm on Main Building, saying it contained asbestos material dangerous to workers.

School officials have conceded that an abandoned boiler room in Main does have friable asbestos, but is not a hazard and did not require special precautions to encase the insulating material.

Oden in late January took a sample in the boiler room and sent it to Chemical and Geological Laboratories of Alaska Inc. An analysis showed no asbestos in that sample.

Oden's only comment about that finding today was, "After they admitted there was asbestos there, that proved my point."

Main is one of 11 school buildings where removal of all asbestos is scheduled by late 1986. Officials say in all cases, identified asbestos has been checked for encasing, if necessary, to prevent fibers from becoming airborne.

Minute asbestos fibers, if inhaled, can years later lead to lung damage or cancer.

This morning, Myrt Charney, borough director of administrative services, said Oden will continue reporting to him in the immediate future. Charney fired Oden and Mulligan with the support of Mayor Bill Allen.

Allen is in Juneau today, and his chief executive director, Greg Strong, is attending a seminar in Anchorage.

Charney said Oden's duties will remain the same. Those principally are to conduct fire and safety inspections of local public schools.

As for the risk management position, Charney said he's had discussions with Corroon and Black Inc., the borough's insurance broker, on possibly restructuring that job. "We're getting some advice from other people," Charney said. "It may be I will downgrade that position," he said, but no decision has been made.

The risk manager, who supervised the safety coordinator, was responsible for overseeing insurance claims, lawsuits, workers compensation and taking corrective or preventive measures to reduce costs.

NEWS-MINER 3/24/85.

Borough reinstates inspector

By TODD PARIS
Correspondent

Less than six weeks after being fired for what borough officials called his "poor job performance" and "unauthorized testimony" before a House subcommittee, James Oden has been rehired as a borough safety inspector.

On Friday, attorneys for the borough and Oden agreed to an out-of-court settlement in a lawsuit filed by Oden. The agreement calls for Oden's reinstatement with no loss in pay or benefits and also for a letter to be placed in Oden's personnel file stating that his safety inspection reports contained "substantially accurate" information.

Those reports were cited by Borough Executive of Administrative Services Myrt Charney as one of the reasons Oden was fired.

A Fairbanks attorney who represented Oden in the case, said the firing violated Oden's rights to freedom of speech and to petition the government.

The testimony, before a House Health and Social Services Subcommittee, dealt with the need for a training program for employees involved with the removal of asbestos from area schools.

The agreement makes no judgement of liability in the case, but Oden's lawyer said the safety inspector got virtually everything he wanted from the lawsuit.

On Saturday, Oden said he hadn't seen a copy of the agreement, and was puzzled by its rapid settlement.

"I'm glad they reconsidered their decision to fire me," Oden said. "But I don't understand why they did it so soon. Maybe they found out that what I was saying was true. Anyway, I'm just glad to be going back to work."

Oden's testimony charged that personnel working in the school district's asbestos removal and abatement program didn't know what they were doing and as a result had created more of a health hazard than had previously existed.

Charney, who was named as a defendant in the suit, said he too is pleased with the settlement and thinks it's in the best interests of the borough. When asked if he felt the agreement was a defeat for the borough, he had no comment.

Also included in the settlement agreement is the recognition by both parties of the need for a safety inspector to "maintain harmonious relations with the School District" and to "reduce the risk to those who

(See ODEN, page 3)

ODEN . . .

(Continued from page 1)

use both school district and borough facilities."

Oden was primarily responsible for inspecting area schools on compliance with state building and fire codes. During the removal of asbestos from a number of schools during the past year, Oden reported that some sprinkler systems and fire alarms had been damaged. That prompted him to investigate safety procedures followed by those removing the hazardous insulating material, and led to his testimony.

The borough agreed to pay for court costs and Oden's legal fees.

Meanwhile in Juneau, Fairbanks Democrat Nillo Kopenon said Oden's firing led him to introduce a "whistleblower bill" in the Legislature last week. Kopenon said that piece of legislation is intended to protect public employees from possible punitive action resulting from potentially damaging testimony.

Oden will report for work to the Borough's Chief Executive Director Greg Strong on Tuesday.

WEP 3-13-85 News Miner

Alaska

Alaska/Fairbanks

Renovation to resume

Asbestos from Hering tested

By SUSAN FISHER
Staff Writer

Asbestos material uncovered by workers at Hering Auditorium is not the kind that can become easily airborne, according to lab results, but air samples were taken Tuesday as a precaution and work on the $2.1 million renovation should resume next week.

The work site was officially ordered shut down Monday, and the balcony area has been enclosed with plastic coverings.

Meanwhile, the private contractor, TCI Ltd., is negotiating with local firms for removal of the asbestos before TCI's work resumes.

According to school district officials, a TCI worker late Friday afternoon removed a portion of what he suspected to be an asbestos material in the balcony. A sample was sent to Anchorage for testing, and found to contain one in 20 parts asbestos, but not in a friable state, officials say. Friable means easy to crumble, thus asbestos fibers could become airborne.

Les Riedlinger, school facilities planner, said he unofficially told the contractor to stop work, and Monday the project architect, USKH Architects and Engineers, officially ordered the shut down.

Hering Auditorium in the Lathrop-Ryan school complex on Airport Way is undergoing renovation to its acoustical and electrical systems, with most work in the stage area.

The school district had not identified the auditorium as containing asbestos previously, although Lathrop High School, built in the 1950s, does contain large quantities. It is one of 11 district buildings slated for asbestos removal. All identified asbestos has been contained, school officials say.

A sample was sent to Anchorage Saturday morning for lab testing. Results were ready Monday.

Riedlinger said he and representatives of TCI and USKH met Tuesday morning with the borough engineering department and OceanTech, the firm that will oversee future school asbestos removal.

TCI has been authorized to negotiate with any of nine firms previously qualified for asbestos removal work, Riedlinger said. Most of those are local companies.

Because the asbestos overlay is very thin and apparently present in limited quantities, the work is not expected to be of such an amount as to require bidding, according to Riedlinger.

Asbestos, a mineral, is fire resistant and was popularly used in building construction years ago. Studies have shown, though, that asbestos fibers, if inhaled, can many years later cause permanent lung damage and possibly cancer. The body cannot dislodge the fibers from the lungs. Federal law now requires workers to wear protective clothing and proper respirators in working with asbestos that can be crumbled or crushed and become airborne.

Riedlinger and school physical plant director Michael Pinon said today that this particular asbestos is not friable. They assume the worker was not dangerously exposed since the worker had indicated to his supervisor he had worked with a similar product in the past.

Air samples were taken as a precaution to assure that asbestos levels in the auditorium do not exceed federal levels, Pinon and Riedlinger said.

The added cost for removing the asbestos will come from a borough-school district reserve account set aside for this work.

Riedlinger said the sprayed on asbestos at Hering was a thin overlay over three-quarter inch plaster board, and was used for acoustical control.

Borough firings concern Koponen

2/15/85

News-Miner Bureau

JUNEAU—Rep. Niilo Koponen says he's "deeply concerned" about the firing of Fairbanks North Star Borough safety officer Mike Oden and his supervisor, Barney Mulligan, after Oden testified to Koponen's committee on asbestos removal legislation.

Koponen, D-Fairbanks, co-chairs the the House Health, Education and Social Services Committee with Rep. Max Gruenberg, D-Anchorage. He said he has asked the Legislature's attorney to explore remedies available to Oden and the committee.

"Although Myrt Charney provided me with information to the contrary, press accounts indicate that Oden and Mulligan were fired in part because of Oden's testimony before our committee," Koponen said.

Charney is the borough's director of administration.

Oden testified Jan. 25 on a bill establishing an asbestos health hazard abatement program. In part, it requires workers who remove asbestos from schools to be certified by the state.

Oden told the committee that during one of the school district asbestos removal jobs, workers had dragged asbestos material through the halls, making the problem worse than if it had not been removed at all.

Oden told the committee that the borough was liable for children being exposed to asbestos, and identified the school where the shoddy work was performed as Joy Elementary. A few days later, he corrected himself and said he had heard the reports about the Main Building.

"I sincerely hope Mr. Oden was not, in fact, fired because of his statements to our committee," Koponen said. "That will require investigation. But, to protect the right of citizens to testify publically before the Legislature and to protect the legislative process itself, I have asked the Legislative Counsel to examine what remedies may be available to the committee and to Mr. Oden."

He said such actions could result in secret meetings of the committee.

"The public rightfully objects to closed meetings, but if people are to suffer for offering their insights and opinions, would we not be duty bound to close meetings to protect those who wish to testify?" Koponen said.

"Free government depends on free speech," he said.

Allen defends two firings

By SUSAN FISHER
Staff Writer

Borough Mayor Bill Allen says he supports department head Myrt Charney's firing Thursday of the risk manager and a safety officer, and that the assembly was informed that action would be taken.

The mayor said he was briefed by Charney on recent controversies involving Safety Officer Michael Oden, and he had talked with Charney and Schools Superintendent Kenneth Burnley before Charney made his decision.

Also fired was Oden's supervisor, Risk Manager Barney Mulligan. Neither could be reached this morning for comment. Charney did not return a phone call for comment.

Oden's recent controversial testimony to a legislative committee was a large part, but not all, of the reason for his dismissal, officials indicated.

According to comments by Allen, Burnley and school district physical plant Director Michael Pinon, Oden's work on inspecting schools and writing up safety deficiencies also played a part.

Oden, a strong supporter of a bill to require workers removing asbestos to be certified, testified to a legislative committee. Oden later admitted to

(See FIRING, page 3)

FIRING . . .

(Continued from page 1)

making mistakes in his testimony, but maintained that school workers were exposed to asbestos and that fibers had been released inside Main Building. Asbestos exposure can be deadly or cause permanent lung damage.

School district officials strongly denyed most of Oden's assertions. Later, Oden identified an area in Main where asbestos insulation was not encased. That was in an abandoned boiler room, and school officials say the enclosed room poses no hazards to building users.

Oden's strained relations with school officials began shortly after his hiring in October, when he wrote a report critical of safety deficiencies at North Pole Middle School.

Allen said today that Mulligan had changed some of Oden's written reports. That, the mayor said, was unacceptable action.

Mulligan and Oden had visited separately with Burnley and Pinon regarding strained relations on the handling of school safety inspections and Oden's written reports before the legislative testimony.

"Our understanding was that Mike's (Oden's) job was supposed to be to assist us with any deficiencies that were known, so that we could take care of them before an outside agency came in. Kind of like bird-dogging problems, if we had any," said Pinon. Instead, he said, communications disintegrated.

Oden has said that school officials ignored the reports he's done, with the exception of the publicized North Pole school. Pinon denies that.

Burnley this morning declined to comment on the firings, but did say the risk manager and safety officer are important positions.

"The priority is the health, safety and welfare of our students," he said.

Inspections must be done regularly and fairly, Burnley said, to assure the district's "meeting regulations and maintaining a safe environment. That's what I want. I demand it. There can be no exceptions to that." Burnley noted that the school district pays for the safety officer's position.

Allen said legislators hearing Oden's testimony would conclude that the borough and school district were handling asbestos materials haphazardly. "I don't think that's the case," he said.

Noting public sensitivity over asbestos, Allen said, "There's a written policy in this borough that we do not espouse the borough's position on anything unless we have the authority to do it. I've even self-imposed a rule on myself with the assembly, before I make any public announcement, to inform the assembly, just as a courtesy."

"We don't have a gag order here. All I insist on is people use reasonable intelligence and good judgment when they talk to the media or anyone else, as far as that's concerned, about borough business. On routine standard business, I don't have any problem with that. But if there's a problem, if there's a controversial position, I want to provide the position of the borough, not borough employees. I'm the guy that takes the heat," said Allen.

Oden also had taken a public position that the city of Fairbanks should not allow cement asbestos boards to installed in the new South Fairbanks Community Center.

Borough fires two after asbestos flap

By MARGARET NELSON
Staff Writer

Two members of the borough's risk management department have been fired as the result of testimony one of them gave last month to legislators regarding asbestos in borough schools.

Borough Chief Executive Director Greg Strong said today that Mike Oden, who held the position of safety coordinator/inspector, and his supervisor, Barney Mulligan, the director of the risk management department, were discharged last week. Their last day was Thursday.

The risk management office, which handles safety inspections of borough buildings, has been under fire recently for its position on the removal of asbestos in borough schools and facilities.

Neither Mulligan or Oden could be reached today for comment.

Oden, who had been with the borough since October, was fired because "he had destroyed the relationship he had with the school district," Strong said. "It wasn't a workable relationship."

Strong said Mulligan was fired because he was "not providing the direction necessary for the safety inspector (Oden)."

The action leaves the borough's risk management office without any inspectors. The office is responsible for insurance, health care benefits and safety throughout the borough, including the school district.

Strong said the borough has hired University of Alaska-Fairbanks Fire Chief Bill Shechter on a temporary basis to review nine reports of safety inspections of borough schools completed by the risk management office.

Oden's dismissal stemmed from testimony last month to the Legislative Health and Social Services Commission regarding asbestos in Fairbanks schools. He said asbestos was prevalent in Joy Elementary School. Later, he corrected his testimony to say he meant asbestos in the Main Building, not at Joy. He was testifying on House Bill 5, which would require any worker removing asbestos to have minimum formal training.

Local school district officials said Oden was wrong in his testimony regarding exposure to asbestos. They said the district has far exceeded federal requirements on protective measure for handling asbestos as well as in its intention to remove all asbestos from schools by the fall of 1986.

According to district officials, asbestos was removed at Joy School in December 1983, and all federal requirements for removal were followed.

Les Riedlinger, school facilities planner; said Main Building is one of 11 older buildings in the district where asbestos insulation has been "encapsulated" or encased until it can be removed. All 11 school district buildings are to be rid of asbestos by late 1986 at a cost of more than $3 million, in addition to the $1.26 million that has already been spent.

A/FAIRBANKS

Controversial question: is asbestos new or old?

1-29-85

By SUSAN FISHER
Staff Writer

A sample taken at Main Building Monday may be asbestos, but school district officials say the asbestos was in an old boiler room and left alone at a consultant's recommendation.

That response came after Borough Safety Officer Mike Oden took a sample from an abandoned boiler room Monday.

The rift between Oden and school administrative staff has become more pronounced in this latest debate over safety hazards and job authorities. The opening round came after Oden joined the borough staff in October, and issued an exhaustive study citing of safety deficiencies at North Pole Middle School.

In this latest round, Oden's testimony to a legislative committee Friday drew fire from school officials irate over his implications of poor worksmanship and asbestos exposure in schools. They say the district has gone beyond federal requirements in taking precautions, and plans are to remove all asbestos from local schools by 1986.

Oden has corrected some of his testimony, but not all of his contentions. Monday morning he went to Main Building to take a sample of what he believes to be friable asbestos. Friable means easily crumbled or reduced to powder. Such asbestos can be become airborne and enter human lungs, where it may cause cancer and other diseases.

That same morning, school Facilities Planner Les Riedlinger said Oden would not find friable asbestos. But Riedlinger was assuming Oden was talking about areas where friable asbestos was encased at Main last summer. An Eicison work crew painted on five coats of a protective covering.

Old asbestos insulation was identified by an Anchorage consultant, said Michael Pinon, district physical plant director. The consultant did not recommend encasing insulation in the old boiler room, because the room is not used, it is enclosed, old ducts are closed off and it poses no dangers, Pinon and Riedlinger said.

By afternoon, Riedlinger learned Oden had been in the boiler room in the basement and may have taken a friable asbestos sample. Still, Riedlinger says that muslin coverings are intact and that asbestos there should pose no dangers.

Oden insists the area should have a posted warning. Riedlinger said today that has been done.

The boiler room was abandoned six or more years ago when Main Building converted to city steam heat. It contains an emergency generator.

Riedlinger says air samples taken at Main before and after the encasing work shows such negligible readings that experts could not identify if fibers were asbestos or not. He also says air samples weren't taken in the boiler room.

Pinon says Oden has never discussed the consultant's report or the district's work in encasing or removing asbestos. Riedlinger is even more rankled, saying Oden hasn't been working with the district.

Oden says school officials have ignored his school inspection safety reports.

"The whole point is I was testifying to try to get people certified" Oden said of Friday's hearing, on requiring worker training for asbestos removal. "It looks like I'm trying to put the district or the borough in a bad spot, and really I'm not," he said.

Official firm on asbestos allegations

By SUSAN FISHER
Staff Writer

A borough safety official whose testimony on asbestos in Fairbanks schools startled legislators Friday has corrected parts of his testimony, but contends workers at Main Building may have been exposed to airborne asbestos.

Local school district officials are furious over Safety Officer Mike Oden's testimony Friday to the House Health, Education and Social Services Committee as well as Oden's continued assertions.

Oden told legislators that workers had swept up crumbled insulation material and dust and carried it in open containers through hallways at Joy Elementary School. He now says he meant to refer in his testimony to Main Building, not Joy Elementary, but he still maintains that debris contained asbestos.

School officials say Oden is wrong, and the district has far exceeded federal requirements on protective measures as well as intentions of totally removing all asbestos in schools by fall 1986.

Oden, though, has not backed down, and this morning said he took samples at Main Building where insulation material has crumbled. He believes it may contain asbestos and says he will have it examined.

Les Riedlinger, school facilities planner, said Oden will not find asbestos. "This school (Main) has a tremendous amount of Fiberglas and calcite insulation" in areas where asbestos was not installed, Riedlinger said.

The furor erupted over the weekend when schools Superintendent Kenneth Burnley and Riedlinger heard of Oden's testimony to HESS as legislators considered House Bill 5, to require any worker removing asbestos to have minimum formal training. His testimony implied Joy school.

Oden, who strongly supports that bill, says he was called 15 minutes before the teleconference hearing began and walked into the Fairbanks Legislative Information Office as the hearing was in progress. He had little preparation time before giving testimony and answering legislators' questions without much preparation time.

Asbestos was removed at Joy School in December 1983, and Riedlinger says procedures were in strict accordance with federal requirements. Main Building is one of 11 older buildings in the district where asbestos insulation has been "encapsulated," or encased, until removal can be accomplished. All 11 buildings are to be rid of asbestos by late 1986 at a cost of $3,017,000, in addition to $1.26 million already spent on removal.

The incident at Main that Oden refers to occurred last summer after pipes were encased.

Oden joined the borough staff in October. On the strength of interviews with a school worker, Oden believes the work crew doing the encapsulating left the area with dust and

(See ASBESTOS, page 3)

ASBESTOS . . .

(Continued from page 1)

crumbled insulating debris.

Riedlinger denies that. He said he personally inspected that area and found it to be clean. The crew came from Eielson Air Force Base and was experienced in encapsulating pipes, says Riedlinger.

Riedlinger says an expert firm took samples at schools prior to beginning any encapsulation or removal. All of the results showed fiber levels so negligible that experts could not distinguish asbestos from non-asbestos fibers. Nonetheless, the district administration is moving ahead to have all asbestos removed, even though federal regulation would not require it, he said.

Asbestos fibers, if inhaled, can lead to permanent lung damage or cancer many years after exposure.

Oden concedes that it won't be proven that asbestos is in the dust at Main Building until lab results are known, but he is adamant in pursuing it.

During Friday's hearing, referring to school workers at Main Building, Oden told legislators that the workers were not told asbestos was present in the building, and might be in the dust and debris they were sweeping. "They were told to carry the material out of the building and put it into a barrel. They did, and at one time they were outside playing with it, throwing it up in the air," Oden said.

"When this type of shoddy workmanship occurs, we increase our exposure. What the workers did was inexcusable. We must now advise our children they have been exposed to asbestos," he testified.

Main Building is occupied by school administrative offices and Fairbanks Alternative High School.

Both Riedlinger and Burnley said the district has followed federal regulations not only to the letter, but gone beyond some of the requirements to assure safety to workers and total protection at school buildings.

Firms here have had to "prequalify" by offering 20 hours of training to their workers in order to even bid the work, Riedlinger said. "They are absolutely required to make available medical examinations of each worker at the conclusion of the jobs," he added.

Legislators turn to asbestos removal

By DAN JOLING
News-Miner Bureau

JUNEAU—Legislation to remove asbestos from schools died in the House Health, Education and Social Services Committee last session. This year, after it became a campaign issue in Anchorage, it's one of the first orders of business.

In a joint hearing with the House Labor and Commerce Committee Tuesday, and with several senators sitting in, the HESS Committee took testimony from Fairbanks, Anchorage and Ketchikan on HB 5, a bill establishing an asbestos health hazard abatement program in state schools.

The committees also considered HB 57, which would appropriate $26 million to the Department of Education for removing or negating asbestos hazards in schools, plus $300,000 for the Department of Labor to administer the abatement program.

According to the National Cancer Institute, between 1.6 and 2.1 million American workers will die from exposure to cancer-causing asbestos. Another 3 million may suffer noncancerous, but fatal, asbestosis.

Gov. Bill Sheffield has included $11 million for asbestos removal in schools in his proposed budget. That amount, however, could be used by schools in Anchorage alone, said Sen. Joe Josephson, D-Anchorage, the sponsor of similar legislation last year.

The bill drew general support from speakers in Anchorage and Fairbanks except for one provision: a requirement for the Department of Labor to certify that workers who remove or seal asbestos are adequately trained, and that contractors submit a plan for removal to the department.

Freshman Rep. Max Gruenberg, D-Anchorage, co-chairman of the HESS Committee, is prime sponsor of both bills. Gruenberg defeated incumbent Mae Tischer in November. The campaign focused in part on Tischer's chairing of the HESS Committee, the graveyard for a similar asbestos bill.

The Legislature approved $11 million for asbestos removal at Bartlett High School in Anchorage last session, reportedly the largest asbestos removal project in the country. The federal government approved another $6 million.

Fairbanks received $1.4 million for school asbestos identification and removal last year and the work is 20 percent complete, according to the borough's capital improvement project booklet. No money has been requested for Fairbanks this session.

William Schneider, a spokesman for Alaska's Associated General Contractors, said he agrees with the intent of the bills but that certification unnecessarily duplicates existing safety regulations.

He said the law already has provisions for dealing with numerous hazardous substances. "Asbestos should not be treated any differently than those substances," he said.

He said part of the AGC's objection was because of uncertainties in the bill. Schneider said the state may be liable if its certification is inadequate and a hazard remains. He also questioned whether $300,000 was enough to run the certification and training programs for two years.

Adding up the true costs of running a program, he said, would lead to the question of whether the expense would provide something that's not being done now.

"The answer is nothing," Schneider said.

But most other speakers favored including the certification process, not only because of the danger involved but because of hazards that may remain if asbestos is removed improperly.

Josephson said he was confident of the ability of Anchorage contractors removing asbestos because of the availability of competing contractors and the Anchorage school district's sophistication in contract management.

"I am not equally confident about other areas of the state," Josephson said. "Last year, your committee heard eyewitness testimony that Alaska workers handling asbestos on the job site have been observed using careless methods reflecting a want of training. We are concerned for the safe working place. We are also concerned about the thoroughness and completeness of the asbestos removal job itself."

Fairbanksan Mick Hotrum, safety representative for the Alaska District Council of Laborers, echoed Josephson, as did representatives for the Alaska Environmental Lobby, the Anchorage School District, the Anchorage Education Association, and the Alaska Health Project, a group of occupational health activists.

The bill requires the state Department of Labor to inspect schools that have not required federal regulations regarding school inspections.

The bill also permits schools to meet for 150 days rather than 180 if the shorter term is necessary for abating the asbestos hazard. The attorney general has already rendered an opinion that the Education Department can waive the 180 day requirement for Bartlett High School in Anchorage so contractors can get a jump on removing asbestos.

TO: The Alaska State Legislature

April 18, 1985

I would like to take this time to address the committee concerning the bill before you now, House Bill #327. I whole-heartedly support this bill, because I recently became an example of this exact same problem.

On Jan. 26, 1985, I testified before a teleconference concerning H.B. #5, which some of you might remember. My testimony was given after work hours and was the beginning of a nightmare. My testimony became headlines and a subject for the Fairbanks North Star Borough Administration. On Feb 7, 1985, I was terminated, because of my testimony. Several of the top Borough officials, including the Mayor, gave public statements to the press and news media, stating these facts. This type of retaliation was very stressful. My professional career and reputation was permanently damaged, not only by the public termination, but also by the Administration making public statements about me.

I was told on three separate occasions, that I was not to talk to any legislators or representatives. My termination and testimony was on the front page of the local newspapers at least four times. This caused a great personal embarrassment to me, and to my family. My family suffered financial losses and pressures. The Administration kept the local newspapers "informed" about their concern of my testimony to the legislators, and the media printed every story, of theirs.

It finally came to the point that I could not support my family. I filed for un-employment, but was refused because I had been terminated and was penalized a six week penalty. I then decided to file a civil law suit.

.On March 26, 1985, I returned to work. My returning to work, with back wages, still does not heal the vounds or repair the damage to my career, or punish the actual persons responsible for my embarrassments. Returning to vork does not pay for all the late bills, late charges or my childrens embarrassment because of their father in the paper.

A person has the right to talk with you, hovever, they must be somehow protected. Since my termination and re-instatement, I have been contacted by other persons that are in the same position. Something must be done to protect them, soon,

I am sorry I can not be here in person to give this to you. Again am fearful that I might lose my position, even at the vriting of this letter. Please, I ask you as a citizen, presently employed, push this legislation through.

Respectfully

Mike Oden

457-2789

DOT worker 'blows whistle' and now says he may be fired

By SAM BISHOP
Staff Writer

A transportation department employee in Fairbanks who pointed out that his supervisors and coworkers were improperly using state vehicles and state time received a severely critical job evaluation shortly afterward, and he now fears he may be fired.

Burle Beard, an 18-year employee in the right-of-way section of the Department of Transportation and Public Facilities, said he first began writing down accounts of incidents and collecting evidence of improper use of state time in October 1984.

Beard's information eventually led to an investigation by the DOT's Division of Internal Review, which cleared the supervisors of almost all the charges.

But Beard said the investigator's report, completed on Aug. 21 and released on Sept. 18, dismissed several of the problems without giving them a thorough review.

Beard said that as a result of his role in starting the investigation, his supervisors have become critical of his job performance in order to justify firing him. He was recently placed on leave until mid-November.

Beard has brought his problem to Reps. Niilo Koponen and Mike Davis. Koponen has introduced a bill designed to protect "whistleblowers" in government positions and so was interested in Beard's situation. However, he said he was not familiar enough with Beard's case to make a judgment on it.

Bill McMullen, director of design and construction for DOT, said Beard's rating—a "low acceptable"—accurately reflects his value to the department.

Because Beard failed to stop agitating even after the internal investigation cleared the supervisors, he is now in danger of being fired, McMullen said. McMullen said he cannot criticize Beard for bringing up the problems, but now that they have been addressed, the matter should be dropped.

"Burle won't let go of this," McMullen said. "He's become obsessed by it."

Beard called the internal investigation a "whitewash."

Beard said he first became aware of improper actions in his department while reading DOT's personnel rules. In his reading, he came to a section that directed employees to report any violations of such rules to their supervisors.

He felt his immediate supervisors were part of the problem, so he began talking to attorneys and other people outside his department to obtain some perspective.

He was told by one attorney that charging time improperly and using state vehicles for personal tasks could be considered fraud, felony deception and embezzlement.

Eventually, news of the troubles reached McMullen through the state Division of Personnel and the Federal Highway Administration.

"I took it very seriously," McMullen said.

A three-week investigation was conducted by the DOT's Division of Internal Review.

"It showed that the allegations were primarily a bunch of smoke," McMullen said.

Beard disagrees. His evidence was primarily against one supervisor, now retired, who Beard said regularly used a state vehicle for personal tasks and went home a half hour early each day.

Beard admits the issue is not terribly significant but said it bothers him that the man's supervisors, who still work in the division, refuse to acknowledge that it occurred. He said he suspects they will not admit to the improprieties because it would mean they had knowingly falsified information on the man's timesheets for many years. That, if proven, could endanger or reduce both the present and retired employees' retirement benefits, he says.

McMullen is not Beard's immediate supervisor, was not responsible for developing the evaluations and is not among the supervisors Beard charges with improper actions.

Beard also said he continues to pursue the issue because he is angered by the poor evaluation he received this summer. He said he feels his supervisors are trying to force him to shut up or get out.

For the past several years, Beard has received short, moderately

BURLE BEARD
"Opened my eyes"

luating and the people who pay the bill," he said.

Still, Beard's refusal to let the issue die is disrupting work in the right-of-way section, he said.

The section is currently the bottleneck for most DOT projects, McMullen said. With more than $100 million in contracts to write each year, the DOT cannot afford to let personal squabbles slow the process, he said.

In response to Beard's information, investigators found that a DOT employee was charging time spent on the Fairbanks North Star Borough Platting Board to specific road projects.

FNM 4-3-85

'Whistle-blowing' ex-worker sues over firing

ANCHORAGE (AP)—A former ARCO Alaska employee is suing the oil company, claiming he was fired illegally after raising questions about the finacial feasibility of a work camp being built by the North Slope Borough for lease by ARCO.

David Sicks, a former ARCO cost analyst, claimed in a Superior Court suit filed Monday that he was fired after he told ARCO auditors of possible illegal activity involving the multi-million dollar Kuparuk Industrial Center at Prudhoe Bay.

The structure, completed in December, was built by the North Slope Borough and leased to ARCO.

Sicks is asking to be reinstated, and also is seeking lost pay and benefits. ARCO officials declined comment on the suit.

Sicks contended he performed a study on the rates that would the borough would need to charge to cover the $68 million cost of the work camp.

After completing the study "it became clear" the project was "totally unfeasible from an economic standpoint," Sicks contends.

Sicks alleges he was told by ARCO officials to change the study to lower the costs. He said he became concerned that his superiors or co-workers were "involved in illegal activities, or if not illegal activities, activities that were clearly of violation of good business practices."

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/6/87

FURTHER REFERRALS: Judiciary

DATE: HB168

The Labor & Commerce Committee has considered HB 168

"An Act relating to protection for public employees."

RECOMMENDS:

[✓] replace with HB168 [✓] the same title

[ ] attached amendment(s) [ ] a new title

[ ] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: [ ] _____letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[✓] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Walt Firrarci NO REC

Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 168
REQUEST
Publish Date:

Revision Date: March 16, 1987
Agency Affected: All
Title: An Act Relating to Protection for Public Employees
BRU: All
Sponsor: House Labor and Commerce Committee
Components: All
Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would not require an additional appropriation.

Prepared By: Diana DeSimone Diana DeSimone Phone: 465-4430
Division: Personnel Date: March 16, 1987

Approved by Commissioner: Garrey Peska Date: 3/23/87
Agency: Department of Administration

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Senate Secretary

Rev. 9/16/86
19/4K1/0316-01

HB

170

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

MEMORANDUM

TO: Members of the House Hess Committee

FROM: Niilo Koponen, Co-Chairman

DATE: May 1, 1987

RE: Bus Driver Employee Protection under CS HB 170(HESS)

****

In today's subcommittee meeting on HB 170, Representative Hudson inquired as to the possibility of ensuring that school bus drivers be covered under the Public Employee Relations Act (PERA).

Under this bill, if a school bus driver was a direct employee of a school district they would have the right to collectively bargain under PERA. However, most school districts contract out to private companies for their school bus services.

The rights of employees of private companies to organize are covered under national labor relations law. According to Randy Carr of the Labor Relations Agency, an Alaskan law allowing employees of private companies who contract with school districts to organize under PERA would be superseded by national law.

Representative Hudson also brought up the increasing problem of out-of-state contracting for school bus services. The House Labor and Commerce committee is presently working on legislation that would require Alaska bus drivers have at least two years experience in-state, that the minimum age be raised to 21, and that they receive a starting wage higher then present minimum wage. Though this does not directly address the question of collective bargaining or employee rights for Alaskan bus driver's, this legislation, as presented to me by committee staff, would address some of the problems discussed.

NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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January 6, 1988

To: Rep. John Sund, Chair
Members, House Judiciary Committee

Re: CSHB 170 (HESS); "An Act relating to participation of political sub-divisions under the Public Employment Relations Act and to collective bargaining rights of school district employees."

NEA-Alaska supports and strongly encourages passage of CSHB 170 (HESS).

By not having access to a statutory right to organize and negotiate on their terms and conditions of employment, the non-certificated employees of school districts have been relegated to a "second class" status since the inception of collective bargaining for public employees in Alaska. AS 14.20.550 for certificated employees of school districts was originally passed in 1970 and AS 23.40.070, the Public Employment Relations Act, was passed in 1972.

By its Declaration of Policy in AS 23.40.070, the Alaska Legislature has clearly stated that joint public employee/employer decision making on wages and working conditions is in the public interest and enhances the potential for more effective government. It is essential that employees have a meaningful voice in determining the conditions of their work environment and that there be a rational mechanism to facilitate this process and bring it to closure.

Relative to the non-certificated employees of school districts CSHB 170 (HESS) is consistent with State Policy and finally rectifies a long standing inequity.

Non-certificated employees of school districts are members of the public and should be afforded the same rights, status, and benefits that are available to the rest of the citizens of our State.

Opponents of CSHB 170 (HESS) allege an intrusion into local control and suggest that the local election process is a viable option to the collective bargaining process as a means for determining the conditions of one's work environment.

It is our feeling that this is an irresponsible position and ignores the basic principles and policies of the State. Further, they have offered no alternatives other than the option of unilateral determination by public employers. In our opinion, this should not be an acceptable alternative.

Thank you for your consideration of the NEA-Alaska position. We encourage favorable and expeditious attention to CSHB 170 (HESS).

Respectfully submitted,

Robert Manners
Executive Secretary

BM01/dl

EDUCATION SUPPORT STAFF ASSOCIATION
2118 Cushman Street
Fairbanks, Alaska 99701
(907) 452-2023

JAN 11 1988

January 8, 1988

Representative John Sund
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Sund:

The purpose of this letter is to communicate to you as chairperson and the other House Judiciary Committee members our profound support for H.B. 170.

It is the public policy of the State of Alaska to promote harmonious and cooperative relations between government and its employees, and to protect the public by assuring effective and orderly operation of government. In so doing the Legislature has recognized the benefits of joint decision-making, the need for established guidelines and the necessity for a rational method to resolve disputes by passing the Public Employees Relations Act.

Yet 4500 to 5000 non-certificated school district employees have been excluded from the state's public policy. These employees do not enjoy the same rights as most other public employees in the state of Alaska.

Since 1978, I have testified in nearly every session of the legislature regarding collective bargaining rights for non-certificated school district employees. We are seeking equity with other public employees, including teachers with whom we work closely every day of the school year.

The current situation for non-certificated employees of Alaskan school districts is intolerable at best. In school districts where collective "begging" is allowed and condoned, the school boards and administration make the rules, play the game, and serve as the referees. The process, where allowed, is not working. The fundamental example can be illustrated as follows. When the school board's representatives are unable to get the employee organization to withdraw from a position or "cave in", they merely put a proposal on the table and give the employee representatives an ultimatum to take it or the bargaining relationship will be severed with the employee organization.

Non-certificated school district employees must be statutorily recognized for collective bargaining purposes if the State's public policy is to be extended to all public employees.

A good bargaining statute, as I have testified many times, provides equity for both sides by establishing the rules by which the players must abide. That means establishing three fundamental elements: 1) mandatory bargaining; 2) an agency which will insist that the rules be followed; and 3) finality to the collective bargaining process. H.B. 170 provides these fundamental elements.

It is difficult to understand why non-certificated employees of school districts have remained outside the scope of mandatory bargaining when the public policy of the State is to afford that opportunity to all employees of the State and its political subdivisions.

We are frustrated beyond belief because of our futile attempts to gain statutory recognition for non-certificated school district employees. No equity exists in an area which is very complex. Collective "begging" is what we do and inherent in that is the perception that we are "second class" employees or worse. Many of the feelings that the Native Americans, blacks, Hispanics, women and other minorities have felt are being experienced by employees of school districts who see themselves as being left out of the collective bargaining process enjoyed by most other employee groups in the state and nation.

As chairperson of the House Judiciary Committee, we are requesting your assistance in rectifying this problem.

We hope to be present for the committee hearing on January 13, 1988.

Thank you for your cooperation in this matter. If we can be of assistance, don't hesitate to call on us.

Sincerely,

H. Frank Belts

H. Frank Belts
Business Manager

cc: Representatives Dave Donley, Fran Ulmer, Sam Cotten, Max Gruenberg, Jr., Mike Navarre, Ramona Barnes, Robin Taylor

HFB/nr

FAIRBANKS CENTRAL LABOR COUNCIL
A. F. of L. - C. I. O.

819 FIRST AVENUE
FAIRBANKS, ALASKA 99701

April 2, 1987

Representative Niilo Koponen, Chairman
Health, Education & Social Services Committee
Post Office Box "V"
Juneau, Alaska 99811

Dear Representative Koponen:

I will be unable to attend the HESS hearing on H.B. 170 and respectfully request that my testimony be read into the record.

H.B. 170 is important legislation and we are particularly pleased with the language of this bill. It embodies the intent of several bills of last session, yet is written in a way we feel is most likely to pass. I hope that it will not be amended.

Sincerely,

Barry Haight
President

Encl.

cc: Rep. Max Gruenberg
Rep. Dave Donley

FAIRBANKS CENTRAL LABOR COUNCIL
A. F. of L. - C. I. O.

819 FIRST AVENUE
FAIRBANKS, ALASKA 99701

Testimony of Barry Haight, President

To: Health, Education & Social Services Committee, April 8, 1987

Re: H.B. 170

Mr. Chairman and Committee Members:

The Fairbanks Central Labor Council AFL-CIO vigorously supports passage of H.B. 170.

Passage of H.B. 170 will correct substantial inequities in existing law. It is difficult to justify why State employees should be granted the right to collectively bargain, while employees doing the same work for boroughs and cities should be denied that same right. That which is justification for one is justification for another.

In addition to State employees, thousands of private sector employees are granted by Federal and State law the right to organize and collectively bargain. They include construction workers, office and communication workers, truck and bus drivers, as well as those employed in our State's largest supermarkets. I would not argue the system is perfect, yet it allows a certain security for the employee and a good measure of stability for the employer.

The Municipality of Anchorage, upon its own initiative, adopted a collective bargaining system similar to the State Act some years ago. It has served Anchorage well.

After a number of years of sporadic bargaining, employee strikes, and expensive lawsuits, the City of Fairbanks placed itself under the State Public Employment Relations Act in 1983. A number of agreements have been negotiated without disruption since then.

There may be those who would use the present economic situation as rationale for not bargaining with employees. I would argue that it is in precisely these times that the individual worker and his family can least afford arbitrary changes to his terms and conditions of employment.

Collective bargaining agreements can provide for flexibility and stability with the employer. Current examples with the City of Fairbanks include:

1) Most contracts contain language for periodic review and mutual change to terms or language during the life of the agreement.

2) Recently one bargaining unit voluntarily agreed to extend the contract for a year and defer wage and benefit increases already scheduled.

3) All contracts provide an orderly plan for lay-offs which the employer is free to use at any time.

4) All contracts contain language preventing work stoppage or slow-downs.

5) Annual and sick leave plans were established by the City about 15 years ago, prior to negotiated contracts. They have been found adequate and have not been increased in any subsequent agreements.

6) Finally, most City of Fairbanks contracts are in the process of being renewed or have been recently settled. Settlements or on-going talks feature a variety of adjustments or freezes to help with revenue shortfalls.

We ask that you favorably pass H.B. 170 from your Committee.

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Dave Donley, Chair
Members of the House Labor and Commerce Committee

FROM: Scott A. Burgess, Executive Director

DATE: March 19, 1987

SUBJECT: HB 170 - Mandatory PERA for Municipalities and School Districts

The Alaska Municipal League is opposed to HB 170 based on the language cited below from the AML 1987 Policy Statement (page 22), adopted by the membership at the 1986 annual meeting in Juneau in November:

> "Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes, just as strongly, any legislative efforts to dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at any time to reject or withdraw from the terms of the Alaska Public Employees Relations Act."
>
> "Binding Arbitration: The League opposes legislation imposing binding arbitration on local governments and school districts. Binding arbitration hinders local elected officials' ability to determine their personnel costs and prevents local governments from having complete control of determining the local tax rate. The scope of decisions with regard to what local government can afford for labor is best left to the local bodies possessing that knowledge."

These are long-standing policies of the AML. Legislation similar to this have been introduced into the Alaska State Legislature perennially, and the AML and its over 120 municipal members have opposed it each time. The concern and opposition by local governments to mandating participation in PERA, and thereby requiring the ability to strike or binding arbitration as a final step in the negotiating process for municipal employees and teachers, only increases as salaries and benefits have increased. Many of the increases in benefits, at least, have resulted from action by the Legislature, and over which the municipalities have no control. The potential limits on local officials' ability to control their budgets presented by HB 170 is an even greater concern when federal and state assistance to municipalities continues to decrease and municipalities have had to increase taxes and/or reduce services.

I have attached a copy of a letter received this year from the City of Wrangell stating their opposition to HB 170. Additional correspondence in opposition to similar legislation, proposed in the past, is also available to the Committee, if requested. I have also attached position papers on mandatory PERA for local employees and on binding arbitration for teachers developed by the AML Legislative Committee last year for similar legislation. Finally, I have summarized below some of the major reasons for the local governments' opposition to the legislation for the Committee:

1. Municipalities are opposed, generally, to State mandates on local governments which remove local control and increase cost without remuneration by the State.

2. Mandating PERA, or the adoption of ordinances with the same effect, removes the power of the elected representatives at the local level to set policy and budgets by balancing the resources and needs of the whole community rather than one segment - public employees.

3. Public employees and teachers have recourse through their elected officials on the city council or borough assembly or school boards to address specific concerns, or to influence voters to elect representatives who are more sympathetic to their positions

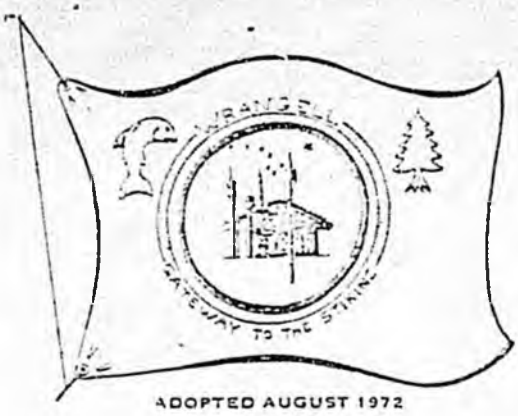
4. Public employees can put collective bargaining before the local voters and the assembly or council through the initiative and referendum process.

5. The public sector is different from the private sector in terms of the services provided, civil service protections, and their access to, and the responsibility of, the elected officials.

6. Many municipalities provide for collective bargaining but the final agreement as to terms and conditions of employment, including salaries is subject to approval of the city council or the school board.

The League strongly opposes HB 170. Thank you.

Attachment



CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2331

March 13, 1987

Representative John Sund
Chairman, House Judiciary
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: House Bill No. 170 relating to
PERA, Right to Strike or Binding Arbitration

Dear Sir:

The City of Wrangell is strongly opposed to House Bill No. 170. As written, the Bill would bring municipalities under the State Public Employment Relations Act (PERA) unless a local ordinance was enacted to permit collective bargaining with the right to strike or binding arbitration as the final step in the negotiation process. It also adds the right to strike for teachers if their contract does not provide for binding arbitration.

In 1972, the Legislature recognized the financial impact PERA could have on municipalities, as well as the need for local control, and provided that we could opt out of the Act by adoption of a Resolution or Ordinance. Recognizing the economic and social impact the Act could have on services provided to the public, the Wrangell City Council did opt out of the Act in the best interests of the taxpayers.

The Wrangell city employees are currently receiving wages and benefits that match or exceed those received by the private major industry employees in our community. We need not remind you that the non-governmental employees in our community are the very taxpayer that must bear the burden of government wages and benefits. While it is recognized that public employees received greater benefits than private employees for many years due to their lower wages, this is no longer true. In many cases (if not most) public employees far exceed private employees in <u>both</u> benefits and wages. The State, in fact, has several employees that receive a higher annual salary than the Governor, some of which were achieved through PERA.

The threat of strike or binding arbitration would place an unfair burden on local government. Unlike private industry, a government employee strike can effect the health and welfare of an entire community

CITY OF WRANGELL, ALASKA

by reducing or completely stopping public services. Binding arbitration can take away the City Council's ability to set the mill levy and utility rates in a reasonable, equitable manner for all of the residents.

A greater burden is already being shifted to the local taxpayers through reductions in State funding and loss of Federal Shared Revenue. A Bill is now before you that repeals the senior citizen/disabled veteran property tax exemption and forces the local taxpayer to absorb the loss or turn their back on so many seniors living on limited incomes needing this exemption.

We urge defeat of House Bill No. 170 Which will only place a greater burden on local taxpayers.

Sincerely,

Joyce Rasler
City Manager

JR:fv

cc: Representative Robin Taylor
Senator Lloyd Jones
Alaska Municipal League
Wrangell City Council
Wrangell School Board

Position Paper
of
AML Legislative
Subcommittee on Education
March 1986

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

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

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

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

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

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

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

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

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

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

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

Position Paper
of
AML Legislative
Subcommittee on Education
March 1986

RE: Binding Arbitration for Teachers

The 1986 Alaska Municipal League Policy, Part VIII, Local Government Powers, Section B(2), Public Employees Relations Act, Binding Arbitration states "the League opposes legislation imposing binding arbitration on local governments. Such legislation would hinder local governments' ability to determine their personnel costs and prevent local governments from having complete control of determining the local tax rate." Many school districts are under local government control. The League is strongly opposed to binding arbitration as a required step in teacher negotiations. The following is in support of this position.

1. If binding arbitration were required, management prerogatives of Councils/Assemblies and local school boards would be curtailed. Control would pass to the arbitrators and teachers. This control would not only affect the issues arbitrated but other issues as well; the results of arbitration can force local governments/school board to adjust other decisions. For example, suppose the results of arbitration require the school board to pay a higher teacher wage than the board has budgeted. In order to pay the wage, the board may be forced to cut programs or other parts of the budget. The alternative would be to raise taxes.

2. The teachers and arbitrators are not responsible to the voters; the Councils/Assemblies and local school boards are. The buck stops with the governing bodies -- not with the arbitrators and teachers.

3. Arbitrators are from outside the community, do not pay local taxes, and, again, are not responsible to local voters for their decisions.

4. Binding arbitration removes fiscal responsibility from the school board and gives it to the teachers and arbitrators. The school district would be told what it could afford.

5. Binding arbitration tends to put the teacher on one side and administrators and the board on the other side as opposing parties, and creates a confrontation situation that can lead to a negative morale.

6. Teachers have control and input through the election process itself; both school board members and the local governing body are elected.

7. There are changes in public thinking and changes in elected officials. A requirement of binding arbitration may not take such changes into account.

8. Each school district is unique and should be free to adopt bargaining procedures to meet the needs of the district.

9. The arbitration process itself is costly. The cost of the arbitrator is estimated to be from $1,500 to $3,000. In addition, there is the cost of staff time for preparation of positions.

   At a time when revenues are shrinking is not the time to increase costs for schools nor local governments.

In summary, whatever affects the budget of school districts is of major concern to local governments where there are locally controlled schools; the local governments, where local schools exist, are required to approve and financially support school budgets. Binding arbitration can force the local government/school to either increase taxes or cut services.

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

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Cherie Shelley, Executive Director

SUBJECT: HB 170 - Collective Bargaining

DATE: 18 March 1987

Equal treatment of public employees is the major concern of House Bill 170. Long overdue, the measure grants collective bargaining rights to noncertificated employees and guarantees the same rights to employees of all municipalities, school districts and political subdivisions.

The Alaska Public Employees Association endorses HB 170 because we support the rights of workers to organize and bargain collectively in the determination of their wages, benefits, and working conditions.

This measure will make the provisions of the Public Employment Relations Act available to all public employees in Alaska. In recognition of the desire for local autonomy, the legislation will allow the various municipalities and political subdivisions the option of replacing PERA with a local ordinance which gives employees the right to engage in collective bargaining.

Quite naturally, APEA would prefer all employees to enjoy the protections available under the Public Employment Relaitons Act. However, HB 170 is of great benefit to the many who are currently denied any voice in the determination of the terms and conditions of their employment.

We believe HB170 will promote better employer-employee relations and we urge the committee to consider this proposed legislation favorably.

Fairbanks Field Office
825 College Road
Fairbanks, AK 99701

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501

Juneau Field Office
227 4th Street
Juneau, AK 99801

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

April 16, 1987

The Honorable Johnny Ellis
Chairman, House HESS Committee
P.O. Box V
Juneau, AK 99811

RE: HB 170 - Political Subdivisions and PERA

Dear Representative Ellis:

I attended and testified at the April 10 hearing on HB 170, and heard opposition expressed to Sections 2 and 4 of the bill. Section 2 would apply the Public Employment Relations Act (PERA), AS 23.40.070-23.40.260, to organized boroughs and political subdivisions of the state, unless they adopted ordinances permitting collective bargaining with either the right to strike or the right to binding arbitration as the final step in the negotiations process. Section 4, a necessary corollary to Section 2, repeals a section of PERA that gave these boroughs and subdivisions the unqualified right to opt out of PERA. I am writing now because I would like to elaborate on the brief comments I made at the hearing in support of these sections.

Most of the opposition among committee members seemed to be based on the premise that the two sections unduly infringed on the rights of boroughs and political subdivisions to handle their own labor relations. It is certainly true that enactment of these two sections might radically alter the personnel policies and practices of some boroughs and subdivisions. However, if those policies and practices are not fair, and not conducive to good employer/employee relations, why should they be regarded as sacrosanct? Boroughs and subdivisions are not sovereign entities like states; they are creature of the State of Alaska. The legislature in Title 29 and in other portions of the statutes has limited the discretion of boroughs and subdivisions in many areas. We at APEA believe that Sections 2 and 4 of HB 170 represent equally appropriate limitations.

The legislature in enacting PERA, and making it applicable to the state, recognized the importance of collective bargaining in the public sector, and the demoralization that can result when public

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Juneau, AK 99801
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employees have no say in the terms and conditions of their employment, but just have to accept what their employer chooses to give them. This is equally true of borough and municipal employees. Under the current state of the law, boroughs and political subdivisions are free to refuse collective bargaining altogether, as many have done, or to create inadequate systems, under which some bargaining can occur, but if the parties are unable to agree the employer can impose the terms. It is wholly reasonable for the legislature to decree that no public employer may operate in these ways.

Virtually every state with laws providing for collective bargaining in the public sector has made these laws mandatory for political subdivisons. Frequently these laws, like PERA, grant public employees the right to strike or, for essential employees, the right to binding interest arbitration. Among the larger states, for example, Pennsylvania, Illinois, Ohio and Wisconsin have such laws, as does Oregon. Indeed, at least one state, Washington, had mandated collective bargaining for its subdivisions even when the state itself does not have it. Thus Section 2 and 4 of HB 170 would hardly represent an unprecedentedly readical restriction on political subdivisions. To the contrary, Section 4 of HB 170, by repealing Section 4 of the 1972 law enacting PERA (the section allowing subdivisions to opt out), would bring Alaskan law in line with that of other states.

It is also worth noting that Section 2 and 4 would not automatically lead to changes in the boroughs and subdivisions. If employees there believe they are being fairly treated now, they may choose not to organize and bargain collectively, just as employees in some major well-run corporations (Delta Airlines is a good example) have opted not to do so. Sections 2 and 4 simply give public employees the opportunity; it does not require them to act on it.

I hope that these comments may cause some of your committee members to reconsider their opposition to Sections 2 and 4 of HB 170. I will be happy to discuss this matter further with anyone who might be interested.

Very truly yours,

John B. Gaguine
General Counsel

cc: House HESS Committee members

Bill No. Committee Substitute for House Bill 170 (HESS) Date January 12, 1988

Title "An Act relating to participation of political subdivisions under the Public Employment Relations Act and to collective bargaining rights of school district employees.

Contact: Eileen Plate 465-2700

Committee Substitute for House Bill No. 170 (HESS) proposes several changes to Alaska's laws which relate to collective bargaining rights of public employees. Specifically, this bill:

1. Strengthens the Public Employment Relations Act by permitting political subdivisions to opt not to be covered by the Act only if they do not receive state funds and if they permit collective bargaining with either the right to strike or binding arbitration as a final step in the negotiating process. Currently, political subdivisions which do not permit collective bargaining may opt not to be covered by the Public Employment Relations Act; and

2. Extends coverage under the Public Employment Relations Act to non-certificated school employees. These non-certificated employees are not presently covered by the Act.

The Department of Labor would, however, recommend an amendment to the bill to clarify that a political subdivision's collective bargaining process must be substantially similar to that provided under AS 23.40.070 - 23.40.260 in order for the political subdivision to opt not to be covered by the Public Employment Relations Act. The present language in lines 15 and 16 of the bill does not make this clear.

In addition, school districts do not receive funds under those provisions of AS 29.60 referenced in Section 1 of the bill. Therefore, under the bill as presently written, school employees would effectively be denied the opportunity to bargain collectively, as actually intended under this bill.

The Department, therefore, recommends that Section 1 of Committee Substitute for House Bill No. 170 (HESS), lines 12-18, be amended to read:

Sec. 23.40.075. APPLICABILITY. AS 23.40.070 - 23.40.260 apply to a political subdivision of the state unless the political subdivision has adopted an ordinance substantially similar to AS 23.40.070 - 23.40.260 that permits collective bargaining for its employees with either the right to strike or binding arbitration as the final step in the negotiation process.

The provisions of Committee Substitute for House Bill No. 170 (HESS) would extend the same rights to bargain collectively to all public employees; and decisions as to whether a group of workers would avail themselves of the collective bargaining process would be made by the workers. Presently, such decisions may be arbitrarily made by political subdivisions without any worker participation.

The Department of Labor supports these improvements to the Public Employment Relations Act.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD. 1-13-88 1:30 p.m.

(7)

HOUSE COMMITTEE REPORT

Date referred: 5/5/87

FURTHER REFERRALS:

DATE: 1-13-88

The Judiciary Committee has considered HB 170

"An Act relating to participation of municipalities, school districts, and other political subdivisions under the Public Employment Relations Act and to collective bargaining rights of school district employees."

RECOMMENDS:

[✓] replace with CS HB 170 (Jud) [ ] the same title

[ ] attached amendment(s) [✓] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[✓] additional referral to the Finance Committee

ADOPTS: [ ] _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[✓] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Robert Taylor (NO Rec)

Tamara Barnes (No Rec)

Chairman's signature

CRAME

5-0724T

Original sponsor: Labor and Commerce Committee

IN THE HOUSE BY THE JUDICIARY COMMITTE

CS FOR HOUSE BILL NO. 170 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act extending collective bargaining rights t noncertificated school district employees."

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

* Section 1. AS 23.40.250(6) is amended to read:

(6) "public employee" means any employee of a public em ployer, whether or not in the classified service of the public em ployer, except elected or appointed officials, or teachers employed b [OR NONCERTIFICATED EMPLOYEES OF] school districts;

5-0724X
Cramer
4/22/87

Original sponsor: Labor & Commerce Committee

IN THE HOUSE

CS FOR HOUSE BILL NO. 170 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act ~~relating~~ amending to collective bargaining rights of noncertificated school district employees."

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

* Section 1. AS 23.40.250(6) is amended to read:

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials, or teachers employed by [OR NONCERTIFICATED EMPLOYEES OF] school districts;

5-0724Z
Cramer
2/16/88

Original sponsor: Labor and Commerce Committee

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 170 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act extending collective bargaining rights to noncertificated school district employees."

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

* Section 1. AS 14.20.550 is amended to read:

Sec. 14.20.550. NEGOTIATION WITH CERTIFICATED EMPLOYEES. A [EACH CITY, BOROUGH AND REGIONAL] school board [,] shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. A school board shall negotiate in good faith with its noncertificated employees on matters of wages, hours, and other terms and conditions of employment.

* Sec. 2. AS 14.20.555 is amended by adding a new subsection to read:

(d) Negotiations between the noncertificated employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the noncertificated employees and one team representing all the participating regional school boards. The provisions of (b) and (c) of this section apply to these negotiations.

* Sec. 3. AS 14.20.560(a) is amended to read:

(a) When a majority of the certificated employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certificated staff, except superintendents of schools. The membership of a [ANY

SUCH] recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska. When a majority of the noncertificated employees in a school district have designated an employee bargaining organization to bargain for them, the school board shall recognize it as the bargaining agent for all of the noncertificated employees.

* Sec. 4. AS 14.20.560(b) is amended to read:

(b) The organization representing a majority of the certificated or noncertificated employees of a school district shall, upon the request of the school board, submit an affidavit verifying that it does represent a majority of those [THE CERTIFICATED] employees. Recognition of the employee bargaining agency by a school board is valid for one year or a term agreed upon by the two parties to an agreement, unless a majority of those eligible to vote [CERTIFIED STAFF] votes to request the termination of recognition of the employee bargaining agency. The school board is entitled to an affidavit of membership from the employee bargaining agency once each year.

* Sec. 5. AS 14.20.560(c) is amended to read:

(c) Upon the request of 25 percent of the certificated or noncertificated employees in a district, the school board shall hold, within 20 days, an election by secret ballot of all the certificated or noncertificated employees in order to determine their choice of a bargaining agency. The results of this election are binding for one year.

* Sec. 6. AS 14.20.570(b) is amended to read:

(b) If the mediation meetings are held during working hours [THE SCHOOL DAY], teachers or noncertificated employees representing an employee bargaining agency shall be released from [CLASSROOM OR OTHER] assigned duties without penalty or loss of pay.

* Sec. 7. AS 14.20.590 is amended to read:

Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements must

(1) [EXECUTED AFTER JULY 1, 1975 SHALL] define "grievances" and provide for grievance procedures for the certificated staff or noncertificated employees; the [. THE] grievance procedures shall provide that the final step in the procedure shall be binding arbitration; and

(2) [. THE NEGOTIATIONS AGREEMENT SHALL] provide a method for the selection of an arbitrator.

Offered: 5/5/87
Referred: Judiciary

5-0724P

Original sponsor: Labor and Commerce Committee

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 170 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to participation of political subdivisions under the Public Employment Relations Act and to collective bargaining rights of school district employees."

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

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

Sec. 23.40.075. APPLICABILITY. AS 23.40.070 - 23.40.260 apply to a political subdivision of the state unless the political subdivision

(1) permits its employees either the right to strike or binding arbitration as the final step in the negotiation process; or

(2) did not receive funds from the state under AS 29.60.010 - 29.60.080 or 29.60.350 - 29.60.375 during that fiscal year.

* Sec. 2. AS 23.40.250(6) is amended to read:

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials, or teachers employed by [OR NONCERTIFICATED EMPLOYEES OF] school districts;

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

[OR NONCERTIFICATED EMPLOYEES OF] school districts;

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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Introduced: 3/6/87
Referred: Labor & Commerce,
Health, Education & Social
Services and Judiciary

5-0724A

IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

HOUSE BILL NO. 170

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to participation of municipalities, school districts, and other political subdivisions under the Public Employment Relations Act and to collective bargaining rights of school district employees."

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

* Section 1. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.595. FINAL RESOLUTION OF IMPASSE. If a contract negotiated under AS 14.20.550 - 14.20.610 does not otherwise provide for binding arbitration as a final step to resolve an impasse in negotiations, employees shall have the rights granted to public employees whose services may be interrupted for a limited but not indefinite period of time under AS 23.40.200.

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

Sec. 23.40.075. APPLICABILITY. AS 23.40.070 - 23.40.260 applies to an organized borough or a political subdivision of the state unless the borough or subdivision has adopted an ordinance that permits collective bargaining for its employees with either the right to strike or binding arbitration as the final step in the negotiation process.

* Sec. 3. AS 23.40.250(6) is amended to read:

(6) "public employee" means any employee of a public employer, whether or not in the classified service of the public employer, except elected or appointed officials, or teachers employed by

[OR NONCERTIFICATED EMPLOYEES OF] school districts;

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M January 19, 1988

SUBJECT: CSHB 170 (Judiciary) (Extending collective bargaining rights to noncertificated school district employees)

TO: Representative John Sund, Chairman
Judiciary Committee

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have requested an opinion on the effect of sec. 4, ch. 113, SLA 1972, on CSHB 170 (Judiciary). Section 4 states:

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

The Committee Substitute amends the definition of "public employee" in PERA to include the noncertificated employees of school districts. The definition in its present form specifically excludes them. Under PERA, a public employer is required to participate in collective bargaining with its public employees. Therefore, the Committee Substitute gives noncertificated school district employees collective bargaining rights.

The language in sec. 4 permits a political subdivision of the state to opt out of PERA. Therefore, a school board could adopt an ordinance or resolution rejecting the application of PERA to its noncertificated employees notwithstanding their inclusion in PERA under the committee substitute.

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

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

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

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

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

In Anchorage Municipal Employees Assoc. v. Municipality of Anchorage, 618 P.2d 575, (Alaska 1980), considering whether the newly formed Municipality of Anchorage could properly exempt itself from PERA in 1975, more than three years after PERA took effect, the court noted that the exemption option contained in sec. 4 was not limited to a period of time. The court stated, Id. at 579, that the Petersburg decision

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

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

If I may be of further assistance, please advise.

TBC:gc
WKG1:032