

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6243 SENATE HEALTH, EDUCATION & SOCIAL SERVICES

647

S B

15

FILE 1

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2/23/89
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER HESS
FIN

DATE TURNED INTO OFFICE 3/23/89

1/9/89

Mr. President:

GRA C&RA Committee considered SB 15
public school employees' collective bargaining agreements'; efd

and recommended:

- replace with CS C&RA same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached ^(Education - Courts) zero ^(Labor) fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

[Handwritten signatures]

OTHER RECOMMENDATIONS

[Handwritten: "no rec"]

[Handwritten: "Do NOT Pass"]

Committee back recommendation

Committee Report CSSB 15 C&RA
 Position Papers: ACSA, AASB, NEA
 Fiscal Notes: Dept. ED. Courts, Labor

SENATE COMMITTEE REPORT

FURTHER

FIN

3/23/89

DATE TURNED INTO OFFICE 4/29/89

Mr. President:

HESS

SB 15

Committee considered

public school employees' collective bargaining agreements; efd

and recommended

replace with _____ CS SB 15 (HESS)) same title
 or adopt _____ CS _____) new title
 attached amendment(s) and technical title change (HB only)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

*Fiscal Notes Forthcoming.
 Labor, Courts, Education.
 4/29/89 DCM*

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Tom Duncan - No Rec
Tim Kelly - No Rec
Log Jones - Do Not Pass
Al Adams - DO NOT PASS

Paul Trish (Do Not Pass)
 Chairman signature and recommendation

Committee Backup attached

Wessler
SJR - 43

"People be the arbitrist"

2 David Crosby

3 Jean Buchannon

4 Kathy Jacobson - Yukatat

5. ~~Hot~~

6. Sue Hare

7.

Bind Arb.

Arbitrator

Sunset

Hold Harmless

issue side of later or first.

Dunca.

#1

Section I

4/2

#2

Amerl 2 -

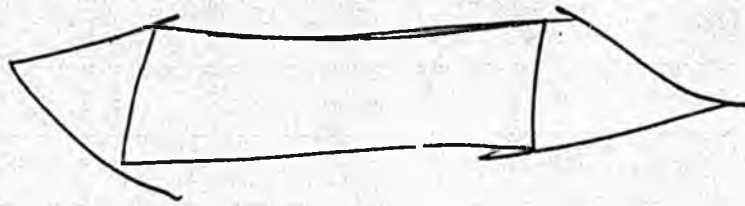
4/1

#3

Amerl 3 -

Sec 5 C
Sec 4 B

3/2



Sch Bd - Full Funding

|| Pupil || Transp. || Sch Debt ||

Original

10

HES - Adopted. 4/1

- 4 issue - 1. tenure 2-4
- 2. Contract Ten.
- 3.
- 4.

Reduction in Revenue

1. <u>Trivias</u>	2) <u>Bind Arb</u>
2	
3.	
4	
5.	
<u>Bind Arb</u>	20

NEA - Union

Yes

Yes

Yes (Hew)

No

CRA

Para - Still Bind Arb.

Limited RT. to strike

→ Still Bind Arb.

∴ RT. to manage

i.e. Oct.

CRA - Compromise -
Hes -

Verification

Finality

Arbitrator

3rd Party at the end
Vote of the people -

Voters



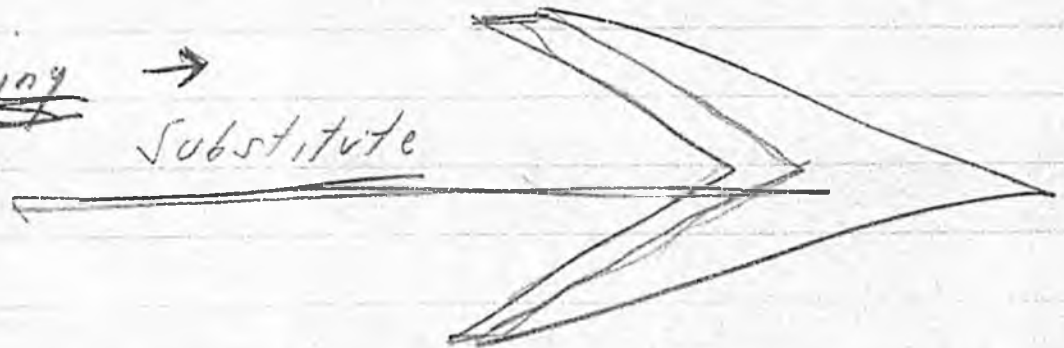
Another Version →

Drew — Arbitrator — Must be Alaskan

John — State Salary Scale — Statewide
NEA — Would like to be involved if
statewide salary plan were adopted.

Ad — "Thank a Teacher"

Lobbying →
Substitute



Susan Adams →

FbKs →

Yes

→ John Sears? Yes
Teacher, Mat Su

Package - (Picketing - Strike)

→ Russ Mc Dowel - Jun. Douglas.
(Mr. Siberow - Reasonable People)

Fake
NOT reasonable - (Salary)



"Compromise" -

→ Carl Rose "Done deal?"

Ed Impact

4/10/11

ANWR



Article 2. Public Employment Relations Act.

Section

- 70. Declaration of policy
- 80. Rights of public employees
- 90. Collective bargaining unit
- 100. Representatives and elections
- 110. Unfair labor practices
- 120. Investigation and conciliation of complaints
- 130. Complaint and accusation
- 140. Orders and decisions
- 150. Enforcement by injunction
- 160. Power to investigate and compel testimony
- 170. Regulations
- 180. Penalty for violation of order or decision
- 190. Mediation
- 200. Classes of public employees; arbitration

Section

- 210. Agreement
- 212. Agreement with the Board of Regents
- 215. Funding and legislative approval
- 220. Labor or employee organization dues and employee benefits, deduction and authorization
- 225. Exemption from Public Employment Relations Act
- 230. Assistance by Department of Labor
- 240. Effect on certain units, representatives and agreements
- 245. Postsecondary student involvement in collective bargaining
- 250. Definitions
- 260. Short title

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 263 (1975).

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

Article applicable unless state political subdivisions reject it. — The legislature provided for this article to be applicable to all political subdivisions of the state unless they rejected it rather than making the article inapplicable unless affirmative steps are taken by these same subdivisions to adopt the act (see § 4, ch. 113, SLA 1972). *State v. City of*

Petersburg, Sup. Ct. Op. No. 2341, 533 P.2d 263 (1975). Section 4, ch. 113, SLA 1972, temporary. — Had the act been permanent, § 4, ch. 113, SLA 1972 would have had effect during the duration, it would have been applicable to the Anchorage Mun. Employees Ass'n v. Municipality of Anchorage, No. 2204 (File No. 45 (1980)).

When article may be rejected. — Article may be rejected if it indicates that municipalities exempted themselves from the purpose of retaining their labor relations, a purpose of continuing collective bargaining rather than to interfere with employee rights. *Alaska Pub. Employees Ass'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976). *International Bhd. of Electrical Workers v. Municipality of Anchorage*, Sup. Ct. Op. No. 1547, Sup. Ct. Op. No. 6116, 653 P.2d 332 (1980).

Rejection of this article does not confer an undue advantage in the negotiation of a new collective bargaining agreement and does not constitute an impermissible interference with the right of employees to organize and bargain collectively in derogation of the declaration of policy. *Alaska Pub. Employees Ass'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1328 (File No. 3045), 555 P.2d 552 (1976).

Rejection must be partial. — It is not impermissible for the legislature to intend that the article must be rejected in part. *State v. City of Petersburg*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

Prior to becoming aware of such activity, municipalities may exempt themselves from the article without interfering with the employees' freedom of choice. *State v. City of Petersburg*, Sup. Ct. Op. No. 1175 (File No. 2341), 538 P.2d 263 (1975).

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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

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 of Sitka v. International Workers, Local 1547 2578 (File No. 6116),

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

If there is no implied exception, the personnel under this article are not the same people. AS 23.40.070 provides the broader coverage and was likely left in place to designate the common work as the state's responsibility. Hafling v. Inlandboatmen's Union, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).

"Public employee teachers." — The legislature defines "public employee teachers" from the Public Employment Relations Act because of its relations purpose of being fulfilled with regard to

Collateral reference to Labor and Labor Relations Act, 1975.

Sec. 23.40.070. joint decision-making. If public employee decision-making procedures have become more important, information on operations of government is made more important. The enactment of public employment relations of public employee relations of work, to provide and work stoppage is in effect an environment. The legislature to promote harmony and its employees orderly operations by

ari materia. — Since not be treated as an this article, and since repeal AS 23.40.040 by tutes are construed in ng v. Inlandboatmen's . No. 1743 (File No.) (1978).

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

NOTES TO DECISIONS

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

(1980); *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)

Quoted in *Alaska C. Fed'n of Teachers Local of Alaska*, Sup. Ct. Op. 6881, 669 P.2d 1299. Applied in *Northw*

Collateral referenc
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stoppage, 37 ALR3d 1
Right of public empl
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Validity and constru

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Sec. 23.40.100.
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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).

organize for the

h and enter into matters of wages, nt; public employees.

t Relations Act (AS 60). January 23, 1978,

35.120(b) and AS take inclusion in the retirement system (AS 690) a condition of state employees and mandatory, the legislature intended the ns of the public at system to apply to and benefits under the retirement system may under the Public rement Act (AS 30). January 23, 1978,

Educ. Ass'n v. ist., Sup. Ct. Op. No. 648 P.2d 993 (1982). Community Colleges' al 2404 v. University p. No. 2729 (File No. (1983).

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ublic employees ation to bargain sing, and engage gaining or other

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 875.

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 *Haffing 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 which is the exclusive unit, including but not limited to an exclusive representative.

(b) Nothing in this section prohibits an agreement with an employee organization

(1) membership dues after the 30th day of the effective date of the agreement;

(2) payment by the employer of a service fee to reimburse the employee for the expense of representation.

(c) A labor or employer may not

(1) restrain or coerce

(A) an employee in AS 23.40.080, or

(B) a public employer in its capacity as an exclusive representative for the purpose of the handling of grievances;

(2) refuse to bargain with an employer, if it has been certified under AS 23.40.070 — 23.40.080 as the exclusive representative of employees in an ap

Similarity to federal labor laws: graphs (a)(1) and (a)(3) similar to § 8(a)(1) and (a)(3) of the National Labor Management Relations Act, 29 U.S.C. § 158(a)(1) and (a)(3). A. C. v. *Colleges' Fed'n of Teachers*, University of Alaska, 669 P.2d 2729 (File No. 6881), 669

For establishment of U.S.C. § 158(a)(3), see A. C. v. *Colleges' Fed'n of Teachers*, University of Alaska, 669 P.2d 2729 (File No. 6881), 669

Derivative violation of (a)(3). — A violation of (a)(3) derivatively includes a violation of (a)(1) as well as discrimination in hiring. The conditions also coerce employees in their rights to gain collectively and engage in concerted activities. A. C. v. *Colleges' Fed'n of Teachers*, University of Alaska, 669 P.2d 2729 (File No. 6881), 669

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(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 a 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 anti-union 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 *Hasling 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).

Applied in *Hasling Union*, Sup. Ct. Op. 3438), 585 P.2d 870

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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 *Hasling 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 *Hafing 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 *Hafing 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)

NOTES TO DECISIONS

Applied in *Haffling 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. 6053, 658 P.2d

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Ass'n v. State, Sup. Ct. Op. No. 2607 (File No. 6053), 658 P.2d 76^o (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 *Hafing 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 *Hafing 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. — 1976 provides: "If 23.40.225 is declared void by a court of competent jurisdiction, then that entire section shall be void."
Opinions of attorney general

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

Sec. 23.40.230. Employees are invited to participate in the personnel board. Employees are invited to participate in the personnel board, including but not limited to, conducting elections. (§ 2 ch 113 SLA 1972)

Sec. 23.40.240. Collective bargaining agreements. Notwithstanding any other law, no collective bargaining agreement shall be entered into between an employer and a representative of employees unless the agreement is in writing.

Applied in *Hafing v. Inlandboatmen's Union*, Sup. Ct. Op. No. 1743 (File No. 3438), 585 P.2d 870 (1978).
Arctic Regional Education Council

Sec. 23.40.245. Collective bargaining. (a) Faculty or other employees of a public institution of higher education, the public institution shall (1) attend and observe the representative of the collective bargaining unit; (2) have access to the representative of the unit, including copies of the collective bargaining agreement. (b) Student representatives shall have access to the substance of collective bargaining activities under (a) by the employer or

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 author-

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§ 23.40.250 LABOR AND WORKERS' COMPENSATION § 23.40.250

ity 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). *Haffing 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. *Haffing 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).

Now 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 910 (1983).

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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;

§ 23.45.010

predecessor to the attendance areas, subject to this article of the "district" whose employees are exempt and therefore did not elect to bargain which it is the Alaska State Teachers' Association and waived its option under this provision that the regional attendance areas also have the right to assert the statutory regional educational system as not simply successors to the State Operated School System entities which have the powers to run their districts as they see fit. Regional Educ. Attendance Areas, Alaska Pub. Serv. Sup. Ct. Op. No. 1811 (1982), 591 P.2d 1292

to determine collective bargaining. Because the employees of school districts are employees of the state and employees under this state personnel board of Labor has jurisdiction over the applicability of a collective bargaining agreement to the attendance areas. Regional Educ. Attendance Areas, Alaska Pub. Serv. Sup. Ct. Op. No. 1811 (1982), 591 P.2d 1292

State v. Alaska Pub. Serv. Sup. Ct. Op. No. 2657 (1983), 592 P.2d 916 (1983).

AS 23.45.010 may be cited as AS 23.45.010 (SLA 1972)

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§ 23.45.010 LABOR AND WORKERS' COMPENSATION § 23.45.010

(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)

Sec. 23.40.070. Declaration of policy.**NOTES TO DECISIONS**

Cited in *Walt v. State*, Sup. Ct. Op. No. 3284 (File No. S-1338), 751 P.2d 1345 (1988).

Sec. 23.40.075. Items not subject to bargaining. The parties may not negotiate terms contrary to the reemployment rights for injured state employees under AS 39.25.158. (§ 1 ch 86 SLA 1988)

Sec. 23.40.200. Classes of public employees; arbitration.**NOTES TO DECISIONS****I. Arbitration.****II. ARBITRATION.**

Only nonstriking employees entitled to compulsory arbitration. — This section unambiguously extends the right to compulsory arbitration only to those employees who are forbidden from striking, i.e., class (a)(1) employees. Class (a)(2)

and (a)(3) employees are not entitled to binding arbitration simply because they happen to be in a bargaining unit with class (a)(1) employees. *Alaska Pub. Employees Ass'n v. City of Fairbanks*, Sup. Ct. Op. No. 3311 (File No. S-2181), 753 P.2d 725 (1988).

Sec. 23.40.210. Agreement.**NOTES TO DECISIONS**

Constitutionality. — This section's cost-of-living wage differentials do not violate the federal constitution's commerce clause since Alaska acted as a "market participant" rather than as a "market regulator." *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

Because the existence and amount of the wage differentials imposed under this section reasonably further a legitimate state purpose, the wage differentials do not violate the equal protection clause of the fourteenth amendment. *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

Imposing wage differentials according to Alaska Marine Highway System (AMHS) employee's states of residence did not infringe on their "right to travel" guaranteed by the fourteenth amendment since the wage adjustments do not penalize AMHS employees for migrating to or

emigrating from Alaska. *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

This section's wage differentials do not violate the privileges and immunities clause because the interest "burdened" by this section's wage differentials is not "fundamental" in nature, and even if this interest were fundamental for purposes of privileges and immunities analysis, Alaska has a substantial interest in eliminating disincentives that discourage Alaska Marine Highway System employees from residing in the state, and its wage differentials bear a "substantial relationship" to its objective of eliminating, or at least minimizing, these disincentives. *International Org. of Masters, Mates & Pilots, Pac. Maritime Region v. Andrews*, 626 F. Supp. 1271 (D. Alaska 1986).

This section does not violate the Privileges and Immunities Clause of the right to travel as embodied in the fourteenth amendment. *International Org. of Mas-*

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ters v. Andrews, 831 F.2d 843 (9th Cir. 1987).

Statutory violations. — Exclusion of grievances involving involuntary transfers from binding arbitration in a provision of the collective bargaining agree-

ment between the state and a union, the Public Safety Employees Association, violates this section. Hemmen v. State, Dep't of Pub. Safety, Ct. App. Op. No. 2999 (File No. S-585), 710 P.2d 1001 (1985).

Sec. 23.40.225. Exemption from Public Employment Relations Act.

Opinions of attorney general. — This section does not supplant 18.80.220(a), a general provision against religious discrimination, nor does it violate the "establishment clause" of the Alaska Constitu-

tion where the non-associational rights of all public employees are secured by AS 18.80.220(a). January 13, 1984 Op. Att'y Gen.

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Chapter 20. Teachers and School Officials.

Article

1. Teacher Certification (§§ 14.20.010 — 14.20.040)
2. Employment and Tenure (§§ 14.20.095 — 14.20.215)
3. Salary Scales (§ 14.20.220)
4. Sabbatical Leave (§§ 14.20.280 — 14.20.350)
5. Professional Teaching Practices Act (§§ 14.20.370 — 14.20.510)
6. Negotiation and Mediation (§§ 14.20.550 — 14.20.610)
7. Interstate Agreement on Qualification of Educational Personnel (§§ 14.20.620 — 14.20.650)

Article 1. Teacher Certification.

Section

10. Teacher certificate required
20. Requirements for issuance of certificate

Section

30. Causes for revocation and suspension
40. Applicability of the Administrative Procedure Act

Collateral references. — 68 Am. Jur. 2a Schools, §§ 128-143.

78 C.J.S. Schools and School Districts, §§ 154-182.

Matters proper for consideration in appointment of teachers. 94 ALR 1484.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Bias of members of license revocation board. 97 ALR2d 1210.

Acting ability of statements imputing inefficiency or lack of qualification to public school teacher. 40 ALR3d 490.

Self-defense or defense of another as justification, in dismissal proceedings, for use or threat of use of force against student. 37 ALR4th 842.

Sec. 14.20.010. Teacher certificate required. A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate except that a person who has made application to the department for a teacher certificate renewal of a teacher certificate which has not been acted upon by the department may be employed as a teacher in the public schools of the state until the department has taken action on the application, but in no case may employment without a certificate last longer than three months. (§ 37-5-3 ACLA 1949; am § 9 ch 98 SLA 1966; am § 1 ch 165 SLA 1976)

Sec. 14.20.020. Requirements for issuance of certificate.

(a) The department shall issue a teacher certificate to every person who meets the requirements in (b) and (c) of this section.

(b) A person is not eligible for a teacher certificate unless that person has received at least a baccalaureate degree from an institution of higher education accredited by a recognized regional accrediting association or approved by the commissioner. However, this subsection is not applicable to

(1) persons employed in the state public school system on September 1, 1962;

(2) persons issued an emergency certificate during a situation which, in the judgment of the commissioner, requires the temporary issuance of a certificate to a person not otherwise qualified.

(c) The board may establish by regulation additional requirements for the issuance of certificates, including the fees to be charged for each certificate.

(d) The board may by regulation establish various classes of certificates.

(e) The commissioner of administration shall separately account for teacher certification fees that the department deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this section and to support the activities of the Professional Teaching Practices Commission under AS 14.20.460, 14.20.470, and 14.20.500. (§ 37-5-4 ACLA 1949; am § 1 ch 76 SLA 1962; am § 10 ch 98 SLA 1966; am §§ 13, 14 ch 32 SLA 1971; am §§ 19, 20 ch 138 SLA 1986)

Effect of amendments. — The 1986 amendment added "including the fees to be charged for each certificate" at the end of subsection (c) and added subsection (e).

Sec. 14.20.030. Causes for revocation and suspension. The commissioner or the Professional Teaching Practices Commission may revoke or suspend a certificate only for the following reasons:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department; or

(4) upon a determination by the Professional Teaching Practices Commission that there has been a violation of ethical or professional standards or contractual obligations. (§ 11 ch 98 SLA 1966; am § 1 ch 9 SLA 1975; am § 1 ch 103 SLA 1976)

NOTES TO DECISIONS

Quoted in *Watts v. Seward School Bd.*,
Sup. Ct. Op. No. 380 (File No. 427), 421
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Collateral references. — Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Validity of governmental requirement of oath of allegiance or loyalty as applied to college curators. 18 ALR2d 303.

Rejection of public school teacher because of disloyalty. 27 ALR2d 487.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Wearing of religious garb by public school teachers. 60 ALR2d 300.

Tests of moral character of fitness as requisite to issuance of teacher's license or certificate. 96 ALR2d 536.

Revocation of teacher's certificate for moral unfitness. 97 ALR2d 827.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearance of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

Sec. 14.20.040. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to all proceedings under AS 14.20.030, and revocations and suspensions are final and reviewable in accordance with AS 44.62.560 — 44.62.570. (§ 12 ch 98 SLA 1966; am § 2 ch 9 SLA 1975)

Sec. 14.20.090. Revocation of certificates. [Repealed, § 59 ch 98 SLA 1966.]

Article 2. Employment and Tenure.

Section

- 95. Right to comment and criticize not to be restricted
- 97. Duty-free time
- 100. Unlawful to require statement of religious or political affiliation
- 110. Penalty for violation of AS 14.20.100
- 120. Statement of qualifications
- 130. Employment of teachers and administrators
- 140. Notification of nonretention
- 145. Automatic re-employment
- 147. Transfer or absorption of attendance area or federal agency school
- 148. Intradistrict teacher reassignments

Section

- 150. Acquisition of tenure rights
- 155. Effect of tenure rights
- 158. Continued contract provisions
- 160. Loss of tenure rights
- 165. Restoration of tenure rights
- 170. Dismissal
- 175. Nonretention
- 180. Procedure and hearing upon notice of dismissal or nonretention
- 205. Judicial review
- 210. Authority of school board or department to adopt bylaws
- 215. Definitions

Collateral references. — 68 Am. Jur. 2d Schools, §§ 138-143, 149-214.
78 C.J.S. Schools and School Districts, §§ 154-217.

Extent of power of school district to provide for the comfort and convenience of

teachers and pupils. 7 ALR 791; 52 ALR 249.

Teacher as an officer whose right may be tested by quo warranto. 30 ALR 1423.

Status of teacher as an officer or employee. 75 ALR 1352.

Teachers' tenure statutes. 110 ALR 791; 113 ALR 1495; 127 ALR 1298; 145 ALR 1078.

Schoolteacher as an employee within workmen's compensation acts. 140 ALR 1383.

Constitutionality and construction of repeal or modification by legislative action of teachers' tenure statute, as regards retrospective operation. 147 ALR 293.

Teacher's civil liability for administering corporal punishment. 43 ALR2d 469.

Right of school teacher to serve as member of school board in same school district where employed. 70 ALR3d 1188.

Who is "teacher" for purposes of tenure statute. 94 ALR3d 141.

Personal liability of public school teacher in negligence action for personal injury or death of student. 34 ALR4th 223.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student. 35 ALR4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student. 35 ALR4th 328.

Sec. 14.20.095. Right to comment and criticize not to be restricted. A bylaw or regulation of the commissioner, a school board, or local school administrator may not restrict or modify the right of a teacher to engage in comment and criticism outside school hours, regarding school personnel, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right. (§ 1 ch 14 SLA 1965; am § 13 ch 98 SLA 1966)

NOTES TO DECISIONS

This section was not enacted to be retrospective. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d 101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).

It applies to activities conducted outside school hours. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d

101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).

And is directed at rules or regulations which would restrict criticism of school officials. — This section is directed at the rules or regulations of a commissioner, a local school board, or a local administrator. *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 554 (File No. 427), 454 P.2d 732 (1969), cert. denied, 397 U.S. 921, 90 S. Ct. 899, 25 L. Ed. 2d 101, rehearing denied, 397 U.S. 1071, 90 S. Ct. 1495, 25 L. Ed. 2d 695 (1970).

Sec. 14.20.097. Duty-free time. Each governing body shall allow its teachers in school facilities with four or more teachers a daily duty-free mealtime of at least 30 minutes between 11:00 a.m. and 1:00 p.m. (§ 1 ch 11 SLA 1969)

Sec. 14.20.100. Unlawful to require statement of religious or political affiliation. A school board, or a member of a school board may not require or compel a person applying for the position of teacher in the public schools of the state to state a religious or political affiliation. (§ 37-5-1 ACLA 1949)

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Collateral references. — Discrimina-
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spect of appointment, duties, compensa-
tion, etc., of schoolteachers or other public
officers or employees. 130 ALR 1512.
Validity of governmental requirement

Sec. 14.20.110. Penalty for violation of AS 14.20.100. A person
violating AS 14.20.100 is punishable by a fine of not more than \$100.
(§ 37-5-2 ACLA 1949)

Sec. 14.20.120. Statement of qualifications. A statement of the
qualifications of each teacher and superintendent employed by the
state or a school district shall be filed with the commissioner. The
statement shall contain the credits earned in college, normal school,
or university, and the number of years of teaching experience both in
the state and elsewhere in the form and manner prescribed by the
commissioner. (§ 37-6-5 ACLA 1949; am § 5 ch 179 SLA 1957; am
§ 12 ch 46 SLA 1970)

Sec. 14.20.130. Employment of teachers and administrators.
An employer may, after January 1, issue contracts for the following
school year to employees regularly qualified in accordance with the
regulations of the department. The contract for a superintendent may
be for more than one school year but may not exceed three consecutive
school years. (§ 1 ch 92 SLA 1960; am § 14 ch 98 SLA 1966)

NOTES TO DECISIONS

Authority of school district to em-
ploy teachers. — A school district has no
authority to employ teachers except as
prescribed by statute and regulation.
Spicer v. Anchorage Independent School
Dist., Sup. Ct. Op. No. 325 (File No. 576),
410 P.2d 995 (1966).

Letter from superintendent of

schools held not to be an offer of a
contract. — See Spicer v. Anchorage In-
dependent School Dist., Sup. Ct. Op. No.
325 (File No. 576), 410 P.2d 995 (1966).

Cited in Skagway City School Bd. v.
Davis, Sup. Ct. Op. No. 1216 (File No.
2265), 543 P.2d 218 (1975).

Collateral references. — Duty of
teacher to perform services other than
those which pertain to instruction. 38
ALR 1414.

Instruction in physical education or

coaching of athletic sports as within du-
ties assumed by, or that may be assigned
to, teacher, or among the subjects in re-
spect of which teacher applicants must
qualify. 119 ALR 819.

Sec. 14.20.140. Notification of nonretention. (a) If a teacher
who has acquired tenure rights is not to be retained for the following
school year, the employer shall notify the teacher of the nonretention
by writing, delivered before March 16, or by registered mail post-
marked before March 16.

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term. (§ 1 ch 92 SLA 1960; am § 15 ch 98 SLA 1966)

NOTES TO DECISIONS

Notice of nonretention sufficient. — See *Griffin v. Galena City School Dist.*, Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 829 (1982); *Martinez v. Anchorage School Dist.*, Sup. Ct. Op. No. 2930 (File Nos. S-108, S-124), 699 P.2d 330 (1985). Quoted in *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Collateral references. — Notice of intention to discharge teacher, or not to re-employ, new contract, sufficiency under statutes requiring such notice. 92 ALR2d 751.

Sec. 14.20.145. Automatic re-employment. If notification of nonretention is not given according to AS 14.20.140 a teacher is entitled to be re-employed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to AS 14.20.158. The right to be reemployed according to this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract of reemployment. (§ 16 ch 98 SLA 1966)

NOTES TO DECISIONS

The purpose of tenure laws is to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

This section seeks to achieve this result by treating an improperly nonretained teacher as if the teacher had been retained, with no prejudice to result from the fact of nonretention. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

The effect of this section is to give an improperly nonretained teacher the enforceable right to a written contract of employment for the next school year containing provisions like those in the teacher's contract for the preceding year. *Redman v. Department of Educ.*, Sup. Ct. Op. No.

1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

This section does not automatically continue a teacher's prior contract in the event proper notice of nonretention is not given. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

The language requiring that the provisions of the previous contract are to be continued for the following school year is intended to protect the teacher's legitimate expectation of continued employment on terms no less favorable than those previously enjoyed. It is not meant to require each term of the previous contract to be continued unchanged where the result would be to unreasonably penalize either the teacher or the employer. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

§ 14.20.145

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State v. Redman, Sup. Ct.
File No. 1431), 491 P.2d 157

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§ 14.20.147

EDUCATION

§ 14.20.147

No action for damages may be based on prior, expired contract. — Where the employer has refused to tender the teacher a new contract, the teacher may enforce the teacher's statutory right to be given a new contract and may then sue for breach of that contract, but an action for damages cannot be based upon a prior

contract that has expired. Redman v. Department of Educ., Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

Quoted in State v. Redman, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Sec. 14.20.147. Transfer or absorption of attendance area or federal agency school. (a) When an attendance area is transferred from a currently operating district to, or absorbed into, a new or existing school district, the teachers for the attendance area also shall be transferred unless otherwise mutually agreed by the teacher or teachers and the chief school administrator of the new district. Accumulated or earned benefits, including but not limited to, seniority, salary level, tenure, leave, and retirement, accompany the teacher who is transferred.

(b) When a school operated by a federal agency is transferred to or absorbed into a new or existing school district the teachers shall also be transferred if mutually agreed by the teacher or teachers and the school board of the new or existing district. A teacher transferred from a federal agency school, which does not have an official salary schedule or teacher tenure in the same manner as a public school district in the state, shall be placed on a position on the salary schedule of the absorbing district; the salary may not be less than the teacher would have received in the federal agency school. If the teacher taught two or more years in the federal agency school and, at the time of transfer, had a valid Alaska teaching certificate, that teacher shall be placed on tenure in the absorbing district.

(c) On the first day of service in the absorbing school district, a teacher transferred from a federal agency school shall be allowed the actual number of days of accumulated sick leave that the teacher has earned while teaching in the state. Consistent with the established district policy the absorbing district may allow credit for any other type of leave. Credit for retirement shall be allowed in accordance with AS 14.25.060. (§ 1 ch 53 SLA 1972; am § 1 ch 150 SLA 1975)

NOTES TO DECISIONS

Back pay is not a benefit for the purpose of subsection (a) of this section. Aleutian Region R.E.A.A. v. Wolansky, Sup. Ct. Op. No. 2380 (File No. 5098), 630 P.2d 529 (1981).

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

Sec. 14.20.148. Intradistrict teacher reassignments. When a teacher is involuntarily transferred or reassigned to a position for which the teacher is qualified, within the district, the teacher's moving expenses shall be paid unless the one-way driving distance is 20 miles or less from the teacher's present place of residence, or unless otherwise mutually agreed by the teacher and chief school administrator of the district. (§ 1 ch 136 SLA 1972)

Collateral references. — Power of one school or district to another. 103 ALR school authorities to transfer teacher from 1382.

Sec. 14.20.150. Acquisition of tenure rights. (a) A teacher acquires tenure rights in a district when the teacher

(1) possesses a standard teaching certificate;

(2) has been employed as a teacher in the same district continuously for two full school years and is reemployed for the school year immediately following the two full school years.

(b) The tenure rights acquired under (a) of this section become effective on the first day the teacher performs teaching services in the district during the school year immediately following the two full school years. (§ 1 ch 92 SLA 1960; am § 17 ch 98 SLA 1966)

NOTES TO DECISIONS

Purpose of tenure laws. — Tenure laws are intended to give job security to experienced teachers and to ensure that they will not be discharged for inadequate reasons. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

A system of tenure has as its objective the retention of able personnel after they have undergone an adequate period of probation with the concomitant result that more talented personnel will be attracted to enter the teaching profession. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

The law does not require that teachers shall teach every day, or every hour of every day. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

The supreme court fails to find any provision of Alaska statutes concerning education which requires, or to perceive of any persuasive policy reasons why, a

teacher must work full days throughout the school year in order to attain tenure rights. No legislative intent to exclude a teacher who works less than full days is manifest from a study of the applicable statutes. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Duties regular and substantial enough to afford intelligent evaluation are sufficient. — When a teacher's duties are regular and substantial enough to afford intelligent evaluation, there is little in the way of persuasive policy considerations for excluding such service from the ambit of Alaska tenure laws. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Cited in *Skagway City School Bd. v. Davis*, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975); *Crisp v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1771 (File No. 3318), 587 P.2d 1168 (1978).

assignments. When assigned to a position for which the teacher's moving distance is 20 miles or more, or unless the chief school administrator

transfers the teacher from one district to another. 103 ALR

103 ALR 103. (a) A teacher ac-

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work full days throughout the year in order to attain tenure. Legislative intent to exclude a teacher who works less than full days is not binding. See a study of the applicable law. *State v. Redman*, Sup. Ct. Op. No. 1431, 491 P.2d 157

regular and substantial work and intelligent evaluation. — When a teacher's duties are not substantial enough to affect an intelligent evaluation, there is little persuasive policy considering such service from the teacher's tenure laws. *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971).

Agway City School Bd. v. State, Sup. Ct. Op. No. 1216 (File No. 1218) (1975); *Crisp v. Kenai Peninsula School Dist.*, Sup. Ct. Op. No. 3318, 587 P.2d

Collateral references. — What amounts to waiver of status or rights under teachers' tenure statute. 145 ALR 1078.

Construction and effect of tenure provisions of contract or statute governing employment of faculty member by college or university. 66 ALR3d 1018.

Who is "teacher" for purposes of tenure statute. 94 ALR3d 141.

Sec. 14.20.155. Effect of tenure rights. (a) A teacher who has acquired tenure rights has the right to employment within the district during continuous service.

(b) A teacher who has acquired tenure rights may agree to a new contract at any time. However, if the teacher fails to agree to a new contract, the provisions of the previous contract are continued subject to AS 14.20.158. (§ 18 ch 98 SLA 1966)

Collateral references. — Compensation of tenured teacher. 145 ALR 108; 154 ALR 148.

Sec. 14.20.158. Continued contract provisions. Continuation of the provisions of a teacher's contract under AS 14.20.145 or 14.20.155 does not

(1) affect the alteration of the teacher's salary in accordance with the salary schedule prescribed by state law, or in accordance with a local salary schedule applicable to all teachers in the district and adopted by bylaws;

(2) limit the right of the employer to assign the teacher to any teaching, administrative, or counseling position for which the teacher is qualified; or

(3) limit the right of the employer to assign the teacher, as is reasonably necessary, to any school in the district. (§ 19 ch 98 SLA 1966)

NOTES TO DECISIONS

This section puts the reemployed teacher in the same salary position he would have been in had his employment not been interrupted, regardless of his salary under his last contract. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

It further allows flexibility in the manner of reemployment where adherence to the strict terms of the prior contract would put an unreasonable burden on the employer. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

Limited interpretation of section would defeat legislative intent. — A limited interpretation of this section as representing an exclusive list of the ways

in which an improperly nonretained teacher's prior contract may be varied would defeat the general intent of the legislature that an improperly nonretained teacher be returned to substantially the same position as before nonretention. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

Ways prior contract may be varied. — In assessing damages due to improper nonretention, the strict terms of a teacher's prior contract may be varied in ways not specifically enumerated in this section where such modifications are necessary to protect the reasonable expectations of the parties. *Redman v. Department of Educ.*, Sup. Ct. Op. No. 1009 (File Nos. 1802, 1822), 519 P.2d 760 (1974).

AS 14.20.145 is expressly made sub-
 ject to this section. Redman v. Depart-
 ment of Educ., Sup. Ct. Op. No. 1009 (File
 Nos. 1802, 1822), 519 P.2d 760 (1974).

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 Sec. 14.20.160. Loss of tenure rights. Tenure rights are lost when the teacher's employment in the district is interrupted or terminated. (§ 1 ch 92 SLA 1960; am § 1 ch 104 SLA 1965; am § 20 ch 98 SLA 1966; am § 22 ch 37 SLA 1986)

Effect of amendments. — The 1986 amendment deleted "or when the teacher reaches the age of 65" at the end of the section.

Sec. 14.20.165. Restoration of tenure rights. A teacher who held tenure rights and who was retired due to disability under AS 14.25.130, but whose disability (1) has been removed, and the removal of that disability is certified by a competent physician following a physical or mental examination, or (2) has been compensated for by rehabilitation or other appropriate restorative education or training, and that rehabilitation or restoration to health has been certified by the division of vocational rehabilitation of the department, shall be restored to full tenure rights in the district from which the teacher was retired, at such time as an opening for which the teacher is qualified becomes available. (§ 1 ch 71 SLA 1975)

Sec. 14.20.170. Dismissal. (a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude; or

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

(b) A teacher may be suspended temporarily with regular compensation during a period of investigation to determine whether or not cause exists for the issuance of a notification of dismissal according to AS 14.20.180. (§ 2 ch 92 SLA 1960; am § 21 ch 98 SLA 1966; am §§ 1, 2 ch 104 SLA 1966)

Legislative history reports. — For report on ch. 104, SLA 1966, see 1966 House Journal, p. 989.

Sup. Ct. Op. No. 1009 (File 822), 519 P.2d 760 (1974).

Tenure rights are lost if dismissal is interrupted or terminated. AS 14.20.180; am § 20 ch 98

Age of 65" at the end of the

Dismissal of a teacher who held a disability under AS 14.20.180, and the removal of a physician following a hearing and compensation by the board of education or training, if the teacher has been certified by the board of education, shall be the same as for a teacher in a department in which the teacher is qualified.

Including a teacher who is dismissed any time only for the

Dismissal of a teacher for incompetency or the unintentional violation of the teacher's customary teaching

Dismissal of a teacher for the commission of an act which, involving moral turpitude

Dismissal of a teacher for the violation of laws of the state, the laws of the district, or

Dismissal of a teacher for the failure to teach with regular competence, whether or not the teacher is dismissed according to AS 14.20.180; am §§ 1,

NOTES TO DECISIONS

In general. — See annotations under AS 14.20.095, Notes to Decisions.

Subsection (b) of this section is in a permissive form and allows temporary suspension during the investigation. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

A right of nontenured teachers to a hearing prior to dismissal for cause is not to be found in this section. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

The express language of subsection (b) of this section clearly lacks any indication that the legislature intended to provide a hearing prior to dismissal for cause of a nontenured teacher. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Despite the reference to AS 14.20.180. — The reference to AS 14.20.180 in this section cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under that section to nontenured teachers. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

The distinction in treatment between tenured and nontenured teachers is quite clear from the express terms of AS 14.20.180. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

Validity of dismissal proceedings. — When a discharged teacher had not demonstrated any way in which his dismissal was tainted by his temporary suspension with pay under subsection (b), nor any other way in which he was prejudiced by the suspension, his contention that the dismissal proceedings were void as a matter of law was found to be without merit. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Dismissal for immorality. — In subsection (a)(2), the act must constitute a crime involving moral turpitude; a criminal conviction is not necessary. *Kenai*

Peninsula Borough Bd. of Educ. v. Brown, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Although the Board of Education could not dismiss a teacher on an assumption that a violation of AS 42.20.030(7) (willfully diverting electricity) always constitutes a theft, the board had sufficient evidence to conclude that the teacher had committed theft, and the dismissal for immorality was therefore valid even if the teacher was not convicted under a theft statute. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Instructions. — There was no error in the court's inclusion of an instruction on provisions of the Professional Teaching Practices Commission Code of Ethics although there had been no determination that a dismissed teacher had violated the code by the commission when fair minded jurors, in the exercise of reasonable judgment, could differ on whether certain actions by the dismissed teacher were unethical or otherwise constituted substantial non-compliance under subsection (a) of this section. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Directed verdict. — When there was evidence that a dismissed teacher had verbally and physically abused another member of the teaching profession in front of students; and fair minded jurors, in the exercise of reasonable judgment, could differ on whether those actions violated provisions of the code of ethics of the Professional Teaching Practices Commission or otherwise constituted incompetency or substantial noncompliance under subsection (a) of this section, the superior court did not err in failing to direct a verdict in the dismissed teacher's favor. *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Cited in *Skagway City School Bd. v. Davis*, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975).

Collateral references. — Temporary disability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal. 72 ALR 283.

Marriage of teacher as ground of re-

moval or discharge. 81 ALR 1033; 118 ALR 1092.

Candidacy for or incumbency of public office or other political activity by teacher or other school employee as ground for dismissal or compulsory leave of absence. 136 ALR 1154.

Assertion of immunity as ground for discharge of teacher. 44 ALR2d 799.

Notice of intention to discharge teacher, or not to renew contract, sufficiency under statutes requiring such notice. 92 ALR2d 751.

Right to dismiss public school teacher on ground that services are no longer needed. 100 ALR2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public school teacher. 4 ALR3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge. 22 ALR3d 1047.

Use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate. 47 ALR3d 754.

Dismissal of, or disciplinary action against, public school teachers for violation of regulation as to dress or personal appearances of teachers. 58 ALR3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate. 78 ALR3d 19.

What constitutes "insubordination" as ground for dismissal of public school teacher. 78 ALR3d 83.

Dismissal of public school teacher because of unauthorized absence or tardiness. 78 ALR3d 117.

Sec. 14.20.175. Nonretention. (a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of the teacher's contract for any cause which the employer determines to be adequate. However, at the teacher's request, the teacher is entitled to a written statement of the cause for nonretention. The boards of city and borough school districts and regional educational attendance areas shall provide by regulation or bylaw a procedure under which a nonretained teacher may request and receive an informal hearing by the board.

(b) A teacher who has acquired tenure rights is subject to nonretention for the following school year only for the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teacher's customary teaching duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent; or

(4) a necessary reduction of staff occasioned by a decrease in school attendance. (§ 22 ch 98 SLA 1966; am § 1 ch 11 SLA 1968; am § 13 ch 46 SLA 1970; am § 15 ch 124 SLA 1975)

NOTES TO DECISIONS

Section exceeds federal constitutional requirements. — This section in requiring a statement of cause and an opportunity to be heard, exceeds federal constitutional requirements. *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Discretion of school boards. — 4 AAC 19.010, which provides that formal evaluations shall serve as a method for gathering data relevant to subsequent employment status decisions pertaining to the person evaluated, cannot operate to limit the broad discretion that was intentionally given to local school boards by the

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legislature, and a school board's decision not to renew the contract of a nontenured teacher may be "for any cause which the employer determines to be adequate." *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Despite the broad language of subsection (a), the board's discretion is subject to certain limitations; for example, a school board may not deny continued employment to a teacher because of the teacher's exercise of first amendment rights, nor may a school board deny continued employment to a teacher if to do so would deprive the teacher of other rights that are guaranteed by constitution or statute. *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Rights of nonretained, nontenured teachers are limited. — The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited. A nonretained, nontenured teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973); *Shatting v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures which do not purport to modify the statutory provisions concerning tenure and termination of employees. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

The grievance procedure may be of value to a nontenured teacher in at-

tempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

But any such results and action would be a matter within the discretion of the hiring authority, and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Nonretention of tenured teacher for substantial noncompliance with district regulations affirmed. — See *Fisher v. Fairbanks N. Star Borough School Dist.*, Sup. Ct. Op. No. 2960 (File No. 7446), 704 P.2d 213 (1985).

Submission of alleged breach of collective bargaining agreement to arbitration. — Where procedures concerning the nonretention of teachers are negotiated by a school district and a teachers' union and are included within a collective bargaining agreement, a nontenured teacher who is not retained by the school district can submit an alleged breach of the collective bargaining agreement to arbitration, though the arbitrator's latitude in fashioning an appropriate remedy is restricted by the language of subsection (a). *Jones v. Wrangell School Dist.*, Sup. Ct. Op. No. 2917 (File Nos. S-223-S-224), 696 P.2d 677 (1985).

Quoted in *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975); *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Collateral references. — Right to dis- services are no longer needed. 100 ALR2d
miss public school teacher on ground that 1141.

Sec. 14.20.180. Procedure and hearing upon notice of dismissal or nonretention. (a) An employer shall include in a notification of dismissal of a teacher who has not acquired tenure rights, or of nonretention or dismissal of a tenured teacher, a statement of cause and a complete bill of particulars.

(b) The tenured teacher may, within 15 days immediately following receipt of the notification, notify the employer in writing that a hearing before the school board is requested. The tenured teacher may

require in the notification that the hearing be either public or private and that the hearing be under oath or affirmation. The notification may also require that the right of cross-examination be provided and that the tenured teacher be represented by counsel and have the right to subpoena a person who has made allegations which are used as a basis for the decision of the employer.

(c) Upon receipt of the notification requesting a hearing, the employer shall immediately arrange for a hearing, and shall notify the tenured teacher or administrator in writing of the date, time, and place of the hearing. A written transcript, tape, or similar recording of the proceedings shall be kept. Transcribed copies shall be furnished to the tenured teacher for cost upon request of the tenured teacher. A final decision of the school board requires a majority vote of the membership. The vote shall be by roll call. The final decision shall be written and contain specific findings of fact and conclusions of law. A written notification of the decision shall be furnished to the tenured teacher within 10 days of the date of the decision. (§ 3a ch 92 SLA 1960; am § 23 ch 98 SLA 1966; am §§ 2, 3 ch 11 SLA 1968; am § 14 ch 46 SLA 1970; am §§ 16, 17 ch 124 SLA 1975)

NOTES TO DECISIONS

Section describes procedure. — This section describes the administrative procedure, which includes a hearing, when a tenured teacher has been given a notice of dismissal or nonretention. *Corso v. Commissioner of Educ.*, Sup. Ct. Op. No. 1412 (File No. 2870), 563 P.2d 246 (1977).

Reference to section in AS 14.20.170 does not extend hearing rights to nontenured teachers. — The reference to this section in AS 14.20.170 cannot reasonably be interpreted to extend the hearing rights given to tenured teachers under this section to nontenured teachers. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

But constitutional due process requirements overcome any statutory rule. — Even though a hearing is not accorded to nontenured teachers by statute, the constitutional requirements of due process overcome any statutory rule. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

And nontenured teachers are entitled to hearing upon dismissal. — Where a mid-year dismissal is at issue, clearly the teachers have been deprived of an interest in property, namely their present teaching post. This is an interest protected by the 14th amendment to the United States Constitution and by the

first article of the Alaska Constitution, and thus they are entitled to a hearing. *Nichols v. Eckert*, Sup. Ct. Op. No. 860 (File No. 1572), 504 P.2d 1359 (1973).

When dismissal effective. — The "notification of dismissal" is a notice that the board has voted in favor of dismissal, but the dismissal cannot be effective until the teacher has had an opportunity to request a hearing if one is desired. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Since this section gives the teacher 15 days in which to request a hearing, the termination is not effective until at least 15 days following the notification of dismissal. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

If the teacher does not request a hearing, the dismissal becomes effective immediately following the expiration of the 15 day period; if the teacher does request a hearing, the dismissal can only be effective after a final majority vote following the hearing. *Kenai Peninsula Borough Bd. of Educ. v. Brown*, Sup. Ct. Op. No. 2886 (File No. 7763), 691 P.2d 1034 (1984).

Meeting resulted in a dismissal prior to a hearing in violation of teacher's due pro-

part." does not supersede this section, which expressly mandates de novo reviews for tenured teachers. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

In reenacting AS 22.10.020 in 1970 the legislature has not unequivocally expressed any intent to deny tenured teachers de novo review nor was the reenactment part of a comprehensive revision. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Since this section and AS 22.10.020 are not irreconcilably conflicting, but can be intelligently read as conterminous expressions of a general rule and an exception to it, nothing in the edicts of statutory construction requires us to find that this section has been rendered inoperative by the reenactment of AS 22.10.020. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

A policy factor militating in favor of a full application of this section is that a tenured teacher against whose favor a decision has been reached is faced with the loss of a very important right: his source of income. In this connection, it is not necessary to indulge in such classificatory labels as "vested right" or "property right," for it is enough that the right be recognized as important for it to act as a guide to decision in the interpretation of this section. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Rights of nonretained, nontenured teachers are limited. — The rights of a nontenured teacher who is simply not retained at the end of his period of employment are relatively limited because such a teacher has no constitutionally protected interest in public employment. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Probationary employees who are otherwise lawfully discharged cannot obtain permanent status through grievance procedures which do not purport to modify the statutory provisions concerning tenure and termination of employees. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

The grievance procedure may be of value to a nontenured teacher in at-

tempting to persuade the hiring authority that he should be retained. The process might on occasion bring forth evidence and argument by which the termination of the nontenured teacher might be reconsidered. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

But any such results and action would be a matter within the discretion of the hiring authority, and thereby a matter of grace rather than legal right. *Gorder v. Matanuska-Susitna Borough School Dist.*, Sup. Ct. Op. No. 929 (File No. 1754), 513 P.2d 1094 (1973).

Right of nontenured teacher to judicial review. — While this section does not extend the tenured teacher's right to a trial de novo to a nontenured teacher, neither does it preclude a more limited form of judicial review of the school board decision; therefore a nontenured teacher has a right to judicial review, on the record, of a school board's nonretention, and although a review on the record is all that is required, in its discretion the superior court may grant a trial de novo. *Stattin v. Dillingham City School Dist.*, Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Courts granted fact-finding role. — While courts normally feel constrained to defer to the fact-finding role which the legislature has given to a particular agency, no such constraint logically should exist where the legislature itself has granted the courts a fact-finding role in their review of administrative action. This section seemingly does just that, for it expressly grants a tenured teacher a "trial de novo" following an unfavorable school board decision. *Matanuska-Susitna Borough v. Lum*, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

When time for appeal begins to run. — In light of the provision in AS 14.20.180(c) that the final decision of the school board must be "written and contain specific findings of fact and conclusions of law," the time for appeal from the board's determination did not begin to run until the written decision was mailed or delivered to the teacher. *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

Applied in *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (File Nos. 4394, 4481), 626 P.2d 1068 (1980); *Jones v. Wrangell*

de the hiring authority retained. The process of bringing forth evidence which the termination of a teacher might be recon- sidered. *Matanuska-Susitna v. Matanuska-Susitna*, Sup. Ct. Op. No. 513 P.2d 1094 (1973).
 results and action within the discretion of the hiring authority, and the exercise of grace rather than leniency. *Matanuska-Susitna v. Matanuska-Susitna*, Sup. Ct. Op. No. 513 P.2d 1094 (1973).
 a teacher to be dismissed while this section does not affect a teacher's right to a permanent position. A tenured teacher, neither a more limited form of the school board decision. A tenured teacher has a right to be on the record, of a permanent position, and although the record is all that is reported to the superior court on the record. *Shatting v. Matanuska-Susitna*, Sup. Ct. Op. No. 4240, 617 P.2d 9
 fact-finding role. — A teacher may feel constrained to perform a fact-finding role which the school board is not bound to a particular position. A constraint logically placed on the legislature itself is a fact-finding role in an administrative action. The school board does just that, for a tenured teacher a permanent position. An unfavorable decision. *Matanuska-Susitna v. Matanuska-Susitna*, Sup. Ct. Op. No. 1179 P.2d 994 (1970).

deal begins to run. The provision in AS 14.20.207 is a final decision of the school board, written and containing findings and conclusions of the school board from the board's decision. It begins to run until the decision is mailed or delivered. *Green v. Kenai Peninsula School Dist.*, Sup. Ct. Op. No. 567 P.2d 760 (1975).
Green v. Kenai Peninsula School Dist., Sup. Ct. Op. No. 4394, 4481, 626 P.2d 994 (1975).
Green v. Wrangell

School Dist., Sup. Ct. Op. No. 2917 (File No. S-223/S-224), 696 P.2d 677 (1985).

Quoted in *Sjong v. State, Dep't of Revenue*, Sup. Ct. Op. No. 2269 (File No. 4255), 622 P.2d 967 (1981); *Fedpac Int'l, Inc. v.*

State, Sup. Ct. Op. No. 2520 (File No. 6034), 646 P.2d 240 (1982); *Fisher v. Fairbanks N. Star Borough School Dist.*, Sup. Ct. Op. No. 2960 (File No. 7446), 704 P.2d 213 (1983).

Sec. 14.20.207. [Renumbered as AS 14.20.215.]

Sec. 14.20.210. Authority of school board or department to adopt bylaws. A school board or the department may adopt teacher tenure bylaws not in conflict with the regulations of the department or state law. (§ 4 ch 92 SLA 1960; am § 26 ch 98 SLA 1966)

Sec. 14.20.215. Definitions. In AS 14.20.010 — 14.20.215

(1) "continuous employment" means employment which is without interruption except for temporary absences approved by the employer or its designee, or except for the interval between consecutive school terms if the teacher is employed only for the months of the school term;

(2) "dismissal" means termination by the employer of the contract services of the teacher during the time a teacher's contract is in force, and termination of the right to the balance of the compensation due the teacher under the contract;

(3) "employer" means the school board or superintendent which appoints the teacher;

(4) "nonretention" means the election by an employer not to re-employ a teacher for the school year or school term immediately following the expiration of the teacher's current contract;

(5) "school year" includes "school term" if the teacher is employed only for the period of the school term; and

(6) "teacher" means a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position. (§ 25 ch 98 SLA 1966; am § 15 ch 46 SLA 1970; am § 19, ch 124 SLA 1975)

Revisor's notes. — Formerly AS 14.20.207. Renumbered and reorganized to alphabetize the defined terms in 1987.

NOTES TO DECISIONS

Applied in *Griffin v. Galena City School Dist.*, Sup. Ct. Op. No. 2469 (File No. 5388), 640 P.2d 829 (1982).

Quoted in *Begich v. Jefferson*, Sup. Ct. Op. No. 481 (File No. 894), 441 P.2d 27 (1968); *State v. Redman*, Sup. Ct. Op. No. 755 (File No. 1431), 491 P.2d 157 (1971); *Shatting v. Dillingham City School Dist.*,

Sup. Ct. Op. No. 2177 (File No. 4240), 617 P.2d 9 (1980).

Cited in *Alaska State-Operated School Sys. v. Mueller*, Sup. Ct. Op. No. 1157 (File No. 2138), 536 P.2d 99 (1975); *Skagway City School Bd. v. Davis*, Sup. Ct. Op. No. 1216 (File No. 2265), 543 P.2d 218 (1975); *Northwest Arctic Regional*

1986 STATE CONVENTION RESOLUTIONS

Co-chairmen: Cheri Jacobus
Malcolm Roberts

Senate
Reorganization

The following resolutions, including those offered from the Floor, were passed by the general assembly of the 1986 Republican State Convention.

R-1-1 PERMANENT FUND: The Principal

Whereas, the Alaska Permanent Fund was created with the approval of Alaska's voters; and whereas, the purpose of the Permanent Fund is to save a portion of the State's one-time oil wealth to benefit all generations of Alaskans, to protect those savings from loss of value, and to invest those savings to produce income for uses provided by law; Therefore, be it resolved that the Republican Party of Alaska is opposed to any current or future expenditure of the principal of the Alaska Permanent Fund for any purpose other than those designed to perpetuate the existence and growth of the Fund. And any change to this concept should be presented to the voters of Alaska; that a system of audit and controls be instituted to insure that the public trust in any investments is safeguarded and protected.

R-1-2 Taxes vs. State Spending

Whereas, the State of Alaska has suffered a substantial decrease in revenues as a result of the decrease in world oil prices, and whereas many cutbacks in state spending can and should be accomplished; Therefore, be it resolved that the Republican Party of Alaska urges that prior to the imposition of any personal income tax or statewide sales tax, the Legislature substantially reduce the State operating and capital budgets.

R-1-3 Taxes on Oil Industry

Whereas, the State of Alaska receives over 80% of all revenues from the petroleum industry and whereas, the State of Alaska has more territory to be explored and developed and whereas, the State of Alaska wishes to encourage and promote the development of both new and marginal oil fields and whereas, the State of Alaska has more potential for mineral development and production than any other State in the Union; Therefore, be it resolved that it is the policy of the Republican Party of Alaska to promote and endorse stable tax policies for all extraction industries, and be it further resolved that no increase in oil taxes should be considered by the Alaska Legislature.

R-2-1 Cash Based Budgeting (Budget Reserve Account)

Whereas, the current State budget process, based on world oil prices, is unpredictable and whereas, the State has recently been awarded or received several "one-time" infusions of revenue from the TAPS settlement, back taxes from ARCO and windfalls and whereas, additional substantial funds reside in the Rainy Day Account; Therefore, be it resolved that the State establish a cash-based budget (budget reserve account) by setting aside a percentage, annually, of gross revenues, until a cash-based budget is established.

R-2-2 Interest Rates on State Loans

Whereas, interest rates have decreased and whereas, the necessity of State subsidy for loan programs has been reduced; Therefore, be it resolved that the Republican Party of Alaska supports legislation to reduce the State subsidy on all State loan programs.

R-2-3 Student Loans

Whereas, the Alaska student loan program provides training and educational opportunities for all Alaskans, particularly young Alaskans; Therefore, be it resolved that the Republican Party of Alaska desires this program to continue and be supported by the Alaska Legislature at a level to meet the needs of Alaskans who wish to participate.

R-2-4 An Elected State Treasurer

Whereas, the audit policy of the State of Alaska is in disarray and whereas, the Executive Branch auditors are ineffective at controlling audit deficiencies of the State government and whereas, the Legislative Budget and Audit Committee does not effectively coordinate or encourage a consistent audit policy for the State of Alaska; Therefore, be it resolved that the people of Alaska elect a Treasurer for the State to establish and maintain a consistent and independent audit policy.

R-2-5 State Assistance to Local Governments: Operations vs. Capital Expenditures

Whereas, capital projects built in local areas often create new operations and maintenance costs and this often increases local taxes and whereas, the oil revenue decline, through the ripple effect, will produce short falls in funds to operate the basic needs of local communities; Therefore, be it resolved that the Republican Party of Alaska urges the municipality or local government to complete an assessment of public need based on the project's effect on public health and safety, and the local government's willingness and ability to pay for the operation of the project.

R-3-1 Economic Diversification

Whereas, the State of Alaska is experiencing economic difficulties and whereas, the State of Alaska has hampered economic development through unnecessary and costly regulations and whereas, development of Alaska's traditional economics could be promoted by such activities as providing tax incentives, reducing government regulations, assisting with marketing and improving access to resource areas; Therefore, be it resolved that the Republican Party of Alaska requests the Alaskan government to redirect its priorities by supporting the expansion and diversification of the Alaskan economy by development of our abundant renewable and non-renewable natural resources.

R-3-2 Foreign Fisheries

Whereas, more than four billion pounds of the fish harvested and/or processed within the two hundred mile zone off Alaska's coast are taken by foreign fishing interests which constitutes eighty percent of the total harvest in those waters and whereas, this valuable resource could bring thousands of new jobs to Alaska and be a tremendous benefit to the economic health and stability of our many coastal communities; Therefore, be it resolved that the Republican Party of Alaska does hereby endorse and support the phasing out of all foreign fishing in U.S. waters by 1988, limiting joint ventures to their current harvest levels, and the phasing out of all foreign processing by 1990. Be it further resolved that the Republican Party of Alaska encourages the development of Alaskan shore-based seafood processing.

R-3-3 Mining

Whereas, mining is one of Alaska's major industries and whereas, mining is an industry that employs thousands of Alaskans and whereas, many current State and Federal regulations governing water, land and access use are too restrictive; Therefore, be it resolved that the Republican Party of Alaska supports the mineral industry in its efforts to gain relief from unreasonable regulation and encourages the State of Alaska to assume issuance of the National Pollutant Discharge Elimination System (NPDES) permitting requirements as authorized under the Federal Clean Water Act.

Resolutions - Page 3

R-3-4 Winter Olympics

Whereas, the City of Anchorage has been named as America's choice to host the 1992 Winter Olympics to be held in the United States and whereas, holding an olympic event will stimulate economic activity throughout the entire State and will bring world-wide exposure to the diverse economic opportunities this State has to offer; Therefore, be it resolved that the Republican Party of Alaska supports and commends the efforts of the Alaska Olympic Committee for seeking to bring the Winter Olympics to Alaska.

R-3-5 Access

Whereas, access to State and private land is necessary for development and recreational opportunities and whereas, there is little surface access to these lands; Therefore, be it resolved that the Republican Party of Alaska supports surface access to all State and private lands and encourages the State government to assert access rights to these lands under RS-2477 access routes now in existence.

R-3-6 Agriculture

Whereas, the current agricultural situation in Alaska has been adversely affected by the lack of sound policies and plans and administrative support; Therefore, be it resolved that all Republican administrations implement sound plans, policies and programs that will encourage development of agriculture in Alaska.

R-3-7 Timber

Whereas, the timber industry in Alaska is a vital industry and a major contributor to the economy of Alaska and whereas, the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980 recognized the importance of the timber industry to the State of Alaska and whereas, the Alaska National Interest Lands Conservation ACT (ANILCA) set forth within the legislation, a timber supply fund and also authorized a timber supply harvest level in order to insure economic stability within the timber industry and whereas, any attempt to open up ANILCA and create additional wilderness areas, decrease the mandated timber harvest level, or eliminate the authorized Timber Supply Fund would cause severe detrimental damage to the economy of Southeast Alaska; Therefore, be it resolved that the Republican Party of Alaska endorses the following actions: 1. The timber harvest level of 4.5 billion board feet per decade as mandated by the ANILCA must be maintained; 2. The Timber Supply Fund as enacted as a part of the Alaska National ANILCA must be maintained and adequately funded; 3. The land base as made available under the ANILCA for renewable timber harvest must not be reduced and no further additions to wilderness areas be enacted; 4. Before Congress begins any further consideration of the ANILCA, it is requested that hearings be held within the State of Alaska.

R-4-1 Subsistence Hunting and Fishing

Whereas, legislation has been mandated by the Federal Government to give rural subsistence users of Alaska's fish and game resources preferential use rights, and the fourteenth Alaska legislature has adopted new subsistence legislation consistent with federal law and whereas, the rights of all Alaskan's should be preserved regardless of place of residence whether urban or rural; Therefore, the Republican Party of Alaska hereby resolves that candidates for State and Federal office running as Republicans support a legitimate needs formula for subsistence use.

R-4-2 Village Sovereignty

Whereas, Congress is currently considering amendments to the Alaska Native Claims Settlement Act, some of which are needed; Therefore, be it resolved that the Republican Party

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of Alaska urges Alaska's Congressional delegation to work towards enacting the needed amendments but defeat any language which would recognize or support the claim of Native sovereignty and be it further resolved that the Alaska Congressional delegation work to ensure that developed lands will not be tax exempt no matter which entity holds these lands.

R-5-A Capital Punishment

Be it resolved that the Republican Party of Alaska urges the reinstatement of the death penalty for committing murder during kidnapping; treason against the United States, terrorism, first-degree murder and wanton killing of a police officer who is in the line of duty.

R-5-1 Opposition to Drug Sale, Possession and Abuse

Whereas, drug abuse continues to be a major social problem in Alaska and whereas, much of the theft and home break-ins are a result of individuals who are trying to feed a drug habit and whereas, marijuana and cocaine are being promoted as socially acceptable substances and whereas, recent studies have documented that marijuana, thought harmless by some in the past, has a long-term detrimental impact on human health and mental and emotional attitudes; Therefore, we resolve that candidates for public office running as Republicans must actively support the laws prohibiting the production, sale, possession or use of drugs, and in particular we resolve that Alaska change its present statute and recriminalize the use and possession of marijuana.

R-5-2 Alcohol and Drug Abuse

Whereas, Alaska has a high incidence of alcohol and drug abuse and whereas, this significantly contributes to traffic fatalities, bodily injury, property damage, child and spouse abuse and crime; Therefore, be it resolved that the Republican Party of Alaska calls for stronger legislation and enforcement of such.

R-5-3 An Elected Attorney General

Whereas, the Office of the Attorney General should not be influenced by the power of the Governor's office, but should be able to act in the best interest of all the people of the State of Alaska; Therefore, be it resolved that we the people of the Republican Party of Alaska feel that the Attorney General should be an elected official, voted for by the people of Alaska and not appointed by the Governor of Alaska.

R-5-4 White Collar Crime

Whereas, the commission of white collar crimes by elected officials and government employees such as perjury, bribery, official misconduct, forgery and fraud rapidly undermines public confidence in government and whereas, recent history has established that express legislative and executive guidance and support are necessary if a truly independent and effective white collar crime prosecution effort is to be undertaken and whereas, the spending climate within State government has easily permitted the rationalization of government actions to serve private interest in the name of the public good; Therefore, be it resolved that the Republican Party of Alaska supports the highest prioritization of the detection and prosecution of white collar crimes in Alaska by elected officials and government employees.

R-6-1 Prayer in Schools

Whereas, Our Republic was founded upon the recognition of rights granted by the Supreme Creator and whereas, this recognition has provided a fundamental basis for our value,

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principles and ideals as a nation; Therefore, be it resolved that the Republican Party of Alaska supports President Reagan's efforts to reinstate voluntary prayer in public schools.

R-6-2 Parents Rights and Responsibilities

Whereas, the Republican Party of Alaska supports basic values including the right of responsibility of parents to love and nurture their children and correct and direct their children's behavior through appropriate discipline and whereas, recent laws in the State of Alaska seem to favor the rights of children, without reducing parental responsibility and liability, and yet diminishing the rights of parents over their children; Therefore, be it resolved that the Republican Party of Alaska hereby reaffirms the importance of parents to guide and correct their children's behavior and requests the Alaska Legislature to review the child advocate statutes of the State of Alaska and revise them as necessary to reflect these views and reinforce parental rights and responsibilities.

R-6-3 Opposition to Pornography

Be it hereby resolved that the Republican Party of Alaska supports and congratulates all businesses that actively oppose the sale and distribution of all pornography.

R-6-4 Right to Life

Whereas, our Republic began with the Declaration of Independence which was based on the principle that "all men and women" are endowed with certain unalienable rights, including the right to life and whereas, the Republican Party hereby rededicates itself to the basic principles of our Republic and the moral legacy of our founding fathers; Therefore, be it resolved that the Republican Party of Alaska objects to state-funded abortions, except where the life of the mother is involved.

R-6-5 Suspected Child Abuse

Whereas, the Republican Party of Alaska strongly opposes the physical and sexual abuse of children, and feel that these abused children need our help and protection and whereas, two-thirds of the nationally reported child abuse cases, according to the National Center on Child Abuse and Neglect (NCCAN), have been deemed groundless and whereas, families are being strained financially and emotionally by agents of the Division of Family and Youth Services, a division of the Department of Health and Social Services, and whereas, parents should not have their authority usurped by the Department of Health and Social Services; Therefore, be it resolved that the Republican Party of Alaska supports the family as a unit, that the Department of Health and Social Services make every effort to keep the family unit intact and that the Division of Family and Youth Services have substantial evidence of abuse before intervention into family matters.

R-7-1 Local Hire

Whereas, the Alaskan community and economy benefit from both the direct and indirect effect of employment of its residents; and whereas, competition for available work is substantial; Therefore, be it resolved that the Republican Party of Alaska supports encouragement of the concept of local hire through voluntary programs, financial incentives such as tax credits, and public recognition of employers with exemplary Alaska hire records.

R-7-2 Tort System Reform

Whereas, it is necessary that most businesses and individuals have liability insurance of various types and whereas, the cost of such insurance is becoming prohibitive;

Therefore, be it resolved that the Republican Party of Alaska commends the Alaska State Legislature for its efforts to resolve the problem and promotes continuing responsible, comprehensive reform of the Tort system.

R-7-3 Primary Election Reform

Whereas, the purpose of a primary is the election of a candidate to represent a Party in the general election, and whereas, the process should allow for party members to select the candidate of their choice and whereas, the open primary which exists in our State allows for the crossing of party lines; Therefore, be it resolved that the Republican Party of Alaska supports primary election reform with opportunity for all Alaskans to participate in the primary election process.

R-7-4 Consolidation of Agencies Pertaining to Building Trades

Whereas, the State of Alaska presently administers building regulation through nine different State departments and this results in considerable fragmentation of adoption and enforcement policies and whereas, the present system results in duplication of services and unnecessary State operating costs; Therefore, be it resolved that the Republican Party of Alaska recommends consolidation of the various building-related regulatory and enforcement agencies in order to provide more efficient services.

R-7-5 Binding Arbitration

Whereas, problems develop when labor practices evolved over many decades in and for the private sector are adopted wholesale for the public sector and whereas, compulsory binding arbitration forces into the hands of an arbitrator (s), not elected nor accountable to the citizens, certain public decisions relative to providing the public program of a community and whereas, there are not shortcuts and no substitutes for collective bargaining and whereas, the Republican Party believes public decisions must be made with the consent of the governed; Therefore, be it resolved that the Republican Party opposes binding arbitration as a method of resolving contract negotiations for public employees.

The following resolutions were offered from the floor. All passed by the Assembly.

Floor #1 Support of President Reagan

Whereas, the policies and principles of President Reagan have achieved economic stability, a strong defense and a reduction of government spending; Therefore, the Republican Party of Alaska totally supports President Reagan in his continuing efforts to maintain a strong defense, decrease government spending, reduce the tax burden and achieve a balanced budget.

Floor #2 Bicentennial of U.S. Constitution

Whereas, the Constitution of the United States is the oldest written frame of government that has been in continuous use by a free people on earth and whereas, government under the Constitution in America has provided an example of self-government that has inspired a yearning for freedom all over the world, and whereas, the bicentenary of the Constitution is in 1987 and the 211th year of the independence of the United States and where the State of Alaska proudly takes its place among the Union of States under the constitution and whereas, in anticipation of the 200th anniversary of the American Constitution we should take the opportunity to celebrate our freedom and to reflect on the frame of government that makes it possible; Therefore, be it resolved that the Republican Party of Alaska supports and celebrates the bicentennial of the Constitution of the United States of America.

Floor #3 Surface Access to All State and Private Lands

Whereas, access to State and private land is necessary for development and recreation opportunities and whereas, there is little surface access to these lands; Therefore, be it resolved that the Republican Party of Alaska supports surface access to all State and private land and encourages the State to begin annual development of a ground-transportation system.

THIS CONCLUDES THE RESOLUTIONS ADOPTED BY THE 1986
STATE REPUBLICAN CONVENTION.

SB 15 - Section Analysis Comparison

A Original SB 15	B Sen. C & RA Version	C HESS Proposal	D ¹⁵ April Draft	E April 4 Draft
Amends Title 14	Amends Title 23 PERA	Amends Title 23	Amends Title 23	Amends Title 23
Current School Employee Negotiations Law	Category Technique of Arbitration	Category Technique of Arbitration 3,4 - Tenure 5 - Continuing Contract 6 - Non-Retention/Dismissal	2,4 - Continuing Contract Category Technique of Arbitration 5 - Lay-off	Category Technique of Arbitration 3,4 - Re-opens Contract if 4 - Financial Exigency
Title:	Title:	Title:	Title:	Title:
Public School Employees Collective Bargaining Agreements	Public School Employees in PERA Class 2, Last Best Offer Package Arbitration	Public School Employees in PERA Class 2, Last Best Offer Package Arbitration, Tenure Rights Continuing Salaries Non-Retention for funding reduction	Public School Employees in PERA Class 2, Last Best Offer Package Arbitration Lay-Offs and Continuing Contract Salaries	Public School Employees in PERA Class 2, Last Best Offer Package Arbitration with Right of Employer to re-open Contract for Financial Exigency
Section 1	Section 1	Section 1	Section 1	Section 1
Declaration of Policy in Current School District Employee Bargaining Law Similar to the policy currently found in PERA stating that collective bargaining is an appropriate public policy and that employees should have the opportunity to participate in the determination of their terms and conditions of employment.	Clarifies that certain Sections of Education Law also pertain to the oper- ation of the Mt. Edgecumbe Boarding School as if it were a regular school district.	Clarifies that certain Sections of Education Law also pertain to the oper- ation of the Mt. Edgecumbe Boarding School as if it were a regular school district.	Clarifies that certain Sections of Education Law also pertain to the oper- ation of the Mt. Edgecumbe Boarding School as if it were a regular school district.	Clarifies that certain Sections of Education Law also pertain to the oper- ation of the Mt. Edgecumbe Boarding School as if it were a regular school district.
Section 2	Section 2	Section 2	Section 2	Section 2
Restates the duty to Negotiate in good faith in the current school employee bargaining law in a condensed way.	Makes the PERA applicable to the employees at the boarding school in Mt. Edgecumbe.	Makes the PERA applicable to the employees at the boarding school in Mt. Edgecumbe.	Makes the PERA applicable to the employees at the boarding school in Mt. Edgecumbe.	Makes the PERA applicable to the employees at the boarding school in Mt. Edgecumbe.

<p style="text-align: center;">Section 3</p> <p>Restatement of the fact that employees in REAA's can organize and coordinate negotiations if the school districts agree to do the same. It further establishes that certificated administrators and non-certificated employees can do so as well. It is a re-statement of the current statute.</p>	<p style="text-align: center;">Section 3</p> <p>Puts school district employees in class 2 of the Public Employee Relations Act, which is the limited right to strike category, and clarifies that the technique of arbitration will be last best offer package arbitration if the strike is enjoined or if the parties go to voluntary arbitration.</p>	<p style="text-align: center;">Section 3</p> <p>Provides that if a Federally Operated School is transferred to, or absorbed into the current or a new school district and a teacher has not yet acquired tenure in that district, the probationary period for that teacher will become five years.</p>	<p style="text-align: center;">Section 3</p> <p>Provides that there will be a change in the prerogative of the employee regarding salary increments if there is no successor agreement on the date of expiration of a current agreement.</p>	<p style="text-align: center;">Section 3</p> <p>Puts school district employees in class 2 of PERA -the limited right to strike category, and clarifies that the technique of arbitration will be last best offer package if the strike is enjoined or if the parties go to voluntary arbitration.</p>
<p style="text-align: center;">Section 4</p> <p>Utilizes the Model of the Public Employee Relations Act relative to Bargaining Unit determination questions and questions of representation election and assigns oversight responsibility for this process to the labor relations agency.</p>	<p style="text-align: center;">Section 4</p> <p>Provides for arbitration, the selection of the arbitrator, and the utilization of the American Arbitration Assoc. If the parties are not able to agree on an arbitrator in the event a strike is enjoined and the dispute goes to arbitration, or in the event the parties decide to voluntarily establish a mutual arbitration procedure. The arbitration shall be last best offer package arbitration. The arbitrator cannot mediate the dispute.</p>	<p style="text-align: center;">Section 4</p> <p>Changes the tenure law and provides that a teacher must serve five years of probation before acquiring tenure.</p>	<p style="text-align: center;">Section 4</p> <p>Provides that rather than pay the experience and educational increments to teachers when a contract expires, the employer shall put an equivalent amount into escrow account and those funds will be disposed of according to the negotiations between the parties.</p>	<p style="text-align: center;">Section 4</p> <p>Provides for last-best-offer package arbitration, local selection of arbitration if parties can mutually agree, utilization of American Arbitration Assn if no local agreement. Also provides for declaration and certification of financial exigency and for reopening the collective bargaining agreement on the initiative of the employer if a financial exigency has been found to exist. If agreement has not been reached within 45 days, the issues will be resolved by the last-best-offer package arbitration procedure.</p>
<p style="text-align: center;">Section 5</p> <p>Adds a section to the current law which clarifies procedures regarding commencement of negotiations and mutual determination of whether or not negotiations will be done in executive session.</p>	<p style="text-align: center;">Section 5</p> <p>Clarifies that the legislative approval requirement under PERA for state employees relative to the financial settlement would not be necessary in public school districts.</p>	<p style="text-align: center;">Section 5</p> <p>Provides that the school district is not required to pay the experience and educational increment differentials to teachers if there is no collective bargaining agreement when a contract expires.</p>	<p style="text-align: center;">Section 5</p> <p>Defines the procedures appropriate for the determination of a financial exigency in a school district, provides for lay off teachers as a result of that financial exigency. It also defines procedures relative to layoff in the event that the parties do not have a local procedure regarding same.</p>	<p style="text-align: center;">Section 5</p> <p>Clarifies that the legislative approval requirement under PERA for state employees relative to the financial settlement is not necessary in public school districts.</p>

<p style="text-align: center;">Section 6</p> <p>Defines the mediation procedure to be used in the event the parties reach impasse. It is essentially the same as current language except that it does not restrict the size of the negotiating teams. It also does not require a mediator's written report since they have been reluctant to do so anyway.</p>	<p style="text-align: center;">Section 6</p> <p>Changes the definition of public employee under PERA to include the employees of school districts.</p>	<p style="text-align: center;">Section 6</p> <p>Gives the employer the right to dismiss or non-retain teachers in the event there is a reduction in funds available to the school district.</p>	<p style="text-align: center;">Section 6</p> <p>Puts school district employees in class 2 of the PERA, which is the limited right to strike category, and clarifies that the technique of arbitration will be last-best-offer package arbitration if the strike is enjoined or if the parties go to voluntary arbitration.</p>	<p style="text-align: center;">Section 6</p> <p>Changes the definition of public employee under PERA to include the employees of school districts.</p>
<p style="text-align: center;">Section 7</p> <p>Provides that if mediation has not produced an agreement or voluntary arbitration by August 1, the parties would immediately submit the dispute to last-best-offer, item-by-item arbitration.</p>	<p style="text-align: center;">Section 7</p> <p>Changes the definitions under PERA to include school districts and REAA's as employers.</p>	<p style="text-align: center;">Section 7</p> <p>Puts school district employees in class 2 of the PERA right to strike category, and clarifies that the technique of arbitration will be last-best-offer package arbitration if the strike is enjoined or if the parties go to voluntary arbitration.</p>	<p style="text-align: center;">Section 7</p> <p>Defines the arbitration procedure to be last-best-offer package arbitration. It also provides that the parties shall utilize the American Arbitration Association if they are unable to agree on an arbitrator at the local level.</p>	<p style="text-align: center;">Section 7</p> <p>Changes the definitions under PERA to include school districts and REAA's as employers.</p>
<p style="text-align: center;">Section 8</p> <p>Provides for the parties to mutually agree on an arbitrator and a local arbitration procedure, and if they are unable to do so, it provides for last-best-offer arbitration item-by-item arbitration using the American Arbitration Assn as the procedural agency. It also provides that the arbitrator shall attempt to mediate the dispute.</p>	<p style="text-align: center;">Section 8</p> <p>Adds a definition in PERA to cover the concept of a regional educational attendance area.</p>	<p style="text-align: center;">Section 8</p> <p>Provides for arbitration, the selection of that arbitrator, and the utilization of the American Arbitration Assoc. If the parties are not able to agree on an arbitrator in the event a strike is enjoined and the dispute goes to arbitration, or in the event the parties decide to voluntarily establish a mutual arbitration procedure. The arbitration shall be last offer package arbitration. The arbitrator cannot mediate the dispute.</p>	<p style="text-align: center;">Section 8</p> <p>Clarifies that the legislative approval requirement under PERA for state employees relative to the financial settlements would not be necessary in public school districts.</p>	<p style="text-align: center;">Section 8</p> <p>Adds a definition section in PERA relative to regional education attendance areas.</p>

Section 9	Section 9	Section 9	Section 9	Section 9
Provides that the grievance arbitrator shall have authority to determine questions of arbitrability of a grievance, and also that the grievance arbitration procedure shall be used to adjudicate unfair labor practices.	Provides for the continuation of collective bargaining agreements, bargaining units and recognized bargaining agents at the time of the effective date of this act.	Clarifies that the legislative approval requirement under PERA for state employees relative to the financial settlement would not be necessary in public school districts.	Changes the definition of public employee under PERA to include the employees of school districts.	Provides for the continuation of collective bargaining agreements and recognized bargaining agents at the time of the effective date of this act.
Section 10	Section 10	Section 10	Section 10	Section 10
Defines and prohibits unfair labor practices by reference to AS 23.40.110 of PERA and also makes it an unfair labor practice for a school board to refuse to continue the terms of an expiring agreement until the new agreement is reached.	Repeals the collective bargaining sections of Title 14 since this version of SB 15 puts the school employees under PERA for purposes of negotiations.	Changes the definition of public employee under PERA to include the employees of school districts.	Changes the definitions under PERA to include school districts and REAA's as employers.	Repeals the collective bargaining sections of Title 14 since this version of SB 15 puts the school employees under PERA for purposes of negotiations.
Section 11	Section 11	Section 11	Section 11	Section 11
Provides that during mediation or arbitration, if these negotiations are conducted during the normal work day, employees shall be released from their duties to participate without loss of pay or benefits.	Provides for an immediate effective date.	Change the definitions under PERA to include school districts and REAA's as employers.	Adds a definition in PERA to cover the concept of a regional education attendance area.	Provides for an immediate effective date.
Section 12		Section 12	Section 12	
Preserves the management rights of school boards and clarifies the exclusivity of those rights as they pertain to educational policy.		Adds a definition in PERA to cover the concept of a regional educational attendance area.	Provides for the continuation of collective bargaining agreements and recognized bargaining agents at the time of the effective date of this act.	
Section 13		Section 13	Section 13	
Provides a new Definitions Section to incorporate terms previously used in amendments to this legislation which require definition.		Repeals the collective bargaining sections of Title 14 since this version of SB 15 puts the school employees under PERA for purposes of negotiations.	Repeals the collective bargaining sections of Title 14 since this version of SB 15 puts the school employees under PERA for purposes of negotiations.	

pective in nature, there-
by creating two classes of
teachers as employees in
school districts.

Section 15

Save harmless provision
relative to current
negotiating units,
collective bargaining
agreements and bargaining
agents.

Section 16

Provides for an immediate
effective date.

Section 15

Save harmless relative to
current negotiating units,
bargaining agents and
collective bargaining
agreements.

Section 16

Provides for an immediate
effective date.

21-10

HAINES BOROUGH SCHOOL DISTRICT -- SALARY SCHEDULE for School Year 1986-87

Acceptability of credit for placement on salary scale will be determined by a committee organized for that purpose.

Years Exp.	<u>BA</u>	<u>BA+15</u>	<u>BA+30</u>	<u>MA BA+45</u>	<u>MA+15 BA+60</u>	<u>PHD MA+30 BA+75</u>
0	27,624	28,839	30,055	31,270	32,486	33,701
1	28,831	30,047	31,262	32,478 OH	33,693	34,908
2	30,038	31,254	32,469	33,685	34,900	36,116
3	31,246 KH	32,461	33,676 AA	34,892	36,107	37,323
4	32,453	33,668	34,884	36,099	37,314	38,530
5	33,660 TH	34,875	36,091	37,306 ee	38,522 DE	39,737
6	34,857	36,082	37,298	38,513	39,729	40,944
7	36,074 LB	37,290	38,505	39,721	40,936	42,151
8		38,497 WG NS.733	39,712 HB FP	40,928	42,143	43,359
9			40,919 CB HE	42,135	43,350	44,566
10			TF AM	43,342 ←F (SH)	44,558	45,773
11				KP TS	45,765 BA HM OS CF EL	46,980 JF
12						48,187 GA JB RB FH LH SS-D RS CS RV RW

APPENDIX B-1



HAINES BOROUGH SCHOOLS

P.O. Box 1289

Meeting the Challenge

Haines, Alaska 99827

REDUCTIONS IN THE SCHOOL PROGRAM SINCE JULY, 1986

PERSONNEL (Not Replaced)

Classified: Elementary Librarian Migrant Aide(2)
Comm Ed Coordinator Chapter I Aide
High School Office Aide
Elementary Aide
Groundskeeper
Overtime for regular maintenance staff
for cleaning after activities
Pool Manager (time decreased)

Certificated:

Jan McPhetres	Donna Truax
Betty Price	David Smith (.7)
June Haas	Claudia Eberly (.5)
Mildred Horridge	Ellen Larson (on leave)

ATHLETICS/ACTIVITIES

Wrestling - eliminated
Volleyball - eliminated
Reduce the # of students & staff traveling, and use ferry
for all travel when possible (reduced costs for
flying)
Supplies and equipment - reduced
Pay for officials reduced
AK Close-up eliminated
Foreign Language festival travel eliminated
Full-time track coach eliminated and hired asst. coach
at lower rate
RSVP funding reduced
Eliminated funds for Artists-in-the-schools
Intramurals (1/7 of a teacher's day for prep)

OTHER

Staff/Board Professional Development (Inservice & Travel) - eliminated
Lutak and Beach Road Bus Runs and winter hazardous routes - eliminated
Physical exams and accident insurance for students - eliminated
Reductions in all areas for supplies, books and equipment
Field Trips - eliminated
Reduced PerDiem
Reduced # of Hours for Substitutes & Substitute Pay
Reduced Summer Administrative costs by approximately \$6,000 per year through cooperative scheduling of vacation time

TOTAL OPERATING BUDGET

From a high of 3,367,511 in 85-86 to 2,911,260 estimated for FY 90, a decrease of about 14%.

MISCELLANEOUS INFORMATION

The statement has been made by a community member that the way to solve the budget problem is to have volunteers in the school. This is already taking place and has been on the increase since the budget reductions began in 1986. Last year we had nearly 200 different volunteers working in the school for a total of nearly 2000 hours.

AND IT ISN'T OVER

We are in the process of attempting to balance the budget for 1989-90, with anticipated expenditures at \$443,000 over estimated revenues. The following will most likely take place in order to submit a balanced budget:

Increase local revenues to maximum allowable \$894,000
- more could probably be raised, but then we would exceed the 21%

Hope we have some fund balance from FY 89

Eliminate all community education programs and use of facilities for other than the regular K-12 program

Close the swimming pool

Postpone seeking K-12 Accreditation

Eliminate teacher inservice and travel for professional development that we had hoped to get back in the budget after having none since 1985-86, and training opportunities for maintenance personnel

Eliminate school funding for summer outdoor education program

Cut funds for equipment, all supplies, media, textbooks and library books by 50%

Postpone the purchase of equipment and services for satellite telecommunications project (courses for students and inservice for staff)

Cut funds for Board and administration travel from the requested \$8,000 to 4,000 (this category was reinstated for 1988-89, after no travel funds since 85-86)

Reduce computer instruction from full to half-time

Reduce expenditure for substitutes

More programs, materials and staff are on the cut list if the above items do not result in a balanced budget.

Finally, with the capital improvement projects scheduled for this summer ("must be done projects", not any "would be nice to do"), our reserve account for capital improvements will be totally depleted.

1989-90 BUDGET

3/29/89

Total expenditures	\$3,149,794
Anticipated revenue	<u>2,726,677</u>
Expenditures in excess of expected revenue	423,117
Estimated fund balance	\$ <u>100,000</u> (323,117)

Other possible Borough funds as indicated by Mayor:

74.

Additional Interest Income	50,000
Additional Sales Tax Revenue	<u>85,000</u> ←
	135,000

Difference with above revenue (188,117)

The attached list of items is presented for consideration as possible ways to balance the budget. Several of the items have been taken from similar lists that we worked with the last two years. Priority order has not been assigned.

Priority No.	Program	Amount	Impact on Program
INCREASED REVENUE			
A.	Increase local support beyond 21% of basic need and fund programs directly	up to 188,117	Specific areas to be funded would be identified and special revenue accounts set up to remove them from the operating budget. Examples could include Community Ed, Athletics and Activities, Library Services, etc.)
B.	Increase funds available to school district by decreasing support of other borough programs	\$151,043	Current borough appropriations are: Chilkat Center \$26,410; Museum \$50,000; Library \$74,633 The budgets for the library and museum have <u>increased</u> 32% and 163% respectively in two years, while the school operating budget has been <u>decreased</u> 3% during the same time period.
PROGRAM REDUCTIONS OR ELIMINATIONS			
C.	Community Ed Courses & Activities	<u>\$ 52,500</u>	Eliminates all but one CE programs and other community and group use of facilities. The only activity to continue in this area would be city-league, provided their fee covers the costs for the supervisor. Reassign half-time coordinator to instructor on grant program. Decreases custodial need by half time position. Because the facility wouldn't be open in the evenings or on weekends for community use, we estimate being able to save 1/4 - 1/3 of our electricity costs at the high school for the school year.
	16,000 GZGT 28,100 FRENCH		
D.	Swimming Pool	\$ 40,750	This is the amount of permanent fund interest currently budgetted to keep the pool open. If the pool was closed, this interest income could be used for the regular school program.
	37,000 POOL BALANCE 4 months		
E.	Satellite high school courses, elementary enrichment and teacher inservice	\$ 15,500	Eliminate offering courses and inservices via satellite Telecommunications Education Program (STEP)

Priority No.	Program	Amount	Impact on Program
F.	Summer Outdoor Education	\$ 4,500	Eliminate borough support of program. The program would have to be funded totally by fees and donations.
G.	All functions (except SPED and Maintenance)	\$ 33,750	50% reduction in what has been requested for equipment
H.	K-12 Accreditation	\$ 5,000	Postpone pursuing K-12 accreditation
I.	Maintenance Travel	\$ 2,000	Eliminates training opportunities for maintenance personnel
J.	Substitutes	\$ 10,000	Reduce substitutes in all categories. Teachers fill in during prep time for absent teachers and secretarial substitutes not hired. OR, assign one teacher as full-time sub, along with other duties. <i>ADMINISTRAT</i>
K.	All Functions (except SPED and maintenance)	\$ 50,700	50% reduction in what has been requested in the areas of teaching & office supplies, textbooks, library books, periodicals, instructional media.
L.	Computer Instruction	\$ 37,227	Reduce this position to half-time and assign teacher to half-time Migrant Ed teacher/counselor. Also assign high school teacher one period per day as Migrant Ed tutor.
M.	Mosquito Lake	\$ 15,500	Mosquito Lake School to K-3 and 4th graders come to Haines, leaving one teacher there. Joneshill to Haines to fill vacancy created by Maples leave, rather than filling position with new person. Savings represents differences between change in foundation formula by moving students and savings of salary and benefits for a new person, and travel costs for Joneshill
N.	Inservice & travel for professional development	\$ 10,000	No inservice or out-of-district travel for teachers

Priority No.	Program	Amount	Impact on Program
O.	Lunch Supervisor	\$ 3,600	Less teacher time for instruction so that adequate lunch supervision can be provided. This presents a significant scheduling problem.
P.	Board, and Administrator Travel	\$ 10,000	No travel funds for Board or Administration
Q.	Intramurals	\$ 6,000	Eliminates program for grades 4-8
R.	High School Athletics & Activities	\$107,270	Eliminates all high school athletics and activities (examples: basketball, track, cross country, music festival, pep band, debate, etc.)
S.	High School English and Elementary Classes	\$ 55,000	Non-retain two non-tenured teachers. Reassign current media center teachers to classrooms. Hire one classified person to operate both media centers (half-time each). This would have a significant impact in areas that are currently providing good programs to all students.

THE FOLLOWING ARE NEGOTIATED ITEMS:

T.	Teacher Salaries (and corresponding benefits)	\$ 57,000	Return to 86-87 certificated salary schedule (prior to the last 3% raise).
U.	Employee Insurance Benefits	\$155,000	District would pay for employee health benefits only. Family coverage would be at employee's expense. This amount is based on a 20% increase in premiums.
V.	Employee Insurance Benefits	\$ 13,600	Eliminate double coverage currently provided for two couples with both spouses employed by the district.
W.	Teacher Benefits	\$ 1,750	Eliminate \$250 recertification stipend.
X.	Salary freezes at current levels (& applicable benefits)	\$ 7,100	No movement for additional year of experience (vertical)
		\$ 15,800	No movement for additional courses (horizontal)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1989

SUBJECT: Binding arbitration for teachers
(CSSB 15(HESS))

TO: Senator Paul Fischer
Chairman
Senate HESS Committee

FROM: John B. Gaguine
Legislative Counsel

*JBG by
TID Cook*

You have asked about the constitutionality of a proposal contained in the draft of CSSB 15(HESS) that would require school districts and REAAs to submit to compulsory binding interest arbitration if the district or REAA and its teachers are not able to reach a collective bargaining agreement through negotiations. Although several states have held similar provisions unconstitutional, the majority of state courts to consider challenges to such arbitrations laws have upheld them. It is my opinion that the Alaska courts would follow the majority rule, and would uphold the proposed provision if it were enacted and were challenged.

Dave Moses of your office mentioned five states that have voided such statutes: South Dakota, Colorado, Utah, Ohio and California. The state supreme courts of South Dakota, Colorado and Utah issued their decisions in the mid-1970s, and as far as I can tell those decisions have not been overruled. City of Sioux Falls v. Sioux Falls Firefighters, Local 814, 234 N.W.2d 35 (S.D. 1975); Greeley Police Union v. City Council of Greeley, 553 P.2d 790 (Colo. 1976); Salt Lake City v. International Ass'n. of Firefighters, Local 1645 et. al., 563 P.2d 786 (Utah 1977). The Ohio Supreme Court issued such a decision last November; however, three of the seven justices dissented vigorously, one justice in the majority expressed misgivings about the decision. City of Rocky River v. State Employment Relations Bd., 530 N.E.2d 1 (Ohio 1988), reh'ng. granted, ___ N.E.2d ___ (1989). In February of this year the court voted to rehear the case. The continuing validity of the decision is therefore in doubt.

Senator Paul Fischer
Page 2
April 28, 1989

California, to the best of my knowledge, is not among this group. A 1974 California Supreme Court decision expressly upheld a statute requiring binding arbitration between a municipality and its firefighters. Among the other state supreme courts that have upheld compulsory binding arbitration statutes are those of New York, Massachusetts, Wyoming, Rhode Island, Michigan, Washington (overruling an earlier decision to the contrary), Wisconsin, Maine, New Jersey, and Oregon. See Annot. 68 A.L.R.3d 885.

Challenges to compulsory binding arbitration statutes generally rely on a theory of unconstitutional delegation of power. It is argued that the setting of terms and conditions of employment (sometimes including wages, and sometimes not) is a legislative function of the local governing body (usually), and that that body cannot be required to cede the function to an arbitrator. The supreme courts of South Dakota, Colorado, Utah and Ohio agreed with this argument. In the case of South Dakota and Colorado, however, the court cited specific anti-delegation constitutional provisions that have no equivalent in the Alaska Constitution.) Most of the courts that have considered the argument, however, have not agreed; see states cited above. Since the Alaska Supreme Court has not adopted a restrictive view of delegation of power, see, e.g., Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966), I would expect it to disagree with this argument, too.

JG:lmb
L7/079

6-0140I
Cramer
4/28/89

B

Original sponsors: Duncan, Zharoff,
Kerttula, et al.

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR SENATE BILL NO. 15 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to continuation of the provisions of
7 certain terms of a teacher's expired contract and to
8 teacher layoffs; including public school employees in
9 the Public Employment Relations Act as class(a)(2)
10 employees entitled to a limited right to strike;
11 establishing unrevised, uncompromised last-best-offer
12 package arbitration for resolution of the collective
13 bargaining process for public school employees; and
14 providing for an effective date."

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

16 * Section 1. SALARY INCREASES DURING NEGOTIATIONS. (a) Notwithstand-
17 ing AS 14.20.158, when a teacher is entitled to a salary increase under the
18 terms of a previous contract that has expired, the employer, while the
19 parties are negotiating a successor contract, shall pay the amount of the
20 increase, and the cost of benefits based on the increase, into an escrow
21 account. Disposition of funds in the escrow account shall be determined
22 under the successor collective bargaining agreement negotiated by the
23 employer and the employee bargaining organization.

24 (b) In this section

25 (1) "employer" means the school board or superintendent that
26 appoints the teachers;

27 (2) "school board" has the meaning given in AS 14.60.010 and

1 (3) "teacher" has the meaning given in AS 14.20.215.

2 * Sec. 2. APPLICATION OF PERA TO SCHOOLS. (a) Notwithstanding AS 23.-
3 40.250(6), the certificated and noncertificated employees of a school
4 district are considered public employees for purposes of AS 23.40.070 -
5 23.40.260. Notwithstanding AS 23.40.250(7), a school district is con-
6 sidered a public employer for purposes of AS 23.40.070 - 23.40.260.

7 (b) The certificated and noncertificated employees of a school dis-
8 trict are considered class (a)(2) employees under AS 23.40.200. Notwith-
9 standing AS 23.40.200(c), in a dispute between a school board of a school
10 district and an employee bargaining organization, if an impasse or deadlock
11 exists after the issuance of an injunction, the parties shall submit to
12 arbitration to be carried out under sec. 3 of this Act.

13 (c) Notwithstanding AS 23.40.215(b), the monetary terms of an agree-
14 ment entered into between a school district and its employees are not
15 subject to approval by the legislature.

16 * Sec. 3. ARBITRATION FOR SCHOOL EMPLOYEES. (a) A collective bargain-
17 ing agreement between a school board and an employee bargaining organiza-
18 tion must include a procedure to promptly select an arbitrator. If the
19 parties are unable to agree on a procedure for the selection of an arbitra-
20 tor, the parties shall use the services of and comply with the procedures
21 of the American Arbitration Association in the selection of an arbitrator.

22 (b) If an impasse or deadlock has occurred between a school board and
23 an employee bargaining organization after a strike has been enjoined, the
24 parties shall submit to last-best-offer package arbitration. In last-
25 best-offer arbitration under this section, each party shall submit a final
26 offer on each issue in dispute. Each party may submit to the arbitrator
27 oral and written evidence in support of its position, and must be given an

1 request of either party, or on the motion of the arbitrator, the arbitrator
2 may conduct a public meeting to allow the parties to present and explain
3 their positions and final offers. A party may not revise its last best
4 offer after submission to the arbitrator.

5 (c) The arbitrator shall, without modification, adopt the total
6 package of final offers of one of the parties, and shall issue a final and
7 binding decision not more than 10 days after the parties have presented
8 their last best offers.

9 (d) The parties shall share the cost of the arbitrator equally.

10 (e) In this section, "school board" means the school board of a
11 school district and the Board of Education for the state boarding school.

12 * Sec. 4. TEACHER LAYOFF. (a) A school district may adopt procedures
13 to lay off teachers in the event of a financial exigency. If a school
14 district determines that it is faced with a probable financial exigency, it
15 shall apply to the office of management and budget in the Office of the
16 Governor for a verification of financial exigency. The office shall inves-
17 tigate the financial circumstances of the school district. The office
18 shall issue its decision whether or not a financial exigency exists within
19 30 days after receipt of the request for a verification from the school
20 district. If the office verifies that a financial exigency exists in the
21 school district, the school district may lay off teachers under this sec-
22 tion.

23 (b) Before applying to the office of management and budget under (a)
24 of this section, a school district shall consider the alternatives avail-
25 able to it to resolve the emergency, including considering changing the
26 district's budget plan, using the district's fund balances, cost savings
27 from voluntary attrition, and other reasonable cost saving measures.

1 However, layoff status does not constitute a break in service for

2 (1) determining eligibility for tenure;

3 (2) retaining acquired tenure rights; or

4 (3) retaining accrued sick leave.

5 (d) Layoffs under this section shall be based on the program needs of
6 the school district as determined by

7 (1) the parties in a collective bargaining agreement;

8 (2) the school district's policy when the employees have de-
9 clined to negotiate layoff procedures; or

10 (3) district-wide seniority when a financial exigency is ver-
11 ified and no other policy is in place.

12 (e) In this section,

13 (1) "financial exigency" means a temporary, financial emergency
14 or crisis that is of sufficient magnitude and immediacy that employee
15 layoff is the only reasonable choice available to the school board to
16 resolve the emergency;

17 (2) "layoff" means the temporary suspension of employment during
18 a period of financial exigency for the school district.

19 * Sec. 5. DEFINITIONS. (a) The definitions set out in AS 23.40.250
20 apply to secs. 2 - 5 of this Act.

21 (b) In secs. 2 - 5 of this Act, "school district" means a municipal
22 school district or a regional educational attendance area; in this sub-
23 section "regional educational attendance area" means an educational service
24 area in the unorganized borough that may or may not include a military
25 reservation, and that contains one or more public schools of grade levels
26 K - 12 or any portion of those grade levels that are to be operated under
27 the management and control of a single regional school board.

1 boarding school, secs. 2(a), 2(b), and 3 - 5 of this Act apply to collec-
2 tive bargaining and negotiation by certificated employees. Notwithstanding
3 AS 14.16.070, AS 23.40.070 - 23.40.260 (Public Employment Relations Act)
4 apply to the employees of the state boarding school who are not subject to
5 secs. 2(a), 2(b), and 3 - 5 of this Act.

6 * Sec. 7. This Act is repealed June 30, 1993.

7 * Sec. 8. Nothing in this Act terminates or modifies a collective bar-
8 gaining unit, recognition of exclusive bargaining representative, or col-
9 lective bargaining agreement if the unit, recognition, or agreement is in
10 effect on the effective date of this Act.

11 * Sec. 9. The operation of AS 14.20.550, 14.20.555, 14.20.560, 14.20.-
12 570, 14.20.580, 14.20.590, 14.20.600, and 14.20.610 is suspended until
13 July 1, 1993.

14 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsors: Duncan, Zharoff,
Kerrettula, et al.

1 IN THE SENATE
2 CS FOR SENATE BILL NO. 15 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act including public school employees in the
7 Public Employment Relations Act as class(a)(2) em-
8 ployees entitled to a limited right to strike; estab-
9 lishing unrevised, uncompromised last-best-offer
10 package arbitration for resolution of the collective
11 bargaining process for public school employees;
12 permitting the reopening of certain public school
13 employee collective bargaining agreements after a
14 declaration of financial exigency; and providing for
15 an effective date."

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

17 * Section 1. AS 14.16.050(a) is amended to read:

18 (a) The following provisions apply with respect to the operation
19 and management of the state boarding school as if it were a school
20 district:

21 (1) requirements relating to school district operations:

22 (A) AS 14.03.030 - 14.03.050 (defining the school
23 term, day in session, and school holidays);

24 (B) AS 14.03.083 - 14.03.140 (miscellaneous provisions
25 applicable to school district operations);

26 (C) regulations adopted by the board under authority
27 of AS 14.07.020(a) that are applicable to school districts and
28 their schools, unless the board specifically exempts the state
29 boarding school from compliance with a regulation;

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(D) AS 14.12.150 (authorizing school districts to establish and participate in the services of a regional resource center);

(E) AS 14.14.050 (imposing the requirement of an annual audit);

(F) AS 14.14.110 (authorizing cooperation with other school districts);

(G) AS 14.14.130 (directing the employment of a chief school administrator);

(H) AS 14.14.140(b) (establishing a prohibition on employment of a relative of the chief school administrator);

(I) AS 14.18 (prohibiting discrimination based on sex in public education);

(2) requirements relating to state financial assistance for education and the receipt and expenditure of that assistance:

(A) AS 14.17.080 (relating to student count estimates);

(B) AS 14.17.082 (relating to school operating fund balances);

(C) AS 14.17.160 - 14.17.220 (setting out the procedure for payment of financial assistance, and imposing general requirements and limits on money paid);

(3) requirements relating to teacher employment and retirement:

(A) AS 14.14.105 and 14.14.107 (relating to sick leave);

(B) AS 14.20.095 - 14.20.215 (relating to the employment and tenure of teachers);

(C) AS 14.20.220 (relating to the salaries of teachers

1 employed);

2 (D) AS 14.20.230 - 14.20.350 (relating to sabbatical
3 leave provisions for teachers);

4 (E) AS 23.40.070 - 23.40.260 [AS 14.20.550 - 14.20.-
5 610] (authorizing collective bargaining, negotiation, and arbi-
6 tration [MEDIATION] by certificated employees), except with
7 regard to teachers who are administrators and except that the
8 board may delegate some or all of its responsibilities under
9 those statutes;

10 (F) AS 14.25 (provisions regarding the teachers' re-
11 tirement system);

12 (4) requirements relating to students and educational pro-
13 grams:

14 (A) AS 14.30.180 - 14.30.350 (relating to educational
15 services for exceptional children);

16 (B) AS 14.30.360 - 14.30.370 (establishing health
17 education program standards);

18 (C) AS 14.30.400 - 14.30.410 (relating to bilingual
19 and bicultural education).

20 * Sec. 2. AS 14.16.070 is amended to read:

21 Sec. 14.16.070. APPLICABILITY OF OTHER LAW. AS 23.40.070 -
22 23.40.260 (Public Employment Relations Act) apply to the employees of
23 the state boarding school [WHO ARE NOT SUBJECT TO AS 14.20].

24 * Sec. 3. AS 23.40.200(c) is amended to read:

25 (c) The class in (a)(2) of this section is composed of public
26 utility, snow removal, sanitation and public school and other educa-
27 tional institution employees. Employees in this class may engage in a
28 strike after mediation, subject to the voting requirement of (d) of
29 this section, for a limited time. The limit is determined by the

1 interests of the health, safety or welfare of the public. The public
2 employer or the labor relations agency may apply to the superior court
3 in the judicial district in which the strike is occurring for an order
4 enjoining the strike. A strike may not be enjoined unless it can be
5 shown that it has begun to threaten the health, safety or welfare of
6 the public. A court, in deciding whether or not to enjoin the strike,
7 shall consider the total equities in the particular class. "Total
8 equities" includes not only the impact of a strike on the public but
9 also the extent to which employee organizations and public employers
10 have met their statutory obligations. If an impasse or deadlock still
11 exists after the issuance of an injunction, the parties shall submit
12 to arbitration to be carried out under AS 23.40.205 for employees of a
13 school district or regional educational attendance area and under
14 AS 09.43.030 for other class (a)(2) employees.

15 * Sec. 4. AS 23.40 is amended by adding new sections to read:

16 Sec. 23.40.205. ARBITRATION FOR SCHOOL EMPLOYEES. (a) A col-
17 lective bargaining agreement between a school board and an employee
18 bargaining organization must include a procedure to promptly select an
19 arbitrator. If the parties are unable to agree on a procedure for the
20 selection of an arbitrator, the parties shall use the services of and
21 comply with the procedures of the American Arbitration Association in
22 the selection of an arbitrator.

23 (b) If an impasse or deadlock has occurred between a school
24 board and an employee bargaining organization after a strike has been
25 enjoined, the parties shall submit to last-best-offer package arbitra-
26 tion. In last-best-offer arbitration under this section, each party
27 shall submit a final offer on each issue in dispute. Each party may
28 submit to the arbitrator oral and written evidence in support of its
29 position, and must be given an opportunity to respond to the

1 presentation of evidence by the other party. The arbitrator may not
2 propose compromises to points in dispute. At the request of either
3 party, or on the motion of the arbitrator, the arbitrator may conduct
4 a public meeting to allow the parties to present and explain their
5 positions and final offers. A party may not revise its last best
6 offer after submission to the arbitrator.

7 (c) The arbitrator shall, without modification, adopt the total
8 package of final offers of one of the parties, and shall issue a final
9 and binding decision not more than 10 days after the parties have
10 presented their last best offers.

11 (d) The parties shall share the cost of the arbitrator equally.

12 (e) In this section, "school board" means the school board of a
13 borough or city school district or a regional educational attendance
14 area and the Board of Education for the state boarding school.

15 Sec. 23.40.207. RENEGOTIATION BECAUSE OF FINANCIAL EXIGENCY.

16 (a) A collective bargaining agreement entered into by a school dis-
17 trict or regional educational attendance area and an employee bargain-
18 ing organization is subject to reopening during its term at the
19 request of the school board after a determination of a financial
20 exigency under this section.

21 (b) If a school board determines that a probable financial
22 exigency exists, it shall apply to the office of management and budget
23 for a determination of financial exigency. The office shall investi-
24 gate the financial circumstances of the school district or attendance
25 area and shall solicit information and testimony from employee organi-
26 zations in the district. Investigation of the financial circumstances
27 must include

- 28 (1) review of the district's or area's budget for the year;
29 (2) necessary expenditures for the year;

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(3) examination of the present revenue available from state, federal, and local sources and from fund balances;

(4) whether the district or area has pursued all other funding sources including additional local contributions, a supplemental appropriation from the legislature, and funding available from the federal government;

(5) the cost savings possible from voluntary attrition and other reasonable measures.

(c) The office shall issue its determination of whether or not a financial exigency exists within 45 days after the initial request for a determination was made. If the office finds, after reviewing the financial circumstances of the district or attendance area and considering available alternate revenue sources and cost-savings measures, that the district or attendance area is unlikely to be able to balance its budget unless it reduces the cost of personal services, the office shall declare that a financial exigency exists. In reporting its determination, the office shall include any findings it has made as to the cause of the financial exigency.

(d) If a financial exigency is determined to exist, the school board may request the renegotiation of collective bargaining agreements entered into under AS 23.40.070 - 23.40.260. The parties to the agreement shall negotiate in good faith. If the parties are unable to reach agreement within 45 days after the date on which the financial exigency was determined, the deadlock shall be resolved by last best offer package arbitration under AS 23.40.205. Notwithstanding AS 23.40.205(c), the parties may, by agreement, extend the time the arbitrator has in which to make a decision beyond 10 days.

(e) In this section,

(1) "financial exigency" means a temporary, financial

1 emergency or crisis that is of sufficient magnitude and immediacy to
2 threaten the fiscal stability of the school district or attendance
3 area;

4 (2) "office" means the office of management and budget in
5 the Office of the Governor;

6 (3) "school board" means the school board of a borough or
7 city school district or a regional educational attendance area.

8 * Sec. 5. AS 23.40.215 is amended by adding a new subsection to read:

9 (c) Notwithstanding (b) of this section, the monetary terms of
10 an agreement entered into between a school district or regional educa-
11 tional attendance area and its employees are not subject to approval
12 by the legislature.

13 * Sec. 6. AS 23.40.250(4) is amended to read:

14 (6) "public employee" means any employee of a public em-
15 ployer, whether or not in the classified service of the public em-
16 ployer, except elected or appointed officials [OR TEACHERS OR NONCER-
17 TIFICATED EMPLOYEES OF SCHOOL DISTRICTS];

18 * Sec. 7. AS 23.40.250(7) is amended to read:

19 (7) "public employer" means the state or a political subdivi-
20 sion of the state, including without limitation, a municipality
21 [TOWN, CITY, BOROUGH], district, school district, regional educational
22 attendance area, board of regents, public and quasi-public corpo-
23 ration, housing authority or other authority established by law, and a
24 person designated by the public employer to act in its interest in
25 dealing with public employees;

26 * Sec. 8. AS 23.40.250 is amended by adding a new paragraph to read:

27 (9) "regional educational attendance area" or "attendance
28 area" means an educational service area in the unorganized borough
29 that may or may not include a military reservation, and that contains

1 one or more public schools of grade levels K - 12 or any portion of
2 those grade levels that are to be operated under the management and
3 control of a single regional school board.

4 * Sec. 9. Nothing in this Act terminates or modifies a collective
5 bargaining unit, recognition of exclusive bargaining representative, or
6 collective bargaining agreement if the unit, recognition, or agreement is
7 in effect on the effective date of this Act.

8 * Sec. 10. AS 14.20.550, 14.20.555, 14.20.560, 14.20.570, 14.20.580,
9 14.20.590, 14.20.600, and 14.20.610 are repealed.

10 * Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

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Original sponsors: Duncan, Zharoff,
Kerttula, et al.

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 15 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to continuation of the provisions of
7 certain terms of a teacher's expired contract and to
8 teacher layoffs; including public school employees in
9 the Public Employment Relations Act as class(a)(2)
10 employees entitled to a limited right to strike;
11 establishing unrevised, uncompromised last-best-offer
12 package arbitration for resolution of the collective
13 bargaining process for public school employees; and
14 providing for an effective date."

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

16 * Section 1. AS 14.16.050(a) is amended to read:

17 (a) The following provisions apply with respect to the operation
18 and management of the state boarding school as if it were a school
19 district:

20 (1) requirements relating to school district operations:

21 (A) AS 14.03.030 - 14.03.050 (defining the school
22 term, day in session, and school holidays);

23 (B) AS 14.03.083 - 14.03.140 (miscellaneous provisions
24 applicable to school district operations);

25 (C) regulations adopted by the board under authority
26 of AS 14.07.020(a) that are applicable to school districts and
27 their schools, unless the board specifically exempts the state
28 boarding school from compliance with a regulation;

29 (D) AS 14.12.150 (authorizing school districts to

1 establish and participate in the services of a regional resource
2 center);

3 (E) AS 14.14.050 (imposing the requirement of an
4 annual audit);

5 (F) AS 14.14.110 (authorizing cooperation with other
6 school districts);

7 (G) AS 14.14.130 (directing the employment of a chief
8 school administrator);

9 (H) AS 14.14.140(b) (establishing a prohibition on
10 employment of a relative of the chief school administrator);

11 (I) AS 14.18 (prohibiting discrimination based on sex
12 in public education);

13 (2) requirements relating to state financial assistance for
14 education and the receipt and expenditure of that assistance:

15 (A) AS 14.17.080 (relating to student count esti-
16 mates);

17 (B) AS 14.17.082 (relating to school operating fund
18 balances);

19 (C) AS 14.17.160 - 14.17.220 setting out the proce-
20 dure for payment of financial assistance, and imposing general
21 requirements and limits on money paid);

22 (3) requirements relating to teacher employment and retire-
23 ment:

24 (A) AS 14.14.105 and 14.14.107 (relating to sick
25 leave);

26 (B) AS 14.20.095 - 14.20.215 (relating to the employ-
27 ment and tenure of teachers);

28 (C) AS 14.20.220 (relating to the salaries of teachers
29 employed);

1 (D) AS 14.20.280 - 14.20.350 (relating to sabbatical
2 leave provisions for teachers);

3 (E) AS 23.40.070 - 23.40.260 [AS 14.20.550 - 14.20.-
4 610] (authorizing collective bargaining, negotiation, and arbi-
5 tration [MEDIATION] by certificated employees), except with
6 regard to teachers who are administrators and except that the
7 board may delegate some or all of its responsibilities under
8 those statutes;

9 (F) AS 14.25 (provisions regarding the teachers' re-
10 tirement system);

11 requirements relating to students and educational pro-
12 grams:

13 (A) AS 14.30.180 - 14.30.350 (relating to educational
14 services for exceptional children);

15 (B) AS 14.30.360 - 14.30.370 (establishing health
16 education program standards);

17 (C) AS 14.30.400 - 14.30.410 (relating to bilingual
18 and bicultural education).

19 * Sec. 2. AS 14.16.070 is amended to read:

20 Sec. 14.16.070. APPLICABILITY OF OTHER LAW. AS 23.40.070 -
21 23.40.260 (Public Employment Relations Act) apply to the employees of
22 the state boarding school [WHO ARE NOT SUBJECT TO AS 14.20].

23 * Sec. 3. AS 14.20.158 is amended to read:

24 Sec. 14.20.158. CONTINUED CONTRACT PROVISIONS. Continuation of
25 the provisions of a teacher's contract under AS 14.20.145 or 14.20.155
26 does not

27 (1) affect the alteration of the teacher's salary except as
28 provided in (b) of this section. in accordance with the salary sched-
29 ule prescribed by state law, or in accordance with a local salary

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schedule applicable to all teachers in the district and adopted by bylaws;

(2) limit the right of the employer to assign the teacher to any teaching, administrative, or counseling position for which the teacher is qualified; or

(3) limit the right of the employer to assign the teacher, as is reasonably necessary, to any school in the district.

* Sec. 4. AS 14.20.158 is amended by adding a new subsection to read:

(b) When a teacher is entitled to a salary increase under the terms of a previous contract that has expired, the employer, while the parties are negotiating a successor contract, shall pay the amount of the increase, and the cost of benefits based on the increase, into an escrow account. Disposition of funds in the escrow account shall be determined under the successor collective bargaining agreement negotiated by the employer and the employee bargaining organization.

* Sec. 5. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.178. TEACHER LAYOFF. (a) A school district may adopt procedures to lay off teachers in the event of a financial exigency. If a school district determines that it is faced with a probable financial exigency, it shall apply to the office of management and budget in the Office of the Governor for a verification of financial exigency. The office shall investigate the financial circumstances of the school district. The office shall issue its decision whether or not a financial exigency exists within 30 days after receipt of the request for a verification from the school district. If the office verifies that a financial exigency exists in the school district, the school district may lay off teachers under this section.

(b) Before applying to the office of management and budget under (a) of this section, a school district shall consider the alternatives