ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5219 SCRA SB 372

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CITY OF FAIRBANKS
Office of City Manager
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

February 3, 1988

Senator Ken Fanning
P.O. Box V
Juneau, Alaska 99811

RE: Support of Senate Bill #372

Dear Senator:

The City of Fairbanks has suffered economically, like the rest of the State, with the recent downturn in the economy. The City of Fairbanks attempted to reduce costs, to live within its means, through meaningful labor negotiations intended to reduce wage and benefit costs.

Due to the State's Public Employment Relations Act, the City's ability to reduce wage and labor rates is extremely limited. The Governor, likewise laboring under the terms and conditions of PERA, has found it nearly impossible to gain any meaningful reduction in wages and benefits in spite of the critical fiscal dislocation that governmental units in the State of Alaska have been experiencing.

While the City subscribes to the collective bargaining process, I can only point to the examples of the City's and State's bargaining results, under PERA, as an indictment of the PERA system. The ability of the City and the State to reduce wage costs is an impossible task under the procedures established by the PERA legislation.

Localities should be allowed to opt out or exempt themselves from the framework established by PERA. Local municipalities or political subdivisions should be allowed to establish its own rules and regulations to govern collective bargaining procedures. Local municipalities must gain control of its fiscal destiny, and be allowed to set wage and benefit rates at levels affordable to the local residents ability to pay. As Mayor of the City of Fairbanks, I wholeheartedly support SB372 as an act to give control of city finances back to the municipal government officials.

Very truly yours,

BILL WALLEY
Mayor, City of Fairbanks

Municipality of Anchorage

MEMORANDUM

DATE: February 1, 1987

TO: Lee Nunn, Executive Manager Government Affairs
THRU: Glenn Lundell, Employee Relations Director
FROM: Personnel Director NRS

SUBJECT: Senate Bill No. 372

As requested, I have reviewed the proposed amendment to AS 23.40 under Senate Bill 372 to add a proposed new section, 23.40.235. The effect of this proposal would be to give municipalities and political subdivisions of the State to option to elect exemption from the provisions of PERA if they had missed the window period originally provided in the act or were currently covered and wished to withdraw.

The immediate impact of this legislation on Anchorage would be negligible as the Municipality has elected to withdraw from PERA and is not covered by the terms of that act. I would, however, recommend our commenting favorably on the proposed legislation as it provides flexibility to local governments that does not currently exist. Employers under PERA who wish to enact a local labor relations ordinance to govern their bargaining currently cannot do so but could under this proposal. Conversely, those finding administration of a local ordinance too onerous could opt to come under PERA. The three year minimum status period proposed under 23.40.235(b) provides a good vehicle for insuring some stability in employee relations while providing the local governments the flexibility in policy decision-making proposed under 23.40.235(a).

While I support this proposed legislation I am concerned about another piece of proposed PERA legislation that is currently in the House Judiciary Committee. That bill is CSHB 170 which proposes the addition of a new section 23.40.075 would have the net effect of requiring coverage under PERA for municipalities or political subdivisions who do not either provide their employees the right to strike or final and binding arbitration as the last step in the negotiation process. The effect of this proposed change is that municipalities (including Anchorage) who do wish to control their employee relations through local ordinance must provide their employees either the right to strike or binding arbitration to settle negotiation impasses. If they do not do so, their PERA exemptions would no longer be valid and their employee relations would have to be governed by PERA.

Currently our labor ordinance AMC 3.70 does provide the proposed impasse resolution mechanisms so we would not come under PERA if CSHB 170 were to pass in its present form. If, however, we found that those mechanisms were not effective for us or responsive to the interests of the community and wished to replace them with other options such as advisory arbitration which is also commonly used in the public sector, we could not do so.

In summation, I would recommend support or at least positive monitoring of SB 372. I would recommend opposition to CSHB 170. If further information or recommendations on these bills is desired, please let me know.

City of Petersburg
P. O. Box 329
Petersburg, Alaska 99833

FEB 1 1988

January 29, 1988

Senator Fanning
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fanning:

This letter is a follow-up to a discussion that I had with your aide, Mrs. Gail Thibodeau concerning the City of Petersburg's experience under the Public Employees Relations Act of 1972 (PERA).

Prior to my initial discussion with Ms. Gail Thibodeau, I became aware of your Senate Bill #372 through the Alaska Municipal League. I was very pleased to see that there is the possibility of some relief from this oppressive piece of legislation.

As you are aware, the Charter of the City of Petersburg authorized the institution of a "home rule" municipality. In other words, the citizens of Petersburg in a "charter election" chose to maintain as much "local control" over their own affairs as was possible under the state law at that time. Since our Charter was adopted by these voters, there has been no single piece of state legislation that has had, as oppressive an impact on this fundamental concept (local control) as the Public Employee Relations Act of 1972 (PERA).

The problem with PERA has been this single opt-out "window" and the courts restrictive interpretation of this concept.

As a practical matter PERA gave Petersburg six months from the time of its passage, to opt-out.

In my opinion, this "single window of time" was totally inadequate for a City Council to digest the implications of PERA, and opt-out in an intelligent manner. In other words, with our own collective bargaining ordinance.

Coincidentally, during this time the "International Brotherhood of Electrical Workers" were actively "signing up" employees in our electric utility. Our City Council reacted to this "perceived threat", rather than the more fundamental issues, and passed a resolution to opt-out of PERA. The courts later interpreted this opt-out as invalid, because it was done concurrently with the unionizing efforts.

Compounding this, the court ruling did not address the rest of the employees, and whether or not, they were under PERA also, or under our existing ordinance. Ultimately, another large union

used this issue to organize the remaining employees and file suit against the city on the issue of "partial opt-out" or equity. After many thousands of dollars of legal expenses and employee consternation the court in 1987 ruled that there could not be a "partial opt-out" and consequently all our employees are under PERA.

Consequently, due to PERA we now have two large outside unions, IBEW and APEA. Their "leadership" and their expectations comes from outside Petersburg, the process is controlled by outside state agencies that are use to dealing with state issues and state resources.

Consequently, the Petersburg taxpayer and rate payer has "lost control" of the single largest expenditure in their annual budget.

Please let me know if I can be of any future assistance in your effort to amend PERA.

Sincerely,

Ed Pefferman, City Manager
City of Petersburg

cc: Senator Jones
Representative Taylor
Representative Sund

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 3, 1988

SUBJECT: Applicability of PERA to municipalities (SB 372)

TO: Senator Ken Fanning

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked several questions concerning the effect of SB 372 on the right of a municipality or a political subdivision to decide to withdraw from coverage under the Public Employment Relations Act.

1. Can a municipality reject coverage under PERA?

The right to withdraw from coverage is established in temporary law, sec. 4, ch. 113, SLA 1972, which 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.

A municipality can reject coverage under PERA. To do so, the city council or borough assembly adopts an ordinance or resolution.

There are limits to a municipality'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.

2. If a municipality is covered by an ordinance or resolution establishing a system of negotiation with employees, are there limitations on the municipality's power to amend the ordinance or resolution?

PERA does not limit the municipality's power to amend its own municipal law. In City of Fairbanks v. Fairbanks AFL-CIO, 623 P.2d 321 (Alaska 1981), the court held that a personnel ordinance which was adopted after the city had a collective bargaining system in place, and which limited the subjects of the existing collective bargaining system, did not violate PERA.

However, the terms of a collective bargaining contract may dictate when a change in the municipal system may take effect. In City of Fairbanks v. Fairbanks Fire. Union, 623 P.2d 339 (Alaska 1981), the city had adopted a resolution establishing a system of employee bargaining and had negotiated a collective bargaining agreement that provided for automatic renewal from year to year unless one party notified the other of intent to change the terms. The agreement required that notice be given at least 90 days before the termination date of the contract. The city adopted a personnel ordinance that differed from the bargaining agreement in probationary periods, sick leave, annual leave, and other areas. However, the adoption

occurred less than 90 days before the termination of the contract. The court held that the change was ineffective for the next contract year but would apply to contracts in the years after that.

3. If a municipality rejects coverage under PERA, can it later reverse its decision and come within PERA?

I have found no cases addressing this issue. However, the policy set out in PERA and supported in the court opinions is to favor collective decision-making in matters affecting wages and working conditions. AS 23.40.070 states, in part,

> . . . it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by
>
> (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
>
> (2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;
>
> (3) maintaining merit-system principles among public employees.

Although sec. 4, ch. 113, SLA 1972, does not specifically permit a municipality to elect to resume coverage under PERA, it is probable that a court would hold that the policy statement supports a finding that the law implicitly permits a municipality to do so.

If I may be of further assistance, please advise.

TBC:gc
WKG1:061

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

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

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

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

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

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

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

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

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

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

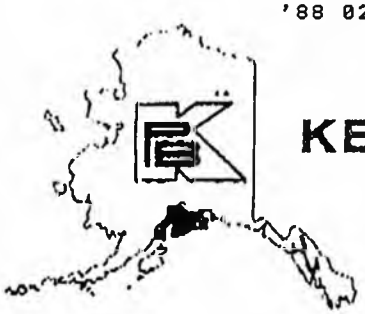
* Sec. 4. This Act is applicable to organized boroughs and

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.

* Sec. 5. AS 23.40.010 is repealed.

Chapter No. 113
Session Laws of Alaska
1972

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



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

TO Senator Ken Fanning DATE 2-16-88

State Affairs Committee SUBJECT SB 372

MESSAGE

The Kenai Peninsula Borough opted out of the Public Employment Relations Act (PERA) in 1972.

We favor SB 372 allowing municipalities to opt in or out of PERA.

SIGNED Don Gilman, Borough Mayor

REPLY

SIGNED DATE

RECIPIENT • Please sign and return pink copy

Feb. 15, 1988

Senator Ken Fanning:
PO Box V
Juneau, AK 99811

Dear Senator Fanning:

We strongly urge you to amend the Public Employees Relations Act (PERA) to mandate that any arbitration process take into account economic realities in arriving at a settlement. We would find it unconscionable that an arbitrator could impose a settlement that would not include the ability of a municipality or the State to pay for the agreement. We would also like the arbitration process to include input concerning market-based salaries as part of the accounting for economic realities. We are happy to see our public sector employees be well paid for their efforts but, see no reason to pay much more than what is needed to attract and retain good workers.

Sincerely,
Ron Johnson
Ronald A. Johnson
2113 Jack St.
Fairbanks, Alaska 99709

cc. Sen Abood, Rep. Adams, Rep. Boyer, Sen. Coghill, Rep. Davis, Sen. Fahrenkamp, Sen Faiks, Rep. Frank, Rep. Grussendorf, Sen. Halford, Rep. Koponen, Rep. Miller

Shirley Tillsworth, 1900 Raven Drive, Fbks, Ak. 99709

Dr. Robert R. Logan 7300 Chena Hot Springs Rd. Fairbanks, Ak. 99712

Dr. Jeung-Nan Chieh 1737 University Av. Apt. G-61, Fairbanks, AK 99709

J Patrick O'Brien 3266 Bluebird Ave. Fairbanks, AK 99709

Paulette Bowell 5002 Dartmouth #14, Fbks, AK 99709

John Mark 1621 Wolverine Wk. Fai., Ak 99709

Jeff Mumy 1129 Prospect Dr. Fai Ak. 99709

Ed Poetzel 15 Rattlesnake Dr Fbks Ak 99701

Tom Kinney 112 Nilgrub Fairbanks, AK 99712

Bob 81497 (1642 Tanuka Dr.) Fairbanks, AK. 99708

Article 2. Public Employment Relations Act.

Cross references. — For applicability of article to political subdivisions unless rejected by them, see § 4, ch. 113, SLA 1972 in the Temporary and Special Acts; for provisions relating to collective bargaining for teachers, see AS 14.20.550 — 14.20.610.

NOTES TO DECISIONS

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

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

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

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

This article is expressly made applicable to home-rule municipalities, and thus municipalities are impliedly prohibited from refusing to negotiate with organizations selected by employees unless the exemption was timely enacted. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 265 (1975).

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

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

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

When article may be rejected. — This article may be rejected when all evidence indicates that municipal governments exempted themselves solely for the purpose of retaining local control over their labor relations, and with the clear intent of continuing collective bargaining rather than to interfere with established employee rights. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980); City of Sitka v. International Bhd. of Elec. Workers, Local 1547, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

Rejection of this article in order to gain an undue advantage in a labor dispute or the negotiation of a new collective bargaining agreement constitutes a deliberate interference with the right of employees to organize and bargain collectively in derogation of the act's express declaration of policy. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Rejection must be prior to substantial organizational activity by public employees. — It is evident from the wording of the exemption provision that the legislature intended to limit the freedom of the political subdivision to consider whether it wishes this article to apply to it by adopting the position that the article must be rejected prior to substantial organizational activity by public employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Prior to becoming aware of substantial organizational activity, the city could have exempted itself from the applicability of this article without interfering with the right of the employees to organize. Rejection of this article 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. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

This article was intended to recognize the right of employees to organize for the purpose of collective bargaining and to require public employers to negotiate and enter into labor contracts with employee organizations. It is apparent that this purpose would be substantially frustrated if a city could wait until the employees elected to be represented by a specific union, and then could exempt itself from the requirements of this article if that union was not favored by the city. In effect, this would give the city the right to control the organization to be selected by the employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

A city council cannot validly reject application of this article more than six months after it becomes effective, and after the members of the council have learned of the organizational activity of the city's power plant employees. State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

The right and power of a city to reject this article becomes subordinated to the rights of the employees granted by the same legislation once the public employer becomes aware of substantial organizational activity on the part of its employees. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Freedom to develop varying scheme of collective bargaining. — Local governments which have validly rejected this article are free to develop a local scheme of collective bargaining which varies from the state scheme as provided in this article. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

The legislature has expressly declared that the state policy of promoting harmonious and cooperative relations in public employment relations can best be effectuated by requiring public employers to bargain collectively with their employees. It is, therefore, most difficult to construe this article to prohibit local governments, which effectively rejected the article, from engaging in collective bargaining under their own local ordinances. It is far more likely that § 4, ch. 113, SLA 1972, was added to give political subdivisions of the state the freedom to fashion their own labor ordinances and systems of collective bargaining. Anchorage Mun. Employees Ass'n v. Municipality of

Sec. 23.40.010. Union contracts with state and political subdivisions. [Repealed, § 5 ch 113 SLA 1972.]

Sec. 23.40.020. Enforcement of certain contracts only if union registers. A labor contract executed in this state by a labor organization that has no local in this state or which contract is not to be executed by one or more of its locals in this state may not be enforced in the courts of this state unless the labor organization has registered with the department and complied with all regulations adopted by it. (§ 4 ch 108 SLA 1959)

Sec. 23.40.030. Definition of labor organization. For the purpose of AS 23.40.020 — 23.40.040 "labor organization" includes an organization constituted wholly or partly to bargain collectively or deal with employers, including the state and its political subdivisions, concerning grievances, terms, or conditions of employment or other mutual aid or protection in connection with employees. (§ 1 ch 108 SLA 1959; am § 32 ch 53 SLA 1973)

Collateral references. — 48 A.n. Jur. 2d, Labor and Labor Relations, § 46.

51 C.J.S., Labor Relations, §§ 43-45. 56 C.J.S., Master and Servant, § 28(15).

Rights and remedies of workmen blacklisted by labor union. 46 ALR2d 1124.

Combination of separate plants or units of the same employer as single bargaining unit, 12 ALR3d 787.

Right of labor union to exclude applicants for membership and remedies of applicant so excluded, 33 ALR3d 1305.

Sec. 23.40.040. Collective bargaining agreement. The commissioner of transportation and public facilities or an authorized representative, in accordance with AS 23.40.020 — 23.40.030, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. A collective bargaining agreement is not final without the concurrence of the commissioner of transportation and public facilities. The commissioner of transportation and public facilities may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration. (§ 1 ch 93 SLA 1962; am E. O. No. 39, § 11 (1977))

NOTES TO DECISIONS

This section was not repealed by implication by the enactment of the Public Employment Relations Act, AS 23.40.070, et seq. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an exception to that act. This section cannot be read as an implied exception to the Public Employment Relations Act, AS 23.40.070, et seq. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

AS 23.40.070 et seq., was intended to incorporate existing collective bargaining agreements rather than exempt them. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Construed in pari materia. — Since this section cannot be treated as an implied exception to the Public Employment Relations Act, AS 23.40.070 et seq., and since the Public Employment Relations Act did not repeal this section by implication, the statutes are construed in pari materia. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This section and Public Employment Relations Act can be harmonized. — The Public Employment Relations Act, AS 23.40.070, et seq., and this section can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting the Public Employment Relations Act. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Any possible conflict between this section and the Public Employment Relations Act is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of this section and saw no inconsistency in enacting the Public Employment Relations Act, AS 23.40.070 et seq., to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the authorization of collective bargaining under this section. Rather, it gives it additional content. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

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

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

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

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

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

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

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

Secs. 23.40.045 — 23.40.060. Records; local labor organizations; interference in chartering prohibited; civil enforcement; exemptions; penalties. [Repealed, § 55 ch 69 SLA 1970.]

Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Determining timely rejection. — Whether a local government has exercised its option to reject this article in a sufficiently timely fashion is best determined by looking at the circumstances of the individual case rather than setting an inflexible deadline. Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2204 (File No. 4562), 618 P.2d 575 (1980).

Forfeiture of exemption from article. — A city did not forfeit its exemption from coverage by this article, by continuing to recognize and negotiate with unions subsequent to its exemption. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (1981).

There is nothing in the language of the Public Employment Relations Act, AS 23.40.070 — 23.40.260, or its legislative history to suggest that the legislature intended to preclude local governments which have validly exempted themselves from coverage under the act from thereafter voluntarily engaging in collective bargaining with employee organizations. City of Fairbanks v. Fairbanks AFL-CIO Crafts Council, Sup. Ct. Op. No. 2285 (File Nos. 4950, 5011), 623 P.2d 321 (1981).

The city did not waive its exemption under § 4, ch. 113, SLA 1972, by negotiating with the union, and thus did not forfeit the authority to enact its own personnel guidelines. City of Fairbanks v. Fairbanks Firefighters Union, Sup. Ct. Op. No. 2290 (File No. 4925), 623 P.2d 339 (1981).

Effect of elimination of state from exemption authorization. — See State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

AS 23.40.040, relating to collective bargaining agreements, was not repealed by implication by the enactment of this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Nor is it an implied exception to article. — AS 23.40.040 cannot be read as an implied exception to this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article was intended to incorporate existing collective bargaining agreements rather than exempt them. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Construed in pari materia. — Since AS 23.40.040 cannot be treated as an implied exception to this article, and since this article did not repeal AS 23.40.040 by implication, the statutes are construed in pari materia. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Any possible conflict between AS 23.40.040 and this article is neither severe nor irreconcilable, particularly in light of AS 23.40.240 which incorporates existing agreements. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

The most reasonable construction, consistent with the implied exception rule, is that the legislature was aware of AS 23.40.040 and saw no inconsistency in enacting this article to provide guidelines and procedures for public employee collective bargaining. The Public Employment Relations Act does nothing to undercut the AS 23.40.040 authorization of collective bargaining. Rather, it gives it additional content. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

This article contains far more detailed provisions than AS 23.40.040. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

And further defines AS 23.40.040. — AS 23.40.040 was comprehensive when it was enacted, but it was further defined by this article. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

Action not in reliance on rights under article. — Where municipality's electrical department employees had pursued unionization since the early 1960's, long before the enactment of this article, although all the electrical department employees signed union authorization cards sometime in 1972, there was no evidence of any organizational activities occurring between the effective date of this article, September 5, 1972, and the passage of the exemption ordinance in question, July 10, 1973; thus the employees were not acting in reliance

on rights granted them by this article. City of Sitka v. International Bhd. of Elec. Workers, Local 1547, Sup. Ct. Op. No. 2578 (File No. 6116), 653 P.2d 332 (1982).

This article applies to employees of the state division of marine transportation. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

If there is no implied exemption for ferry personnel under this article, it cannot be said that the two acts do not cover the same people. AS 23.40.040 is a subset of the broader coverage under this article and was likely left intact deliberately to designate the commissioner of public works as the state's representative in bargaining with the ferry unions. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

"Public employees" excludes teachers. — The legislature chose to define "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Employees covered by this article are free to join a national as well as a local union. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Borough School Dist. Classified Ass'n, Sup. Ct. Op. No. 1802 (File No. 3800), 590 P.2d 437 (1979).

As to procedural safeguards which local labor ordinances must afford concerning representation elections, see Alaska Pub. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

Cited in Warwick v. State ex rel. Chance, Sup. Ct. Op. No. 1252 (File No. 2712), 548 P.2d 384 (1976); Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983); Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764 — 1775.

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

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

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

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

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

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

Given AS 39.35.120(b) and AS 39.35.170, which make inclusion in the public employees retirement system (AS 39.35.010 — 39.35.590) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Retirement Act (AS 23.40.070 — 23.40.260). January 23, 1978, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in State v. City of Petersburg, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975); Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978); Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, Sup. Ct. Op. No. 2294 (File No. 4562), 618 P.2d 575 (1980); Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Cited in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 1764 — 1775.

51 C.J.S., Labor Relations, §§ 20-22, 33.

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

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

NOTES TO DECISIONS

Quoted in Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

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

Collateral references. — Right of public employees to strike or engage in work stoppage, 37 ALR3d 1147.

Right of public employees to form or join a labor organization affiliated with a federation of trade unions or which includes private employees, 40 ALR3d 728.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees, 22 ALR4th 1103.

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

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

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

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

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

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

(b) If the labor relations agency has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. If the labor relations agency finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which organization the employees

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

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

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

(e) An election may not be directed by the labor relations agency in a bargaining unit in which there is in force a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, a collective bargaining agreement may not bar an election upon petition of persons in the bargaining unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later. (§ 2 ch 113 SLA 1972)

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

(1) restrain or coerce

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

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

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

NOTES TO DECISIONS

Similarity to federal act. — Paragraphs (a)(1) and (a)(3) are substantially similar to § 8(a)(1) and (a)(3) of the Labor Management Relations Act, 29 U.S.C. § 158(a)(1) and (a)(3). Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

For establishment of violation of 29 U.S.C. § 158(a)(3), see Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Derivative violation of (a)(1) from violation of (a)(3). — A violation of paragraph (a)(3) derivatively results in a violation of (a)(1) as well since employer discrimination in hiring, firing or working conditions also coerces or restrains employees in their rights to organize, bargain collectively and engage in other concerted activities. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Refusal to ratify tentative agreement. — It is permissible for an employer to refuse to ratify a tentative collective bargaining agreement in accordance with an agreed upon ground rule, so long as the employer's failure to ratify does not appear to have resulted from the employer's intent to string out negotiations and avoid reaching agreement. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Work rule changes. — Since employers are free to make unilateral changes on matters which fall outside mandatory subjects of bargaining, the labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of

Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

Burden on union. — A union is required to demonstrate that an applicant was denied employment because of some antiunion motive on the part of the employer. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

The union did not establish the presence of an antiunion motive on the part of the university where there was testimony that the applicant was not hired because more qualified applicants were available and ultimately because a lack of student interest caused the class to be cancelled and where although the union presented correspondence which demonstrated that the university considered the applicant's unavailability (because of his position as a negotiator) in determining his qualification, there was unequivocal testimony that it was the mere fact of the applicant's unavailability, not the reason therefor, which was considered in this regard. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

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

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

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

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

NOTES TO DECISIONS

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

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

NOTES TO DECISIONS

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

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

NOTES TO DECISIONS

Distinction between mandatory and permissive bargaining subjects. — This section requires the labor relations agency to distinguish between mandatory and permissive bargaining subjects in its remedial orders. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

While this section authorizes the agency to issue cease and desist orders barring prohibited practices, and to order affirmative action which will carry out the provisions of the Public Employment Relations Act, it does not require employers to bring to the bargaining table subjects other than wages hours, and other terms and conditions of employment. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

The labor relations agency erred insofar as it rescinded work rules pertaining to permissive bargaining subjects and ordered the extension of terms in the previously expired collective bargaining agreement pertaining to permissive bargaining subjects. Alaska Community Colleges' Fed'n of Teachers Local 2404 v. University of Alaska, Sup. Ct. Op. No. 2729 (File No. 6881), 669 P.2d 1299 (1983).

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

NOTES TO DECISIONS

Stated in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

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

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

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

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

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

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

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

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

(c) The class in (a)(2) of this section is composed of public utility, snow removal, sanitation and public school and other educational institution employees. Employees in this class may engage in a strike after mediation, subject to the voting requirement of (d) of this section, for a limited time. The limit is determined by the interests of the health, safety or welfare of the public. The public employer or the labor relations agency may apply to the superior court in the judicial district in which the strike is occurring for an order enjoining the strike. A strike may not be enjoined unless it can be shown that it has begun to

threaten the health, safety or welfare of the public. A court, in deciding whether or not to enjoin the strike, shall consider the total equities in the particular class. "Total equities" includes not only the impact of a strike on the public but also the extent to which employee organizations and public employers have met their statutory obligations. If an impasse or deadlock still exists after the issuance of an injunction, the parties shall submit to arbitration to be carried out under AS 09.43.030.

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

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

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

NOTES TO DECISIONS

I. General Consideration.
II. Arbitration.

I. GENERAL CONSIDERATION.

Certain teachers not covered by section. — Teachers, who are not "public employees" for purposes of this article, are not covered by this section. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

Strikes by teachers. — Issuance of injunction to end teachers' strike, without separate finding of irreparable harm was not error, since by making these strikes illegal, the legislature has decided that a teachers' strike would cause irreparable harm. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

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

II. ARBITRATION.

Not exclusive remedy. — The fact that an arbitrator cannot grant the relief afforded by a statute is an indication that holding arbitration to provide an exclusive remedy would conflict with the statutory purpose. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues arbitrable. — The duty to maintain fit premises under a collective bargaining agreement providing for bush housing is one for which a contract remedy is available and is thus arbitrable. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Issues not arbitrable. — The legality of a clearly expressed and plainly applicable contract formula was held not arbitrable under the terms of a contract clause providing for arbitration in disputes involving the meaning or application of the express terms of the contract. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

Because of the explicit nonwaiver provisions of AS 34.03.040, the right to sue under the Uniform Residential Landlord and Tenant Act, AS 34.03, cannot be prospectively bargained away in a collective bargaining agreement which provides for arbitration. Public Safety Employees Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 769 (1983).

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

NOTES TO DECISIONS

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

Sec. 23.40.212. Agreement with the Board of Regents. (a) The Board of Regents of the University of Alaska may delegate to the Department of Administration its authority under AS 23.40.070 — 23.40.260 to negotiate with an organization for an agreement.

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

Sec. 23.40.215. Funding and legislative approval. (a) The monetary terms of any agreement entered into under the Public Employment Relations Act are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection

is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations. (§ 2 ch 113 SLA 1972; am § 1 ch 10 SLA 1984)

Effect of amendments. — The 1984 amendment, effective February 24, 1984, added subsection (b).

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

NOTES TO DECISIONS

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

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

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

Sec. 23.40.225. Exemption from Public Employment Relations Act. Notwithstanding the provisions of AS 23.40.220, a collective bargaining settlement reached, or agreement entered into, under AS 23.40.210 that incorporates union security provisions, including but not limited to a union shop or agency shop provision or agreement, shall safeguard the rights of nonassociation of employees having bona fide religious convictions based on tenets or teachings of a church or religious body of which an employee is a member. Upon submission of proper proof of religious conviction to the labor relations agency, the agency shall declare the employee exempt from becoming a member of a labor organization or employee association. The employee shall pay an amount of money equivalent to regular union or association dues, initiation fees, and assessments to the union or association. Nonpayment of this money subjects the employee to the same penalty as if it were nonpayment of dues. The receiving union or association shall contribute an equivalent amount of money to a charity of its choice not affiliated with a religious, labor or employee organization. The union or association shall submit proof of contribution to the labor relations agency. (§ 1 ch 85 SLA 1976)

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

Opinions of attorney general. — A state employee in a collective bargaining unit who does not belong to an organized religion is entitled to an accommodation of his religious opposition to the payment of union dues. January 13, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

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

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

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

NOTES TO DECISIONS

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

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

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

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

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

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

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

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

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

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

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

(4) "monetary terms of an agreement" means the changes in the terms and conditions of employment resulting from an agreement that will require an appropriation for their implementation or will result in a change in state revenues or productive work hours for state employees.

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

(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 or noncertificated employees of school districts;

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

(8) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but does not mean the general policies describing the function and purposes of a public employer. (§ 2 ch 113 SLA 1972; am § 2 ch 10 SLA 1984)

Revisor's notes. — In 1984, paragraph (8), added in 1984, was renumbered as paragraph (4) and former paragraphs (4)-(7) were renumbered as present paragraphs (5)-(8) to retain alphabetical order.

Effect of amendments. — The 1984 amendment, effective February 24, 1984, added paragraph (4). (See revisor's notes.)

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

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

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

NOTES TO DECISIONS

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

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

Teachers, who are not "public employees" for purposes of this article, are not covered by this section. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

The legislature defined "public employees" as excluding teachers from the Public Employment Relations Act because the cooperative relations purpose of that act was already fulfilled with regard to teachers under the provisions of Title 14. Anchorage Educ. Ass'n v. Anchorage School Dist., Sup. Ct. Op. No. 2537 (File No. 5021), 648 P.2d 993 (1982).

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

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

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

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

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

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

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

Quoted in Carter v. Alaska Pub. Employees Ass'n, Sup. Ct. Op. No. 2657 (File No. 6586), 663 P.2d 916 (1983).

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

Chapter 45. General Provisions.

Section
10. Definitions

Sec. 23.45.010. Definitions. In this title

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

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

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

(A) the basic hourly rate of pay; and

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

SYNOPSIS OF SB 372

Section 1 (a) allows a municipality or a political subdivision to exempt itself from the provisions of PERA (the Public Employment Relations Act) by adopting an ordinance or resolution. If the municipality or political subdivision are not currently covered by PERA, this allows them to adopt the provisions of PERA through an ordinance or resolution.

Section 1 (b) mandates that a municipality or political subdivision who either adopt PERA or opt out of PERA, as provided for in Section 1(a), may not change their status for at least three years following that action.

Section 2 repeals a non-codified section of the original Public Employment Relations Act (PERA) that defines which political subdivisions are to be covered by the Act. SB 372 more clearly spells out this provision of PERA, so the old language is no longer needed.

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

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

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

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

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

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

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

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

Sec. 3. AS 09.43.010 is amended to read:

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

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

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.

* Sec. 5. AS 23.40.010 is repealed.

Chapter No. 113
Session Laws of Alaska
1972

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

Sec. 01.10.050. Tense, number, and gender.

NOTES TO DECISIONS

Quoted in D.A.W. v. State, Sup. Ct. Op. No. 2935 (File No. S-169), 699 P.2d 340 (1985).

Cited in Dunlop v. State, Sup. Ct. Op. No. 3068 (File Nos. S-923, S-1163), 721 P.2d 604 (1986).

Sec. 01.10.055. Residency. (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, that may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

Sec. 01.10.060. Definitions. In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" [illegible] officer of the state troopers, members of the police [illegible] porated city or borough, United States marshals and their deputies, and other officers whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

(9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(10) "property" includes real and personal property;

City of Petersburg
P. O. Box 929
Petersburg, Alaska 99833

FEB 1 1988

January 29, 1988

Senator Fanning
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fanning:

This letter is a follow-up to a discussion that I had with your aide, Mrs. Gail Thibodeau concerning the City of Petersburg's experience under the Public Employees Relations Act of 1972 (PERA).

Prior to my initial discussion with Ms. Gail Thibodeau, I became aware of your Senate Bill #372 through the Alaska Municipal League. I was very pleased to see that there is the possibility of some relief from this oppressive piece of legislation.

As you are aware, the Charter of the City of Petersburg authorized the institution of a "home rule" municipality. In other words, the citizens of Petersburg in a "charter election" chose to maintain as much "local control" over their own affairs as was possible under the state law at that time. Since our Charter was adopted by these voters, there has been no single piece of state legislation that has had, as oppressive an impact on this fundamental concept (local control) as the Public Employee Relations Act of 1972 (PERA).

The problem with PERA has been this single opt-out "window" and the courts restrictive interpretation of this concept.

As a practical matter PERA gave Petersburg six months from the time of its passage, to opt-out.

In my opinion, this "single window of time" was totally inadequate for a City Council to digest the implications of PERA, and opt-out in an intelligent manner. In other words, with our own collective bargaining ordinance.

Coincidentally, during this time the "International Brotherhood of Electrical Workers" were actively "signing up" employees in our electric utility. Our City Council reacted to this "perceived threat", rather than the more fundamental issues, and passed a resolution to opt-out of PERA. The courts later interpreted this opt-out as invalid, because it was done concurrently with the unionizing efforts.

Compounding this, the court ruling did not address the rest of the employees, and whether or not, they were under PERA also, or under our existing ordinance. Ultimately, another large union

used this issue to organize the remaining employees and file suit against the city on the issue of "partial opt-out" or equity. After many thousands of dollars of legal expenses and employee consternation the court in 1987 ruled that there could not be a "partial opt-out" and consequently all our employees are under PERA.

Consequently, due to PERA we now have two large outside unions, IBEW and APEA. Their "leadership" and their expectations comes from outside Petersburg, the process is controlled by outside state agencies that are use to dealing with state issues and state resources.

Consequently, the Petersburg taxpayer and rate payer has "lost control" of the single largest expenditure in their annual budget.

Please let me know if I can be of any future assistance in your effort to amend PERA.

Sincerely,

Ed Pefferman, City Manager
City of Petersburg

cc: Senator Jones
Representative Taylor
Representative Sund

STATE of Alaska, Petitioner,

v.

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

No. 2341.

Supreme Court of Alaska.

July 24, 1975.

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

Reversed and remanded.

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

1. Appeal and Error ⇐363

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

2. Labor Relations ⇐52

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

3. Labor Relations ⇐52

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

4. Labor Relations ⇐52

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

5. Labor Relations ⇐677

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

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

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

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

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

OPINION

BOOCHEVER, Justice.

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

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

1. AS 23.40.070(1) and (2).
2. SLA ch. 113 (1972).
3. SLA ch. 113, § 4 (1972) provides as follows:

   This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.
4. In view of our holding in the instant case, we do not reach the issue of whether the City could act by means of passage of a resolution rather than by enactment of an ordinance.
5. Only four of six Council members were present at the meeting and only three voted for the resolution. Due to concern that procedural irregularities might have rendered the first resolution invalid, the Council met again on April 11, 1973 and passed a second resolution, 367–R, purportedly exempting the City of Petersburg from the applicability of the PERA.
6. This was indicated by testimony before the labor relations hearing officer. Paul Jones, an employee of the City testified that Councilman Ted Smith was aware that the employees of the power plant had signed pledge cards two or three days after the signing occurred. Doug Welde testified that on the day following the signing of the cards, Councilman Oines asked him "What's this I hear about the IBEW and the Union". Councilman Ted Smith testified that he was aware prior to the March 29, 1973 meeting that the employees of the power plant had signed something indicating that they were interested in a union. Smith further testified that the resolution passed at the March 29 special meeting was in response to the organizational activities at the power plant. Councilman Oines testified to a similar motivation for this meeting and stated that the signing of the IBEW cards could have been discussed at the meeting. Councilman Fred Haltiner admitted that, prior to the March 29 meeting, he had been told that possibly all of the power plant employees had signed pledge cards. However, Ms. Jerry Van Bleck, the Clerk-Treasurer for the City of Petersburg, testified that at the March 29 meeting there was no mention of the power plant employees having signed authorization cards. In his decision, the hearing examiner deemed the following conclusively proved by the evidence:

   The right of the City to exempt itself from the operation of the PERA had existed and was notice to the world since the Act was signed by the Governor in June of 1972; *but the City took no action to escape from the PERA until it learned that its eight power plant employees had signed pledge cards.* It acted five days later on March 29, 1973, at which time the City passed Resolution 366–R for the purpose of exempting itself from the operation of PERA. (emphasis added)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. AS 23.40.070.

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

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

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

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

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

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

13. The City contends that determination of when it becomes aware of substantial organizational activity is too imprecise a standard. While admittedly difficult factual situations may be conjured up, courts are constantly required to make similarly difficult determinations (as, for example, whether a party has exercised due care in a negligence case). *See also State v. Marathon Oil Co.*, 528 P.2d 293, 297-98 (Alaska 1974); *United States v. Ragen*, 314 U.S. 513, 523, 62 S.Ct. 374, 86 L.Ed. 393, 390 (1942). In any event, it is clear that substantial organizational activity has occurred when all of the employees of a particular unit of government have signed cards authorizing a specific union to represent them.

14. SLA ch. 113, § 5 (1972).

15. SLA ch. 108, § 1 (1959).

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

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

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

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

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

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

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

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

Reversed and remanded.[20]

CONNOR and BURKE, JJ., dissenting separately.

CONNOR, Justice (dissenting).

I must respectfully dissent.

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

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

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

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

18. The state and the IBEW alternatively argued that the trial court erred in the standard of review it applied to the decision of the Department of Labor, contending that the superior court's review of the Department's construction of SLA ch. 113, § 4 (1972) should have been limited to a determination of whether there existed a reasonable basis for the hearing examiner's decision. Here the question presented involved statutory interpretation about which courts have specialized knowledge and experience. Although we disagree with the conclusions reached on the merits by the trial judge, we hold that he did not err in substituting his independent judgment for that of the hearing examiner. The standard applied by the trial court was consistent with the guidelines set forth in *Kelly v. Zamarello*, 486 P.2d 906, 916–17 (Alaska 1971). The appropriate standards of *Kelly* should also be applied upon remand in reviewing other portions of the Department's decision.

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

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

1. § 1, ch. 108, SLA 1959.

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

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

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

BURKE, Justice (dissenting).

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

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

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

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

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

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

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Cherie Shelley CS
APEA

SUBJECT: Senate Bill 372

DATE: February 2, 1988

The Alaska Public Employees Association (APEA) is adamantly opposed to Senate Bill 372, which strikes at the heart of collective bargaining for municipal employees.

APEA represents municipal employees covered under the Public Employee Relations Act in Ketchikan Gateway Borough, City of Petersburg, City of Fairbanks and Fairbanks North Star Borough. SB 372, if allowed passage could effectively destroy collective bargaining for these municipal employees. The legislation would allow municipal governments which have opted for coverage under PERA to now opt-out, leaving employees relations in a vacuum. Management would be free to unilaterally set wages and other working conditions.

In 1972 the legislature found that joint-decision making is the modern way of administering government, including municipal government. If public employees are granted the right to share in the decision-making process affecting wages and working conditions, they are more responsive and better able to exchange ideas, and information in operations with their administrators. Accordingly government is made more effective. PERA provides the legal structure for such process.

CS/jm

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Alaska Municipal League

Policy Statement

1988

Alaska MUNICIPAL League

Adopted at the Business Meeting
of the 37th Annual Local Government Conference
of the
ALASKA MUNICIPAL LEAGUE
Anchorage, Alaska
November 13, 1987

and an amendment to the statutes governing these codes that would allow municipalities adopting these codes to provide for a transition period regarding licensing and certification requirements for plumbers and electricians working within their boundaries. The League supports the adoption of the national codes as the standards for Alaska.

9. Authorities: The League opposes any effort by the Legislature to restrict the method of establishment, form, powers, or other features of municipal port or other authorities. The League supports legislation that would clarify the authority of municipalities to form public corporations, authorities, and similar public entities through which they may exercise a power.

B. PUBLIC EMPLOYEE LABOR RELATIONS

1. Alaska Public Employees Labor Relations Act: The League strongly opposes any legislation that 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 employee labor relations ordinances. The League supports legislation to allow each municipality to reject or withdraw from the terms of the Alaska Public Employees Labor Relations Act at any time. The scope of decisions as to local government finance and labor policies is best left to the local governing body.

2. 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.

C. UNORGANIZED BOROUGH

The League urges the Legislature to address the organization of the unorganized borough.

D. TRIBAL COUNCIL/LOCAL GOVERNMENT RELATIONS

The League supports and encourages efforts on the part of the Legislature and other concerned parties to address tribal/local government relations.

E. FORMATION OF NEW MUNICIPALITIES

1. State Policies: The League supports state policies that encourage rather than discourage the formation of new municipalities.

2. Funding: The League strongly supports legislation to provide adequate funds to assist in the study of the feasibility of forming new municipalities and in the unification and/or consolidation of borough and city governments. The League also supports increasing funds for the formation of newly organized municipalities.

STATE of Alaska, Petitioner,

v.

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

No. 2341.

Supreme Court of Alaska.

July 24, 1975.

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

Reversed and remanded.

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

1. Appeal and Error ⇐363

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

2. Labor Relations ⇐52

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

3. Labor Relations ⇐52

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

4. Labor Relations ⇐52

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

5. Labor Relations ⇐677

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

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

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

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

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

OPINION

BOOCHEVER, Justice.

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

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

1. AS 23.40.070(1) and (2).
2. SLA ch. 113 (1972).
3. SLA ch. 113, § 4 (1972) provides as follows:

   This Act is applicable to organized boroughs and political subdivisions of the state, home rule or otherwise, unless the legislative body of the political subdivision, by ordinance or resolution, rejects having its provisions apply.
4. In view of our holding in the instant case, we do not reach the issue of whether the City could act by means of passage of a resolution rather than by enactment of an ordinance.
5. Only four of six Council members were present at the meeting and only three voted for the resolution. Due to concern that procedural irregularities might have rendered the first resolution invalid, the Council met again on April 11, 1973 and passed a second resolution, 367–R, purportedly exempting the City of Petersburg from the applicability of the PERA.
6. This was indicated by testimony before the labor relations hearing officer. Paul Jones, an employee of the City testified that Councilman Ted Smith was aware that the employees of the power plant had signed pledge cards two or three days after the signing occurred. Doug Welde testified that on the day following the signing of the cards, Councilman Oines asked him "What's this I hear about the IBEW and the Union". Councilman Ted Smith testified that he was aware prior to the March 29, 1973 meeting that the employees of the power plant had signed something indicating that they were interested in a union. Smith further testified that the resolution passed at the March 29 special meeting was in response to the organizational activities at the power plant. Councilman Oines testified to a similar motivation for this meeting and stated that the signing of the IBEW cards could have been discussed at the meeting. Councilman Fred Haltiner admitted that, prior to the March 29 meeting, he had been told that possibly all of the power plant employees had signed pledge cards. However, Ms. Jerry Van Bleck, the Clerk-Treasurer for the City of Petersburg, testified that at the March 29 meeting there was no mention of the power plant employees having signed authorization cards. In his decision, the hearing examiner deemed the following conclusively proved by the evidence:

   The right of the City to exempt itself from the operation of the PERA had existed and was notice to the world since the Act was signed by the Governor in June of 1972; *but the City took no action to escape from the PERA until it learned that its eight power plant employees had signed pledge cards.* It acted five days later on March 29, 1973, at which time the City passed Resolution 366–R for the purpose of exempting itself from the operation of PERA. (emphasis added)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. AS 23.40.070.

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

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

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

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

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

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

13. The City contends that determination of when it becomes aware of substantial organizational activity is too imprecise a standard. While admittedly difficult factual situations may be conjured up, courts are constantly required to make similarly difficult determinations (as, for example, whether a party has exercised due care in a negligence case). *See also State v. Marathon Oil Co.*, 528 P.2d 293, 297–98 (Alaska 1974); *United States v. Ragen*, 314 U.S. 513, 523, 62 S.Ct. 374, 86 L.Ed. 383, 390 (1942). In any event, it is clear that substantial organizational activity has occurred when all of the employees of a particular unit of government have signed cards authorizing a specific union to represent them.

14. SLA ch. 113, § 5 (1972).

15. SLA ch. 108, § 1 (1959).

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

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

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

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

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

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

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

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

Reversed and remanded.[20]

CONNOR and BURKE, JJ., dissenting separately.

CONNOR, Justice (dissenting).

I must respectfully dissent.

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

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

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

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

18. The state and the IBEW alternatively argued that the trial court erred in the standard of review it applied to the decision of the Department of Labor, contending that the superior court's review of the Department's construction of SLA ch. 113, § 4 (1972) should have been limited to a determination of whether there existed a reasonable basis for the hearing examiner's decision. Here the question presented involved statutory interpretation about which courts have specialized knowledge and experience. Although we disagree with the conclusions reached on the merits by the trial judge, we hold that he did not err in substituting his independent judgment for that of the hearing examiner. The standard applied by the trial court was consistent with the guidelines set forth in *Kelly v. Zamarello*, 486 P.2d 906, 916–17 (Alaska 1971). The appropriate standards of *Kelly* should also be applied upon remand in reviewing other portions of the Department's decision.

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

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

1. § 1, ch. 108, SLA 1959.

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

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

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

BURKE, Justice (dissenting).

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

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

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

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

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

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

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Cherie Shelley
APEA

SUBJECT: Senate Bill 372

DATE: February 2, 1988

The Alaska Public Employees Association (APEA) is adamantly opposed to Senate Bill 372, which strikes at the heart of collective bargaining for municipal employees.

APEA represents municipal employees covered under the Public Employee Relations Act in Ketchikan Gateway Borough, City of Petersburg, City of Fairbanks and Fairbanks North Star Borough. SB 372, if allowed passage could effectively destroy collective bargaining for these municipal employees. The legislation would allow municipal governments which have opted for coverage under PERA to now opt-out, leaving employees relations in a vacuum. Management would be free to unilaterally set wages and other working conditions.

In 1972 the legislature found that joint-decision making is the modern way of administering government, including municipal government. If public employees are granted the right to share in the decision-making process affecting wages and working conditions, they are more responsive and better able to exchange ideas, and information in operations with their administrators. Accordingly government is made more effective. PERA provides the legal structure for such process.

CS/jm

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825 College Road
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Anchorage, AK 99501
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Juneau Field Office
227 4th Street
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RICK L. RASMUSSON, ESQ., P.S.
3288 ADAMS DRIVE, SUITE 103 • FAIRBANKS, ALASKA 99709-5058

FEBRUARY 1, 1988

Senate State Affairs Committee
Room 423, Capitol Building
P.O. Box V
Juneau, AK 99811

FEB 1 1988

SB 372

Attn: Senators Ken Fanning (R) Dist. K-A ,
Mitch Abood (R) Dist. G-A (Chair),
Willie Hensley (d) Dist. L,
Rick Uehling (R) Dist. H-B (Vice-Chair),
and Senator Joe Josephson (D) Dist. H-A

RE: SB 372

Dear Senators:

I've been an unwilling member of APEA since July of 1985. After meeting all the qualifications for pre-employment and meeting all academic standards for my profession and finally after a lengthy interview process, I get hired, to later find that I had 10 working days inwhich to join an organization I neither heard of or knew anything about; set the stage for my continual efforts to thwart their efforts.

Municipal employees, including Policemen/women, Firefighters, and Public Service employees be it State and/or Municipal should not form Union-like organizations for collective bargaining for two main reasons. It protects those who do not really produce as an employee, but hide behind the grievance process and the other has to do with wages. Some of my fellow cowrokers without a college degree are making as much, if not more, money than I was when I first graduated in 1980 (undergraduate). This is not fair, nor equitible, **and I hope this Senate Bill 372 gets passed, hands down.**

Thank you.

Sincerely,

RICK L. RASMUSSON, Esq.

RLR/ur

ENCLOSURE

APEA Members of Municipalities and Political Subdivisions

Senate Bill 372 is important to you.

SB 372, introduced by Senator Ken Fanning (R) District K-A, is a direct attack on collective bargaining. . .

If is passes it will:

- Allow municipalities and political subdivisions to adopt an ordinance or resolution to exempt itself from the Public Employment Relations Act. PERA guarantees your legal right to bargain and the grievance process.
- In addition, a municipality or political subdivision that exempts itself under the language in this bill may not change its status for at least three years.

APEA has fought long and hard to protect PERA for its members.

The Fight Goes on and We Need Your Help.

The bill was introduced on January 26. It is scheduled for a hearing in **Senate State Affairs** on February 3. The time span between the bill's introduction and a scheduled hearing is unusually short. **This means that SB 372 will move fast.**

There's no time to waste!

Let the members of the Senate State Affairs Committee know that you object to the passage of this bill. Tell them that SB 372 is an attack on collective bargaining.

Senate State Affairs Committee Members

Mitch Abood (R) Dist. G-A (Chair)
Willie Hensley (D) Dist. L
Ken Fanning (R) Dist. K-A
Rick Uehling (R) Dist. H-B (Vice-Chair)
Joe Josephson (D) Dist. H-A

if one of these senators represents your district, then contact him directly.

If not, either call, send a telegram, or a public opinion message to the chairman. **Do it Today!**

State Affairs Committee: (907) 465-4522 – Room 423, Capitol Bldg., P.O. Box V, Juneau, AK 99811

Public Opinion Message: (907) 465-4648

Alaska Public Employees Association

January 28, 1988

Fairbanks Fire Fighters Association

LOCAL 1324

P.O. BOX 1739

FAIRBANKS, ALASKA 99707

PERA

Senator Mitch Abood, Chairman
Senate State Affairs Committee
P.O. Box V
Juneau, AK 99811

February 1, 1988

FEB 4 1988

Dear Senator Abood:

The majority of the members of Fairbanks Fire Fighters Local 1324 have directed me to communicate our position on PERA and binding arbitration to the Interior Delegation.

Prior to 1973, the Fire Fighters of the Fairbanks Fire Department were not recognized as a bargaining unit. Local 1324 tried to strike and gain recognition, the city had a court injunction issued. From 1973 to 1983 Local 1324 was recognized and negotiated contracts at the city's pleasure and convenience. The only recourse for emergency service bargaining units was the courts. PERA with binding arbitration was adopted in 1983 by the City Council. Since 1983 we have negotiated two contracts and have yet to go to binding arbitration or the courts on contract negotiation disputes. With PERA it is in the best interests of all parties to negotiate in good faith with reasonable requests. Neither party wants to go to arbitration as the results are unpredictable. Since 1983 the local political manipulations have not had as direct an impact on contract negotiations. The emergency service contracts are not as easily negotiated in the media. The emergency services are the core services of the city and should be insulated to some extent from the rapidly shifting views of special interest groups and political interests. The events surrounding negotiations and tax issues in 1987 are a classic example of why PERA and binding arbitration are necessary. During the contract negotiations in 1987 the Council was constantly approached by special interest groups demanding wage reductions. The media seemed to heighten the controversy. When our contract was signed September 1, 1987, some special interest groups were vocal with their displeasure of the negotiation process, blaming PERA because their lobbying had not achieved the results they wanted in the contract. Monday, January 25, 1988, a resolution brought before the City Council died for lack of a second.

Fairbanks Fire Fighters Local 1324 believes in PERA and binding arbitration and has strived to understand it and negotiate within the guidelines set down in the law. We are determined to oppose any attempt to weaken or discontinue the City's involvement in PERA. We believe that PERA is best for us and the public in the long term. We appreciate the efforts of those that support our views on this issue and encourage those that do not to communicate with us so that we might present our position in more detail.

Sincerely,

R. G. Duncan

Rocky Duncan, President, Local 1324

★ Fairbanks North Star Borough

809 Pioneer Road · P.O. Box 1267 · Fairbanks, Alaska 99707 · (907) 452-4761

RECEIVED
FEB 4 1988

February 1, 1988

SB 372 Applicability of PERA to Municipalities

Honorable Mitch Abood
Chairman
Senate State Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Abood:

I urge you to defeat SB 372. As a strong supporter of collective bargaining, I see this bill as the beginning of the end for public employee collective bargaining.

Sincerely,

Juanita Helms
Borough Mayor

JH:rlf

cc: Members, Senate State Affairs Committee
Interior Delegation

TESTIMONY TO SENATE STATE AFFAIRS COMMITTEE

SENATE BILL 372

February 3, 1988

My name is Barry Haight. I represent the Fairbanks Fire Fighters Association and I am also a professional fire fighter. The Fairbanks Fire Fighters oppose S.B. 372 and support the right of municipal employees to bargain collectively. That support includes binding arbitration as the appropriate method of impasse resolution for public safety employees.

While Fairbanks had originally opted out of the Public Employee Relations Act; bargaining of sorts continued with some employee groups. Then in the fall of 1983 due to discord; and lack of uniformity in dealing with employees, the City Council voted unanimously to place the City under PERA. Today you have before you legislation proposing to change that law as a solution to a local issue. We maintain that changing state law is not the answer and will not solve the local problem.

According to news reports, Fairbanks' Mayor requested this legislation so the City can avoid going to binding arbitration with police and fire fighters. He claims this is necessary because an arbitrator won't award pay and benefit concessions in favor of the City. Then the assertion is made that layoffs of fire and police personnel will be the result. Such statements and conclusions are not based on fact or experience and leave out relevant information.

I would like to take a couple minutes and provide some of that information to this committee.

The Fairbanks Fire Fighters have negotiated only one contract with the City since coming under PERA. That contract was amicably concluded five months ago without impasse or arbitration. It was approved by the City Council and not vetoed by the Mayor. It is remarkable that while negotiations were in progress, the Mayor was making public demands for concessions that were not made by the City's actual negotiator.

I think it is important for the committee to know agreements reached with the fire fighters contained wage and benefit concessions. In fact, all City employee groups have made a variety of wage, benefit and reduction of hours concessions.

Staffing levels in both the police and fire departments have been less than adequate for nearly a decade. In 1979 fire fighters and policemen were laid off and attrition by nonreplacement was begun and continues to date. The lack of public safety employees in Fairbanks today is not simply the result of the current revenue crisis. To attempt to draw a connection between lack of fire fighters and binding arbitration is deceptive and untrue. The present City Mayor has opposed hiring the proper number of fire fighters for almost six years, and this includes those years when huge amounts of shared revenue were available from the state and federal government.

The Fairbanks City Council does not share this negative view of binding arbitration or bargaining and rejected a resolution opposing binding arbitration at the January 25th council meeting. The resolution died for lack of a second.

Fairbanks has a local problem and part of that problem is revenue. While other communities have that same revenue problem the have reacted differently to it. Unlike Fairbanks they have a sales tax, and unlike Fairbanks their property taxes are considerably more than 2.8 mills.

Two Budget Committees selected and appointed by the Mayor within the last two years have urged increases in local effort for revenues These recommendations were shelved and twice the council's efforts at raising local revenues were vetoed by the Mayor.

City employees are doing their part; in addition to wage and benefit concessions, other noncontractual money saving work arrangements have been accomplished. Now all that is needed is a property tax increase of less than one mill to deterr further layoffs and start Fairbanks off in a more positive direction for the future.

Senate Bill 372 will not solve our problem. It will add to the mistrust and may deterr voluntary cooperation between employee groups and local government.

We ask you to allow Fairbanks to solve its own difficulties and not pass S.B. 372 from committee.

NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE
1411 W. 33RD AVENUE
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FAIRBANKS REGIONAL OFFICE
2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

February 4, 1988

To: Sen. Mitch Abood, Chair
Members, Senate State Affairs Committee

Re: SB 372; "An Act relating to the applicability of the Public Employment Relations Act to municipalities and political subdivisions."

NEA-Alaska opposes SB 372 in its present form.

The Legislature has established that collective bargaining for public employees is public policy and in the interests of more effective government; AS 23.40.070.

It is our feeling that providing for political subdivisions to have the opportunity to opt out of PERA absent a requirement that they provide for collective bargaining through a local ordinance similar to PERA would only lead to instability in employer/employee relationships and the high probability of additional and unnecessary litigation between the parties.

Further, for the Legislature to send out a message to political subdivisions that it is now permissible for them to opt out of PERA would be inconsistent with the original purpose and intent of PERA and would compromise the rights which have been established for public employees.

If the Committee is of a mind revise or modify SB 372, we encourage that you give serious consideration to mandating the applicability of PERA to all political subdivisions, including school districts for non-certificated employees, unless they have adopted a local ordinance or resolution similar to PERA which establishes the right of employees to organize and negotiate their terms and conditions of employment.

Thank you for your consideration of our concerns.

Respectfully submitted,

Bob Manners
Executive Secretary

Alaska State Legislature

REPRESENTATIVE
MARK BOYER

HOUSE FINANCE COMMITTEE

House of Representatives

FAIRBANKS

1098 LAKEVIEW TERRACE
FAIRBANKS, ALASKA 99701
(907) 456-6473

JUNEAU

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3466

MEMORANDUM

TO: Senator Mitch Abood, Chairman
Senate State Affairs Committee

FROM: Representative Mark Boyer

SUBJECT: SB 372

DATE: February 22, 1988

I believe the attached memorandum from Brian Phillips, City Manager of the City of Fairbanks, will clarify the City's position with regard to SB 372, and rectify any misapprehension of that position which may have been engendered by Mayor Walley's testimony of February 17. I would greatly appreciate it if you would read Mr. Phillips' comments into the committee record of SB 372.

SB 372

City of Fairbanks

MEMORANDUM

TO: Honorable Mayor, and City Council Members,
City/FMUS Department Heads
Union Business Agents & Stewards

FROM: BRIAN C. PHILLIPS, City Manager

SUBJECT: Public Employment Relations Act (as23.40)

DATE: February 16, 1988

The City Council on January 25, 1988 defeated, by non-advancement, a resolution opposing the continuance of certain PERA provisions. I interpret this policy setting action to be the City Council's support, by majority, for a status quo relative to the provisions of PERA. Therefore, unless otherwise legislated by the Fairbanks City Council, this office and all department heads of the City will refrain from giving any new written or oral testimony, recommendations, or interviews relative contrary to this policy position.

Over 60% of the City's $80.7 million dollar budget involves unionized personnel covered under this act; This directive affecting City employed personnel is intended to clarify this City's status quo position on PERA, relative to the recent action by the Fairbanks City Council, and to once again build upon the positive working relationship between the City and our employees.

Brian C. Phillips

BRIAN C. PHILLIPS
City Manager

BCP/sam

cc: Interior Delegation

(Senator or Representative)
Pouch V
Juneau, Alaska 99811

Dear (Senator or Representative)

As a member of the labor force in the Matanuska-Susitna Borough, I am concerned for the need to have House Bill 170 passed and made into law, and to have Senate Bill 372 defeated.

Public employees all over this State have the right to collective bargaining. I feel ALL employees are entitled to participate in formulating decisions that pertain to their employment. It is intolerable that the State of Alaska would have different standards for various groups of people. Alaska Statute Sec.23.40.070 DECLARATION OF POLICY clearly states reasons why ALL employees should be included.

> ".....joint decision-making is the modern way of administering government. .....become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly government is made more effective. .....best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between goverment and its employees and to protect the public by assuring effective and orderly operations of government.

In closing, I urge appropriate action from you on this legislation - Pass HB 170 and Defeat SB 372.

Coll. BARGaining Municipalities/ School

Applicability of PERA to municipalities

Thank you.

Sincerely,

Sherry L May
HC03 Box 8438-2
PALMER 99645

Pouch V
Juneau, Alaska 99811

Collective Bargaining; Municipalities

Dear Senator Abood,

As a member of the labor force in the Matanuska-Susitna Borough, I am concerned for the need to have House Bill 170 passed and made into law, and to have Senate Bill 372 defeated.

Public employees all over this State have the right to collective bargaining. I feel ALL employees are entitled to participate in formulating decisions that pertain to their employment. It is intolerable that the State of Alaska would have different standards for various groups of people. Alaska Statute Sec. 23.40.070 DECLARATION OF POLICY clearly states reasons why ALL employees should be included.

> ".....joint decision-making is the modern way of administering government. .....become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly government is made more effective. .....best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to pormote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.

In closing, I urge appropriate action from you on this legislation - Pass HB 170 and Defeat SB 372.

Thank You.

Sincerely,

June Perry
P.O. Box B 70449
WASILLA 99687

SB 462 Legislature —

SENATOR MITCH ABOOD
STATE AFFAIRS COMMITTEE
POUCH V
JUNEAU ALASKA 99811

DEAR SENATOR MITCH ABOOD,

AS A MENBER OF THE LABOR FORCE IN THE MATANUSKA-SUSITNA BOROUGH, I AM CONCERNED FOR THE NEED TO HAVE HOUSE BILL 170 PASSED AND MADE INTO LAW, AND TO HAVE SENATE BILL 372 DEFEATED.

PUBLIC EMPLOYEES ALL OVER THIS STATE HAVE THE RIGHT TO COLLECTIVE BARGAINING. I FEEL ALL EMPLOYEES ARE ENTITLED TO PARTICIPATE IN FORMULATING DECISIONS THAT PERTAIN TO THEIR EMPLOYMENT. IT IS INTOLERABLE THAT THE STATE OF ALASKA WOULD HAVE DIFFEERENT STANDARDS FOR VARICUS GROUPS OF PEOPLE. ALASKA STATUTE SEC. 23.40.070 DECLAARATION OF POLICY CLEARLY STATES REASONS WHY ALL EMPLOYEES SHOULD BE INCLUDED.

"..... JOINT DECISION-MAKING IS THE MODERN WAY OF ADMINISTERING GOVERNMENT. .....BECOME MORE RESPONSIVE AND BETTER ABLE TO EXCHANGE IDEAS AND INFORMATION ON OPERATIONS WITH THEIR ADMINISTRATORS. ACCORDINGLY GOVERNMENT IS MADE MORRE EFFECTIVE. .....BEST WAY TO HARNESS AND DIRECT THE ENERGIES OF PUBLIC EMPLOYEES EAGER TO HAVE A VOICE IN DETERMINING THEIR CONDITIONS OF WORK, TO PROVIDE A RATIONAL METHOD FOR DEALING WITH DISPUTES AND WORK SSTOPPAGES, TO STRENGTHEN THE MERIT PRINCIPLE WHERE CIVIL SERVICE IS IN EFFECT AND TO MAINTAIN A FAVORABLE POLITICAL AND SOCIAL ENVIRONMENT. THE LEGISLATURE DECLARES THAT IT IS THE PUBLIC POLICY OF THE STATE TO PROMOTE HARMONIOUS AND COOPERATIVE RELATIONS BETWEEN GOVERMENT AND ITS EMPLOYEES AND TO PROTECT THE PUBLIC BY ASSURING EFFECTIVE AND ORDERLY OPERATIONS OF GOVERNMENT.

IN CLOSING, I URGE APPROPRIATE ACTION FROM YOU ON THIS LEGISLATIION- PASS HB 170 AND DEFEAT SB 372.

THANK YOU.
SINCERELY,

CLAUDIA DOLFI
POB 52
SUTTON, AK 99674

PUBLIC EMPLOYEES

LOCAL 71

DON VALESKO
PRESIDENT
ASSISTANT BUSINESS MANAGER

HEADQUARTERS
2510 Arctic Blvd
Anchorage, Alaska 99503

208 Wendell Room 205
Fairbanks, Alaska 99701

701 W. 8th Street
Juneau, Alaska 99801

February 25, 1988

Senate State Affairs Committee
STATE OF ALASKA
P.O. Box V
Juneau, Alaska 99811

Dear Senators:

Local 71 would like to go on record as being against Senate Bill 372 (SB 372) and the unethical handling of the February 17, 1988 teleconference. Never before have I seen such an injustice as the one perpetrated by the sponsor of this bill.

At the teleconference there was greater than a 5-1 ratio of people against SB 372, with thirty-three (33) against the bill and six (6) people for it. Senator Fanning, in an effort to support his attack on public employees, solicited the testimony of private interest groups. This is supported by his requesting two (2) seperate sign-in sheets: one for the bill and one against it. He then hand-picked from these lists who was to testify in an effort to make it appear that testimony was equal. Adding insult to injury, Donna Gilbert, who signed in after myself and approximately twenty-five other individuals, was one of the first to testify. This is clearly a misuse of the teleconference system by Senator Fanning.

If you were to support this bill, you would be going on record as supporting Senator Fanning's attack on public employees and organized labor.

Sincerely,

David L. Lambert
Business Representative
Interior Region

Senate State Affairs Committee: Senator Abood - Chairman
Senator Uehlings - Co-chairman
Senator Hensley - member
Senator Josephson - member
Senator Fanning - member

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

TELECONFERENCE TESTIMONY

S.B. 372

1:30 p.m.
February 17, 1988

SENATE STATE AFFAIRS COMMITTEE

I am writing in opposition to SB 372 Pera

This bill, as I read it, would cause utter chaos in labor/management relations and could virtually eliminate all collective bargaining in our political subdivisions. Why? Because if a political subdivision chose to opt out of PERA (under the provisions of this bill) there is not a procedure for continuing a collective bargaining relationship once existing agreements have expired. Once existing agreements have expired, the collective bargaining process and other labor/management relations cease to exist, at least in any form that provides some semblance of equality. This bill in effect disenfranchises thousand of public employees from the decision-making and problem-solving processes now provided by law.

Senator Fanning told us here in Fairbanks last Saturday, February 13, that none of the above would occur if SB 372 is enacted into law.

The driving forces for the recent attacks on PERA are based on misinformation and misconceptions.

<cont>

For the past two years we here in Fairbanks have been privy to hearing the attacks on PERA. More Specifically, the criticism seems to be aimed at the binding arbitration provisions for Class I employees. Arbitrators are being blamed for their lack of sensitivity to local issues as they relate to wages and fringe benefits. Arbitrators are accused of not taking under consideration the employers' ability to pay, the status of the local economy, and comparable wages locally and across the state.

These criticisms are a profound distortion of the facts. I have been in this business for 18 years and my experience leads me to state that the very first consideration an American Arbitration Association arbitrator gives to any salary issue dispute is the EMPLOYER'S ABILITY TO PAY and numerous related issues, i.e. comparable salaries, the local economy, etc.

The testimony I am giving can be verified if you will only read a AAA arbitrators's decision in any wage dispute.

You must remember that the issues before an arbitrator have been seriously discussed and negotiated prior to the arbitrator even receiving the issue for determination. In addition, it is also important to remember that not many collective bargaining issues go through the arbitration process because both parties would, in most cases, desire an at the table agreement.

Thank you for your time and interest.

H. Frank Belts

H. Frank Belts
Business Manager

Alaska State Legislature

Please enter into the record my testimony to the SENATE STATE AFFAIRS committee name

committee on BILL #372 bill/subject . dated FEBRUARY 17, 1988 .

SEANATE BILL #372 IS A DIRECT ATTACK ON COLLECTIVE BARGAINING. PERA QUARANTEES OUR RIGHTS TO BARGAIN AND TO USE THE GRIEVANCE PROCESS,

SINCE WE HAVE FOUGHT LONG AND HARD TO PROTECT OUR RIGHTS UNDER PERA WE PROTEST THE PASSAGE OF THIS BILL,

JIM CANARY - CHAPTER CHAIR APEA KETCHIKAN GATEWAY BOROUGH

LEE VOLLMER - SAC DELEGATE APEA KETCHIKAN GATEWAY BOROUGH

SHERRIE SLICK - S. E. EXECUTIVE BOARD APEA
MEMBER APEA - KETCHIKAN GATEWAY BOROUGH

Signed: _____
Testifier

ALASKA PUBLIC EMPLOYEES ASSOCIATION
Representing (Optional)

Address

Phone No

SENATE BILL 372, testimony

DATE: 17 February 1988

By: Donald A. Callahan, Jr.
475 Halvorson Rd.
Fairbanks, Alaska 99709
907-479-2678

Occupation: Paramedic-Firefighter
Fairbanks Fire Dept.

I am testifying against the passage of this bill. The reason I am against this bill is that it will destroy the effectiveness of our small union organizations in the state. Our Union, the International Association of Fire Fighters, Local 1324, has 40 members. If this bill passes we will have little recourse in dealing with disputes with our employer. We do not have the right to strike and even if we did, our small number would have little effect towards our goals. There has been talk by some that the right to strike should be given to police and fire employees. We feel the public safety employees have a moral obligation not to strike even if the legal right was given.

At this time under PERA, if an impasse in contract negotiations or other disputes arise, an arbitrator is selected by the State Department of Labor to hear both sides and make a legal decision. The impasse will then be settled. Without PERA the employer has no legal motivation to complete contract negotiations or to settle other contract disputes if he does not want to. This would especially be true with small public safety unions with little economic strength or membership clout.

PERA may not be needed for contract enforcement between an employer and a large union such as Teamsters or the Operating Engineers who have a healthy treasury and large body of members. When they strike the loss of their work force is immediately felt by the community. Fire and police employees do not have these same privileges.

In his presentation of this bill, Senator Fanning has stated its passage will insure city and municipal employees that they will be given fair and beneficial treatment. Unfortunately there is evidence that this would not be true. In a work session of the Fairbanks City Council, on November 25th, 1985, the present City Attorney stated and I quote, "We used to dictate to the unions how it would be, but now it is easy for them to file an Unfair Labor Practice with PERA." So I ask you, without PERA where will we resolve unfair labor practices? In 1979 City Management unilaterally declared that our union contract was void and placed all city employees under a new city personnel ordinance. The fire chief immediately issued a memorandum which eliminated 13 negotiated benefits that the employees had under contract. Many of these items were not of a monetary nature and we believe they would have adversely effected the operation of the department. He further stated in that memo that more changes were forthcoming. It was later determined that the contract was valid and so these changes were not made.

I am in a unique position as a government employee. I used to be in top management of the City and was a non-union employee. I do not have a history of a strong union affiliation. I was City Engineer for three years and Public Works Director for about one and a half years in charge of all City facilities maintenance except for the Municipal Utilities System. At the beginning of that period the city work force was non-union. My workers went for approximately three years without a raise in pay while wages in the private sector were going up 10 percent or more per year in the private sector due to pipeline activity. I made appeals to City Council through the City

Manager to make wage concessions to the employees so they would not unionize. No concessions were made and the city employees formed and joined various unions.

I believe this bill has been brought to you in the legislature for one reason. It is an attempt by a few individuals to solve a local financial crisis by appealing to you at the state level to enact vindictive legislation. Our city council realizes that the elimination of PERA is not the answer to our local financial problems. In their last council meeting the resolution to support passage of Senate Bill 372 was presented by one member of the council. His resolution died because it did not receive a second by any of the other five members. This indicates to me that they did not support the repeal of PERA.

The passage of the PERA bill would force small local unions such as our local police and fire department union to join forces with the large unions in the State in order to maintain our effectiveness. I believe our small union groups are much more responsive to our city's needs.

I ask you to let this local issue be resolved at the local level where it belongs. Please vote against Senate Bill 372.

Ronald Collins

This testimony was presented verbally to the telephone on 17 February 1993.

R. C.

Let me begin by stating that I am against Senate Bill 372. I have been a voting resident of Fairbanks since 1973 and an employee of the Fairbanks City Fire Department since 1981.

There has been much said in many circles about PERA and what it means to many people. I thank you for the opportunity to express my opinions.

The legislation Senator Fanning introduced as SB-372 reminds me of the days of the horse and carriage. When His Lordship's carriage carrying Mr. Randolph had it's lantern boy running ahead to light his way through the halls of our state legislature. It also carries with it a reminder of the days of the sweatshops and imported labor. If a governing body and those who work for them to provide vital services; and here I refer to Police protection, Fire protection, water and power distribution, and sewage removal; if these workers do not have a method to break an impasse during collective bargaining - then there is truly no bargaining process.

Fairbanks's city mayor stands alone among the elected government leaders of this municipality in trying to return to those days of yesteryear. By that, I mean he does not have the support of the city council in his action or statements on, about, or involving PERA. This is evidenced by the city councils refusal to even consider a resolution supporting a bill to change PERA. Such a resolution died before our city council in January of 1989 for lack of a second.

An example of the dark times can be seen in the statement made by the city attorney during a budget work session on November 25 1985. Under pressure from the city mayor and others ,not all of whom are apart of our local government, he said, " we use to dictate to the unions now it would be...".

Gentlemen, we in Police and Fire have been thru this before. In 1983 the city voted unanimously to go under PERB. Our present mayor did not then, nor does he now have the fortitude and backing for an outright VETO. Instead he tries to convince you of untruths or half truths by means of insinuations and vague statements which when faced with the facts he will either rudely cut you off on his radio talk show or reply "That is not really what I meant".

This bill is clearly a partisan issue: It is anti-union, designed by those persons intent on union busting and denying the employees that provide vital services to the public the opportunity to enjoy job security and the ability to plan for the future of their families; their children's future. All the while we risk ourselves in fires and hostile or violent situations not experienced by legislators, store owners, normal homemakers, or the tourists we protect. Yet the people (the public) wants- NO -they expect us to be there when they call. We are not allowed to- NO -we are forbidden "TO STRIKE". We can not say;

"NO- we are not coming- your house will just have to burn"

"NO- I will not save your child from the flood of 1967 or,

the earthquake of 1964, or the ill happenings of tomorrow".

We are expected to risk our lives for them and those they hold dear. Yet a simple matter of the right to collective bargaining with binding arbitration as a last resort is too much to give us in return. How can we be expected to concentrate on giving professional service and responding to our citizens emergency needs while wondering if we will be the ones to loose our homes, our futures, and our jobs through the whims of one person who can arbitrarily change the terms and conditions of our employment to cover up their inability to properly manage our city. Gentlemen, we are human and such thoughts as these play on our minds while a bill, like SB-372, is alive in our state's legislature.

It astounds me why our local issue of city personnel manning is drug through the halls of our state legislature by our mayor and (under his direction) the city manager. What astounds me more is why an Alaskan Senator would pick up on this issue and introduce legislation unless it is designed to bolster his views of:

1) not hiring local Alaskan residents

2) anti-union practices and union busting

3) pro oil company sympathies.

I believe Mr. Fanning would do better by spending his time at our capital, short as it will be, in trying to increase state oil revenues to the people of the state of Alaska.

I am opposed to SB-372 because of the dire consequences it will have on me and my family and the potential down grading of services the citizens of our city will receive should it be enacted into law. I urge you to kill this bill now before it costs the life of one of us.

Thank you,

Cliff Mercer

Alaska State Legislature

Please enter into the record my testimony to the State Affairs committee name

committee on SB 372 bill/subject, dated 2/18/88.

I favor SB 372 because it makes PERA optional for municipal governments: the level of government closest to the individual. Although Fairbanks's mill rate has been 2.8 since 1985, the assessed value of Fairbanks has roughly doubled since 1983; and though Fairbanks has done well previously with state and federal assistance, it is facing a budget deficit in excess of $1.5 million.

The private sector and union members, public sector without binding arbitration and the private union members, have to face the vagaries of the economy. The 1st class public employees have the privilege of wage and benefit increases regardless of the ability of the rest of the local economy to pay. This situation is supported by the union leaderships which seem quite willing to rob Union Member Peter to pay Union Member Paul.

PERA has had the effect of raising 1st class wages and benefits out of proportion to the rest of the local economy. This is similar to the situation in the book Animal Farm in which the elite determined that all citizens of animal farm were equal, but some were more equal then others. Just like PERA.

Signed: Marlene M. Leak, DPM

Testifier / Marlene M. Leak, D.P.M.

self

Representing (Optional)

771 8th Avenue, Fairbanks, AK 99701

Address

(907) 452-1015

Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Senate Bill 372
committee name

committee on PERA , dated 2/17/88 .
bill/subject

Please add my testimony for Senate House Bill 372.

It is High time We CHOSE METH.
To SAVE MONEY On These COSTS.
KEEP it Simple - KEEP it LOCAL!

Thank You

Signed: Angie Kruckenberg ANGIE KRUCKENBERG
Testifier

Representing (Optional)

PO Box 10449 Fairbanks
Address

907-457-6270
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the State Affairs committee name

committee on Bill 372 bill/subject, dated 02-17-88.

If everything was always fair + reasonable we would not need Labor unions, Contracts or Federal Labor Laws. There are not State Labor Laws that protect Employees that work for municipalities. As Law Enforcement we need protection from the Local political arm, and find it hard to believe that anyone can support strikes by Police + Fire Fighters.

Collective bargaining + binding arbitration has not been unfair to the City. It has provided stability that is needed, and should not change.

Signed: Scooter Welch
Testifier

Fairbanks Police Dept. Employees Assoc.
Representing (Optional)

650 7th Ave
Address

459-6500
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the State Affairs committee name

committee on SB 372 bill/subject, dated February 17, 1988.

Refer to attached, please.

Signed: kayle Lyn Schoenborn
Testifier

self
Representing (Optional)

440 Shannon Drive, Fairbanks, Ak
Address

452-8683
Phone No.

TESTIMONY ADDRESSING SENATE BILL 372

TELECONFERENCE 2/17/88

My name is Kayle Schoenborn and I am here to testify in opposition to this bill. I have been with the Fairbanks Fire Department for seven years. For half of those years I have worked under the threat of layoff and have actually received two layoff notices. As a public employee I am tired of being held responsible for Fairbanks' revenue problems. There is a serious issue that goes beyond the misplaced blame suffered by public employees: the question of the public's safety.

In 1974, the Fairbanks Fire Department funded sixty-seven firefighting positions. Those sixty-seven protected 214 million dollars in property. The thirty-three firefighters we have today protect one billion, seventy-three million dollars in property. Our population has grown proportionately in those fourteen years. Our department is down by more than half.

The safety of the citizens of this community has become a political issue. The lives and property of the people we are charged to protect are seriously jeopardized. I am witnessing a degradation of my profession and a deadly decline in the quality of protection we are being allowed to give. I urge you to consider the welfare of the people who gave you the priviledge of office.

It's embarrassing to see Fairbanks' dirty linen being aired in Juneau, this is a local issue generated by a vocal, regressive radical special interest group. To clear up any misconceptions, please consider: The City Council opposes this bill; a resolution to support it could not even muster a second. The City Manager is not supporting this bill. The Borough Mayor opposes this bill.

A ridiculous cliche has become a buzzword in Fairbanks: if the unions don't take concessions, there will be layoffs. Late last year a contract was signed with the city and the firefighters. The council approved it; the mayor did not veto it, the negotiations were amicable and there was no binding arbitration. The document contained wage and benefit reductions, as did all the city contracts signed recently.

HB 372 aims to remove the one mechanism which places both negotiating parties on equal footing: binding arbitration. Without some form of impasse resolution, collective bargaining is useless. Management can dictate. The right to bargain fairly was a hard-won democratic freedom. One of the underlying themes in this bill is an elitist desire to control and subjugate the worker: union busting.

I urge you to defeat this bill and seek a simple solution to our revenue woes: direct the oil companies to pay their fair share. It has been some legislators' stance for years to court the oil companies'

favor, oftentimes in exchange for fat compaign donations. This obeisance is costing every Alaskan, but most particularly the worker. I ask that you examine the dishonest motives beneath this piece of legislation and defeat it.

Thank you for allowing me to speak.

Kayle Schoenborn, 440 Shannon Drive, Fairbanks, Ak

Alaska State Legislature

Please enter into the record my testimony to the Senate State Affairs
committee name

committee on S.B. # 372 , dated February 7 1978.
bill/subject

See attached copy

Signed: Sandra L. Simons
Testifier

Fairbanks Fire Dept. 9
Representing (Optional)

P.O. Box 2214 Fairbanks Ak. 99707
Address

488-2415
Phone No.

Testimony to Senate State Affairs Committee
Senate Bill #372
February 17, 1988

My name is Sandra Grisone. My husband is a proffesional Firefighter. Along with the Fairbanks Firefighters, I oppose Senate Bill #372 and support the right of municipal employees to bargain collectively. My support includes binding arbitration as the best method of impasse resolution for public safety employees. Without impasse resolution there is no future for collective bargaining.

State Senator Ken Fanning was quoted in The Daily Newsminer (1-28-88) that "The legislation will help promote fiscal stability while at the same time it will ensure city and municipal employees

that they will be given fair and beneficial treatment." This is the same Senator that does not support local hiring. Senator Fanning "thinks" if municipal governments can't reduce pay and benefits for their police and firemen, their only option is to lay people off. This is not the answer due to the fact that the City Employees cannot give enough to solve Fairbanks problem. The City of Fairbanks problem is not Pera or high wages. It is the City's refusal to replace declining state and federal revenues with taxes.

The City has created the illusionment of five personal having cushiony jobs. This is not a fact. There are continuous threats of

lay off even after cuts. The Fire Dept. personel, excluding managment and clerical, has dropped fourteen (14) positions from 1986 to 1988. At this time there are thirty-three (33) positions left to protect the city. It is my opinion that both Fire and Police Dept. have too high of a managment and clerical personel.

The Fire and Police staff have been drastically reduced to the point that the publics safety has already been compromised. The Public Safety Employees contract not only deals with pay and benefits, but with employee safety which has been widely disregarded by City Managment.