

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7541 SENATE LABOR & COMMERCE

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 95() dated 2/28/91

Page 2, lines 17-21:

Delete all material.

Insert a new paragraph to read:

"(3) require a contractor, subcontractor or other person to do business, including the handling, using, selling, and transporting of goods, or the employment of construction industry employees, only with other contractors, subcontractors or persons who qualify under and are in compliance with the terms of the agreement."

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TO: CSSB 95() dated 2/28/91

Bill version -

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"(3) require the state or a political subdivision of the state and one or more labor organizations representing employees in the building, maintenance, and construction industry to enter into an agreement concerning labor relations on a public construction project, to cease or refrain, or agree to cease or refrain, from handling, using, selling, transporting, or doing business with a contractor, subcontractor, or other person."

Terry Cramer version -

Page 2, lines 17-21:

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Insert a new paragraph to read:

"(3) require a person covered by the agreement to limit the persons with whom the person or a contractor or subcontractor of the person does business, including the handling, using, selling, and transporting of goods to persons who qualify under the terms of the agreement."

Helene Brooks version -

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CS FOR SENATE BILL NO. 95 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS RODEY, Menard

A BILL

FOR AN ACT ENTITLED

1 "An Act permitting the state or political subdivisions of the state to enter into project
2 labor agreements."

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

4 * Section 1. AS 23.05.380 is amended to read:

5 Sec. 23.05.380. REGULATIONS. The agency shall adopt regulations under the
6 Administrative Procedure Act (AS 44.62) to carry out labor relations functions under
7 AS 23.05.360 - 23.05.390, AS 23.40.070 - 23.40.260, AS 36.90.150, and AS 42.40.730 -
8 42.40.890.

9 * Sec. 2. AS 36.90 is amended by adding a new section to read:

10 Sec. 36.90.150. PROJECT LABOR AGREEMENTS. (a) The purpose of this section
11 is to enable the state or a political subdivision of the state to structure labor relations at the job
12 site of a public construction project in the interests of industrial harmony and to permit public
13 agencies to make optimal use of their construction resources.

14 (b) If the public construction project meets the requirements of (c) of this section, the

1 state or a political subdivision of the state and a representative of one or more labor organizations
2 representing employees in the building, maintenance, and construction industry may enter into
3 a project labor agreement concerning labor relations on a public construction project whether or
4 not the representative is a majority status labor organization under 29 U.S.C. 159. However, they
5 may not enter into a project labor agreement to cover work currently or traditionally performed
6 by employees of the state or political subdivision or work covered under a current collective
7 bargaining agreement between the state or political subdivision and a labor organization
8 representing employees of the state or political subdivision unless both the state or political
9 subdivision and the labor organization representing the employees consents to coverage of that
10 work in the project labor agreement. In addition to addressing wages, hours, and other terms and
11 conditions of employment, the agreement may, with respect to labor relations on the project,

12 (1) require the state or political subdivision to require a contractor, subcontractor,
13 or other person on the project to

14 (A) notify labor organizations representing building, maintenance, and
15 construction industry employees of project employment opportunities; or

16 (B) accept referrals of qualified applicants from the labor organizations
17 for project employment;

18 (2) provide for priority in opportunities for employment referrals based on
19 minimum training or experience qualifications or based on length of service

20 (A) with the contractor, subcontractor, or other person;

21 (B) in the industry; or

22 (C) in the particular geographical area;

23 (3) require the state or a political subdivision of the state and one or more labor
24 organizations representing employees in the building, maintenance, and construction industry to
25 enter into an agreement concerning labor relations on a public construction project, to cease or
26 refrain, or agree to cease or refrain, from handling, using, selling, transporting, or doing business
27 with a contractor, subcontractor, or other person.

28 (c) This section applies to a public construction project only if

29 (1) the project is entirely funded by state and local funds; and

30 (2) the total cost of the project exceeds \$7,000,000.

31 (d) The state or political subdivision shall retain substantial control of job site labor

1 relations including the means, manner, and standards of performance of all employees engaged
2 in work or employed on projects covered by an agreement entered into under this section.

3 (e) If a settlement is reached at the completion of negotiations under this section, the
4 state or political subdivision shall reduce the settlement to writing in the form of an agreement.
5 The agreement may include a term for which it will remain in effect, not to exceed three years.
6 However, if the specific project is expected to last longer than three years, the term may exceed
7 three years but may not exceed the length of the project. The agreement must include a
8 grievance procedure with binding arbitration as its final step.

9 (f) The labor relations agency shall adopt regulations under the Administrative Procedure
10 Act (AS 44.62) to implement this section.

11 (g) Notwithstanding a project labor agreement entered into under this section, employees
12 of the contractors and subcontractors on a public construction project are not considered
13 employees of the state or political subdivision of the state.

14 (h) An agreement entered into under (b) of this section does not constitute an election
15 under 29 U.S.C. 159.

16 (i) The provisions of AS 36.30 do not apply to agreements entered into under this
17 section.

18 (j) An agreement entered into under this section is not prohibited under AS 45.50.562 -
19 45.50.596.

20 * Sec. 3. AS 36.30.850(b) is amended by adding a new paragraph to read:

21 (23) agreements entered into under AS 36.90.150.

22 * Sec. 4. AS 45.50.572 is amended by adding a new subsection to read:

23 (j) AS 45.50.562 - 45.50.596 do not prohibit agreements entered into under AS 36.90.150
24 between a public employer and a labor organization or representative of labor organizations.

rd

7-LS0319J

~~Cramer~~

3/21/91

NEW CS
CS FOR SENATE BILL NO. 95 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

*Language added
to this CS 3-21-91*

Sponsor(s): SENATORS RODEY, Menard

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12 site of a public construction project in the interests of industrial harmony and to permit public
13 agencies to make optimal use of their construction resources.

14 (b) The state or a political subdivision of the state and a representative of one or more

1 labor organizations representing employees in the building, maintenance, and construction
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 4 29 U.S.C. 159. However, the may not enter into a project labor agreement to cover work
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 10 and other terms and conditions of employment, the agreement may, with respect to labor relations
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20 (A) with the contractor, subcontractor, or other person;

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7-1.S0319G
Cramer
. 3/14/91

CS FOR SENATE BILL NO. 95 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

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24 in work or employed on projects covered by an agreement entered into under this section.

25 (d) In negotiating and implementing an agreement under this section, the state or political
26 subdivision of the state and the labor organization or representative of labor organizations shall
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7-LS0319D

Crumer
2/28/91

CS ADOPTED by LHC

CS FOR SENATE BILL NO. 95 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

*LANGUAGE
REMOVED IN
NEW CS 3/21/91*

BY

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Referred:

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*DRAFT
CS-95*

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APR 26 1991

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 24, 1991

Senator Drue Pearce
Capitol Building
Room 510

Dear Senator Pearce:

I want to thank you for the letter and copies of the public comment on Senate Bill 95.

With best regards.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel".

Walter J. Hickel
Governor

1991 LEGISLATION
POSITION PAPER
DEPARTMENT OF ADMINISTRATION

Division Labor Relations Bill Number CCSB 95

Bill Title An Act permitting public entities to enter into project labor agreements.

Position Statement: Explain briefly what bill does, its impacts and Department's position, i.e., a) support, b) do not support, c) neutral or d) oppose.

CCSB 95 modifies the original bill by proposing that most of the text be added to Title 36 (Public Works), rather than in AS 23.40, Public Employment Relations Act (PERA). The CS is clear in its title, intent and wording. Nevertheless, it is substantively the same bill as the original version; we are opposed to it.

CCSB 95 is loosely modeled after portions of the National Labor Relations Act (NLRA) which permits the negotiation of so-called "project labor agreements" between private construction contractors and unions which traditionally represent employees in the building and construction trades. However, CCSB 95 proposes a radical departure from existing law by authorizing public entities which contract out construction or maintenance to negotiate directly with unions the wages, hours and terms of employment which will govern the employees subsequently utilized by the private contractor(s) who is awarded the construction contract. The private contractor has no role in these collective bargaining negotiations. Further, the bill proposes that the public entity must retain control of the job site labor relations, including the means, manner and standards or performance of the private contractor's "employees" working on the project. To our knowledge, no other state has enacted law authorizing the negotiation of project labor agreements directly with the government, rather than the traditional primary employer (contractor) who actually does the work.

False
Even if constitutional, this type of government intrusion into and control of private sector labor relations is bad public policy. Exercise of government authority under these provisions would effectively strip private employers of their ability to freely engage in good faith bargaining with unions as provided in federal law. It raises the distinct possibility that small contractors and nonunion contractors will be severely disadvantaged in competing for public works contracts. since the project labor agreement negotiated without their participation may require a union hiring hall.

APPROVED:

Director Bruce Cummings Division Labor Relations

Signature Bruce Cummings Date 3/13/91

Commissioner Millett Keller

Signature Millett Keller Date 3/13/91

(For more information, call Barbara Pritchett 465-2200)

Rev. 01/28/91

POSITION PAPER
CSSB 95

Position Statement Continued:

The bill requires that any such agreement contain a grievance procedure culminating in binding arbitration. This is not required in federal law; it is subject to the free give-and-take of negotiations. The bill requires that disputes arising from the negotiation or implementation/administration of such contract be adjudicated under PERA, rather than under the NLRA.

FACE

The substantial control over employees which the public entity can or must exercise under this proposal--combined with its cross-references to Alaskan public employee labor law--raises the possibility that public entities negotiating such a project labor agreement would be found under federal tax and/or employment laws to be joint or primary employers of the project workers, notwithstanding the award of a separate construction or maintenance agreement with a "contractor."

FACE

Proponents have advocated this bill as promoting Alaska hire on public works contracts. However, it is unclear how union referrals under this bill would contribute to Alaska hire any more than is already permissible under existing NLRA provisions for project labor agreements.

WRONG

Proponents also suggest that project labor agreements would be more economical under this bill than under the NLRA, although again it is unclear how. It is also unclear whether public entities may abandon attempts to negotiate such an agreement, once the process is initiated; cross-references to PERA for adjudication of disputes suggest that any attempts to withdraw because of economic unfeasibility would be procedurally burdensome and time-consuming, if not impossible.

Although utilization of bill provisions is ostensibly permissive, the reality is that organized labor may exercise irresistible pressure on public entities to, at a minimum, "experiment" with application of the new law. Since public employers are not experienced or well-trained in the negotiation and execution of construction labor agreements (nor maintenance agreements, in many cases), there is a strong possibility that such agreements would be less cost-effective than those negotiated with private employers. The State has experienced this result in the negotiation of the initial maintenance agreement (1974) with its Labor, Trades and Crafts bargaining unit.

STATE IS
INCOMPETENT

This bill also raises the specter of jurisdictional disputes between public employee unions and their private sector counterparts. At the State level, jurisdiction on maintenance and small-scale construction work is presumed by organizations representing State employees. This bill may enable the negotiation of labor agreements for this work with unions who are not now the majority status representative of these employees. How this can be reconciled with other provisions of PERA regarding representation rights is not explained in the bill itself; presumably, this issue would be ultimately resolved by legal disputes over jurisdiction.

AMENDMENT
LEAVES
PERA

Bill No: Senate Bill No. 95

Date: February 19, 1991

Title: "An Act relating to agreements between a labor organization and a public employer."

Contact: Eileen Plate
465-2700

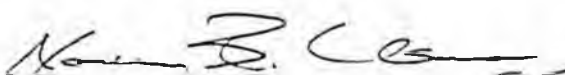
Senate Bill No. 95 would amend the Public Employment Relations Act to insulate certain conduct from an unfair labor practice charge under AS 23.40.110. A public employee labor organization would not be able to charge a public employer with an unfair labor practice for entering into an agreement with construction trade unions to impose restrictions on construction or maintenance contractors working for the public employer. SB No. 95 would allow terms in such an agreement that required the employer to notify labor unions of opportunities for employment, allowed unions to refer applicants for employment, imposed minimum training or experience requirements for employment, or required hiring preferences based on length of service with an employer, in an industry, or in a geographical area.

PERA covers collective bargaining only between public employees and public employers. The effect of SB 95 on PERA would be very narrow--insulating a public employer from an unfair labor practice charge by one of its bargaining unit representatives.

The purpose of PERA as described in AS 23.40.070 is to provide for collective bargaining between public employees and public employers "to promote harmonious and cooperative relations between the government and its employees and to protect the public by insuring effective and orderly operations of government." SB 95 does not appear to either advance or obstruct this objective.

SB No. 95 would not have a fiscal impact on the Alaska Labor Relations Agency.

APPROVED:



Nancy Bear Usura, Commissioner
Department of Labor

POSITION PAPER/Department of Labor



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: CSSB 95

APPROVED: 

TITLE: Unfair Labor Practice Exemptions

DATE: March 13, 1991

CSSB 95 modifies the original bill in organization but not intent. While the department originally took a neutral position toward this bill, we have discussed the implications of it with other departments who are more knowledgeable of labor law and conclude that we cannot support it.

The Position Paper by the Department of Administration essentially describes the reasons why this bill does not make good public policy. The idea of government negotiating labor agreements without competition which conspire to exclude many citizens and firms from the opportunity to work on public works projects is controversial at best. As the bill's language is permissive and not compulsory, it is doubtful we would seek to enter into such agreements.

Our reluctance to enter into project related labor agreements is based on an assessment of advantages and disadvantages. The cited advantages of lower wage costs, hours of work and the like are fictional given that most of these elements are fixed in law. Perhaps we could gain a no-strike clause, but we have not experienced any significant project delays due to labor disputes under current arrangements. At risk, is the likelihood of legal challenges from both employees and contractors who are denied access to the public works program. Such challenges seem likely and would be expensive in both legal costs and potential claims and damages.

Because we would not seek to enter into such agreements, we do not forecast any fiscal implications.

For Further Information contact Katy McHugh at 465-3900.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: Senate Bill No. 95

APPROVED:

A handwritten signature in cursive script, appearing to read "Randy Simon", written over a horizontal line.

TITLE: " An Act relating to agreements between a labor organization and a public employer."

DATE: 2/20/1991

The Department does not oppose nor support the bill. The legislation should, however, improve the likelihood of Alaska hire on certain construction projects.

Alaska State Legislature

Senator Druo Pearson, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Ellason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

March 19, 1991

Kathleen Strasbaugh, Assistant Attorney General
General Civil Section
Department of Law
P.O. Box K
Juneau, AK 99811

Dear Ms. Strasbaugh:

The Senate Labor & Commerce Committee has been taking testimony on Senate Bill 95, An Act permitting the state or political subdivisions of the state to enter into project labor agreements. During a recent hearing, Commissioner Millet Keller of the Department of Administration entered into the record a copy of a memorandum that you wrote to Bruce Cummings and Randy Simmons on March 13, 1991.

Further clarification of that memorandum would be appreciated. A point brought out in conversation regarding the legislation was that all employees are covered by either the Public Employees Relations Act or the National Labor Relations Act.

In the first case, the employees would be classified as public employees and entitled to all terms, conditions and benefits there in. In the second instance it was noted that according to a 1st Circuit Court of Appeals ruling a public entity i.e.; state or municipality, could not negotiate or set the terms and conditions of a labor agreement between a private employer and a labor organization.

Would you please advise me if my understanding correct and could you please amplify.

Thank you for your timely attention to this matter. This legislation will be brought before the committee for an additional hearing in the near future.

Sincerely,

Rod Mourant
Legislative Aide

Attachments

MEMORANDUM

State of Alaska

Department of Law

TO D. Randy Simmons, Deputy Commissioner
Department of Transportation and
Public Facilities

DATE: March 13, 1991

FILE NO:

and

TEL NO: 465-3600

Bruce Cummings, Director
Division of Labor Relations
Department of Administration

SUBJECT SB 95

FROM Kathleen Strasbaugh *KS*
Assistant Attorney General

Please find attached copies of opinions prepared by our office and legislative legal counsel regarding last year's version on the above legislation. We believe that this year's versions pose some of the same problems.

Last year, Sen. Rodey introduced legislation proposed by the IBEW which it (the IBEW) hoped would result in the use of project labor agreements in the public sector. We believe they had two arrangements in mind: [1] the project owner enters agreements with labor unions that their hiring halls will be used on construction projects and then requires its contractors to use the halls in accordance with the agreement, and [2] the owner requires its bidders to use union labor. IBEW suggested that it could insure local hire if such agreements were implemented.

The legislative device used last year, and again this year in SB 95 (also introduced by Sen. Rodey), is an amendment to PERA which protects public employers from unfair labor practice charges if they enter into prehire agreements with the construction trade unions for certain kinds of public works projects. The opinions written last year centered around the union's local hire theory, and the possibility that such arrangements might be anticompetitive, both under antitrust laws and the state's procurement code. The opinions suggest that excluding nonunion workers or contractors might constitute discrimination against particular economic groups in violation of the state's equal protection guarantee, as interpreted by the Alaska Supreme Court in State v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989).

Neither last year's bill nor this year's actually permit or mandate project labor agreements; they merely permit prehire agreements where the public employer actually employs the workforce on a project. Neither covers the situation where a project is put out to bid. Thus it is unlikely to result in project labor agreements, though some public entities may use it if they use force accounts for construction. We understand that a draft committee substitute is circulating which purports to cover the situation where the public entity is the project owner rather than the employer which would result in such agreements.

This year's bill exempts agreements described in the new section it adds to PERA from the provisions of AS 36.30 and antitrust statutes. It is not clear that project labor agreements as contemplated by their sponsors could not nonetheless be considered anticompetitive, since the approved agreements concern the public entity only when they act as employers, not as owners contracting out. The draft committee substitute is an effort to govern the public entity as a project owner rather than as an employer, but because it directs that the project's labor relations be conducted under PERA, and that the public entity retain substantial control over the projects employees, it would appear that the proposed substitute does not really change the relationships involved.

The provision of proposed AS 23.40.110(d) allowing preference for a particular geographical area may not be an unfair labor practice if the bill is enacted, but the bill will not protect public employers from Enserch liability. A new subsection, proposed AS 23.40.110(e), has been added which protects public employers from unfair labor practice charges for boycotting. However, it is unlikely that courts would look favorably on such activities by government entities. The state's protective labor legislation (little Davis-Bacon, OSHA, workers' comp, etc.) covers the basic health and safety of the state's workers. Thus the primary public purpose advanced in support of such agreements is the purchase of labor peace, i.e., if the public employer signs up, the union promises not disrupt its project. In litigation in Massachusetts, such an agreement have been challenged on the theory that the best price is in the public interest, and if such an agreement results in the rejection of lower bids, it is inimical to the public interest.^{1/} And of course when a government dispenses its favors in a discriminatory fashion, it is subject to Enserch type equal protection challenge.

As to the boycott or "hot cargo" portion of the bill, if a government can't debar contractors without granting them a hearing, how can it undertake a boycott without some sort of due process?

^{1/} Such an agreement by the state of Massachusetts as owner was struck down as violative of the National Labor Relations Act, which was found to preempt the state's efforts to control the labor relations between the contractors and their employees. Associated General Contractors v. Massachusetts Water Resources Authority, ___ F.2d ___, 59 U.S.L.W. 2266 (October 24, 1990). The committee substitute attempts to avoid this issue by leaving the labor relations in the control of the public entity. However, this control may result in an employment relationship.

Deputy Commissioner Simmons & Director Cummings
SB 95

March 13, 1991
Page 3

It might be wise to eliminate at least the boycott and geographic preference sections of the bill. To the extent that laws are supposed to instruct, the inclusion of the material might lead a government entity (many of the entities covered by PERA are small municipalities and utilities) to conclude that the geographic preference and boycotting are permissible, when they might in fact result in constitutional litigation.

Please let me know if I can provide any further assistance.

KS:lmk



ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

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J. Chubb

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AND EXPORT AUTHORITY

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M E M O R A N D U M

TO: Cynthia Larson
Department of Commerce
and Economic Development

FROM: Bertram L. Wagnon 
Executive Director

DATE: February 20, 1991

SUBJECT: Requested Staff Analysis of
Senate Bill No. 95

I apologize for the lateness of the Authority's response and assure you that our performance and responsiveness will improve.

Senate Bill No. 95 is the predecessor of last year's Senate Bill No. 529. I am attaching for your information various items of correspondence that go to the heart of the policy and legal issues associated with this piece of proposed legislation.

In my opinion, the Authority's staff does not possess the expertise required to perform a traditional fiscal note analysis of Senate Bill 95. Certainly we could provide our opinion on the likely impacts associated with our development projects, but feel this needs to be offered in the full context of all public work projects.

You should be aware that the Authority receives its authority to engage in public works procurement under delegation from the Department of Transportation and Public Facilities (AS 36.30.015). This is true of nearly all other state agencies engaged in public works activities. This being the case I would recommend that DOT&PF assume the lead role for the administration in responding, analyzing, and interpreting impacts associated with this legislation.

The Authority intends to contact DOT&PF and request their assistance in analyzing the impacts of the proposed legislation on the Authority's development program as authorized by AS 44.83. How private sector developers and the contracting community react to state agencies providing negotiated project labor agreements, as part of the bidding document, can only be speculative without their direct testimony.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL 1547

2702 OFNALI STREET
ANCHORAGE, ALASKA 99503-2779

TELEPHONE DISPATCH FAX
(907) 272-6571 (907) 276-1547 (907) 276-1963

BUSINESS MANAGER FINANCIAL SECRETARY PRESIDENT



April 10, 1990

Jan Hart DeYoung, Esq.
State of Alaska
ATTORNEY GENERAL'S OFFICE
Anti-Trust Division
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501

Re: Anti-Trust Complaint Against
North Slope Oil Companies

Dear Ms. DeYoung:

Although I am writing this letter in my capacity as General Counsel for the International Brotherhood of Electrical Workers, Local 1547 ("IBEW"), the matters we seek to bring to your attention involve a major public policy issue for the State of Alaska. If the conduct complained of herein is not enjoined, the State will have permitted the oil companies to obtain total control over the North Slope Labor Market in clear violation of AS 45.50.564. It will have also condoned the efforts of that monopoly to artificially depress the market rate for labor. The State's labor organizations have also been denied the opportunity to negotiate in a market composed of more than one employer or to secure a competitive market value for the services of their members.

For these reasons, please consider this an official complaint filed pursuant to AS 45.50.590 and a request that the Attorney General commence an investigation into the allegations contained herein.

STATEMENT OF FACTS

The instant problem has its roots in several informal luncheon discussions in 1988 between Bill Wade, the newly-appointed CEO of Arco Alaska ("Arco") and Gary Brooks, Business Manager of the IBEW. As a result of those discussions, Mr. Wade agreed to explore the possibility of improved relations between Arco and organized labor. Since such a project could have easily involved more people than would be practical, the discussions were narrowed to the five business managers of the Petroleum Crafts Council, i.e.

Jan Hart DeYoung, Esq.

April 10, 1990
Page 2

the Plumbers, Pipefitters & Steamfitters ("Fitters"); Laborers International Union of North America ("Laborers"); International Union of Operating Engineers ("Operators"), General Teamsters ("Teamsters"); the IBEW and several oil company representatives of Arco.

The parties met occasionally over the course of several months but formal negotiations never commenced. Curiously, Arco alleged fear of an anti-trust lawsuit if any single oil company agreed to negotiate directly with any one labor organization individually or directly with a group of labor organizations. Rather, it was strongly implied through these talks that the oil companies would deal with labor only through a contractor association serving as the middle man in negotiations, for all of the oil companies.

Just prior to the vote repealing Economic Limit Factor ("ELF") during the past legislative session, real negotiations began for the first time. The motivation, however, was political. George Nelson, former President of British Petroleum Exploration ("BP"), offered a basic 70 percent wage package for 50 percent of the oil companies' work on the North Slope in exchange for a commitment by labor to lobby the legislation against the repeal. The availability of work on the North Slope was made expressly conditional upon labor's success in blocking this legislation. By the first vote, the offer went from 70 percent of the basic wage and 50 percent of the work to 73/50 percent, then to 73/60 percent, and then to 75/60 plus a \$20 million pipeline job. For several of the crafts that was sufficient; however, IBEW held out on the basis that it was unwilling to engage in political blackmail to secure work for its members. The money and offer was also too far below IBEW's scale.

The ELF was ultimately repealed. Once that occurred, no agreement was reached and no further talks took place for several months. The oil companies were no longer willing to negotiate; labor had not delivered the promised votes. Then in approximately March of 1989 following the Valdez/Exxon oil spill, George Nelson apparently decided it was time the oil companies and labor finalized some kind of agreement. The oil companies then retained Attorney Thomas P. Owens, Jr., Esq. to create a North Slope Contractors Association (the "Association") to deal exclusively with labor. Mr. Owens was then to meet with representatives of organized labor on behalf of the oil companies through the Association. Several representatives of labor did meet with Mr. Owens. However, the pipeline crafts -- the Laborers, the

Operators, the Teamsters and Fitters -- had already consented to the 70 percent wage rate for all pipeline work that the Association had scheduled. The Association thereafter refused to deal with any labor group individually or to discuss anything other than one standardized set of terms and conditions.

Once an agreement with the pipeline crafts was signed, there was absolutely no possibility for any real negotiations between the association and the remaining building trades crafts -- even assuming there had been before. In essence, the Association had successfully fixed the going labor rate and the building trades crafts were told "this is it, take it or leave it." Several of the crafts were unwilling, but at a loss for what else to do, signed a similar agreement. The IBEW, however, again did not and to date is adamantly opposed to being forced to accept terms unilaterally dictated by the oil companies through the Association. Mr. Brooks has steadfastly refused to permit the Association to dictate to the IBEW how much its electricians can ask for their services regardless of what other unions might have found agreeable. IBEW has never consented to deal as if all of organized labor was one bargaining unit. Neither is it willing to let the oil companies dictate standard terms. The result, however, has been the threat of economic sanctions and enormous political pressure exerted by the oil companies through the Association to get IBEW to capitulate and thus secure a total monopoly.

SUMMARY

The Association gave IBEW very little, if any, latitude to change or deviate from the terms it had forced upon the other unions. The major purchasers of North Slope labor have essentially established a dominant buyer's association that because of the extent of its control over the market has been able to declare that henceforth labor will be "gold" for only one single depressed rate. The Association and through it, the oil companies have applied enormous and increasingly threatening pressure on the IBEW to capitulate. The reason is that without IBEW's participation, the monopoly is not yet fully completed. On the other hand, the Association has not deviated from its position that the IBEW can do no better for its members than the Association has permitted other unions. In fact, because the IBEW has refused to sign an agreement similarly reducing its wage rate to the 70% level, the Association has solicited the other unions to do IBEW's work. Economic coercion and political pressure is thus still being utilized to control the North Slope construction market.

Jan Hart DeYoung, Esq.

April 10, 1990
Page 4

The nature of the problem is further described in the attached letter from Gary Brooks to Wesley Nason dated March 12, 1990. Additional information can be obtained from the following:

James M. Beasley, Vice President, Houston Contracting Company - Alaska, Ltd.	(561-3419)
Gary Brooks, Business Manager, International Brotherhood of Electrical Workers, Local 1547	(272-6571)
Mazo Frey, Business Manager, Laborers Local 341	(272-4571)
Matt Groskie, Business Manager, Ironworkers Local 751	(258-4766)
Wesley P. Nason, President, North Slope Contractors Association; and Vice President and Area Manager of H.C. Price Construction Company	(345-4657)
George N. Nelson, Former President, British Petroleum Exploration	(278-1611)
Thomas P. Owens, Jr., Attorney for North Slope Contractors Association	(276-3963)
Phil Thingstad, Business Manager, Carpenters Local 1281	(276-3533)
Bill Wado, President, CEO-Arco Alaska, Inc.	(265-6499)

If you have any additional questions, please feel free to contact me. We hope the State will consider these potential anti-trust violations as seriously as we do. The oil companies have successfully obtained a monopoly over the employment market and wage rates on the North Slope. They have used that monopoly to mandate a wage roll-back across the entire State and, thus, have artfully compressed the prevailing or Davis-Bacon rate for the work at issue. Such a wage reduction was made possible not by hard bargaining. Rather, it was the decision of the oil companies to act in concert with each other in offering only one flat rate for labor regardless of its nature or the labor organization involved.

Jan Hart DeYoung, Esq.

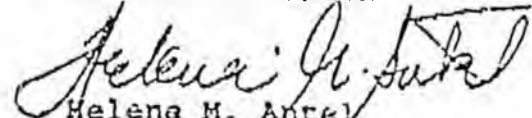
April 10, 1990
Page 5

that created this monopoly. It is also the product of an illegal combination in pursuit of political gains outside the scope of traditional collective bargaining. Anti-trust exemptions apply only when traditional bargaining occurs at the behest of a labor organization. When an employer group initiates bargaining for a purely political purpose and then coerces labor to agree to mandated uniform terms, the anti-trust exemptions are clearly no longer applicable.

Certainly, given these facts, the State should consider this a matter of such significant public interest to warrant at least an investigation; we think it is and we look forward to your involvement and your help. When a situation develops such as it has here, there are clearly anti-trust implications. When a buyer's association is formed which is then able to foreclose any price competition among non-member sellers, an anti-trust violation has certainly been alleged. This is precisely what the oil companies have done here.

Very truly yours,

IBEW LOCAL UNION 1547


Helena M. Antel
General Counsel

HMA/cfd.

cc: Gary Brooks, IBEW Business Manager
Senator Tim Kelly
Senator Rick Halford
Senator John B. Coghill
Senator Jim Rodey
Roger Sams, IBEW Assistant Business Manager - Anchorage
Tom Cashen, IBEW Assistant Business Manager - Juneau
John Guich, IBEW Assistant Business Manager - Fairbanks
Vera Plumb, IBEW Assistant Business Manager - Ketchikan

Prehire Union Agreements

§ 17.3 Agenda Item 2: Employ More Sophisticated Top-Down Organizing Techniques

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The NLRA allows employers in construction to sign a union agreement without the benefit of a certification election. So-called "prehire agreements" are allowed under § 8(f) of the NLRA due to the cyclical and sporadic nature of employment in this field. As a result, organized labor can directly approach construction management to sign a union agreement in what is known as "top-down" organizing.

In the 1980s organized labor markedly decreased its reliance on top-down organizing efforts. This decrease was largely the result of increasing reluctance by construction contractors to be saddled with either union wages or union work rules which impact their competitiveness. In addition, employers were either aware of, or themselves had participated in, disputes arising out of the trust fund obligations which accompanied the collective bargaining agreements.

Another obstacle to top-down organizing was the NLRB's *Deklewa* decision.¹² This decision, which changed the rules governing prehire agreements, offered long-time union employers an opportunity to repudiate their collective bargaining agreements and start over. Thus, while top-down organizing was still the favored organizing tool for unions because of the cyclical nature of employment in construction, it was not meeting with the type of success it had enjoyed 20 years ago.

However, in the 1990s organized labor has become more sophisticated in its "sales pitch" to both contractors and owners and may successfully stem the decline in success of top-down organizing. Again, it is the labor force shortage which offers the key element for these renewed efforts. After the recession which marked the 1980s, construction in many parts of the country has enjoyed a resurgence. With this resurgence has come the need for trained employees. Open shop contractors are facing a critical shortage of trained employees.

Organized labor has exacerbated this problem by recruiting qualified employees from the nonunion ranks to obtain employment with union contractors. Nonunion employers have seen wholesale defections of long term employees to their union competitors based upon union promises of high wages and fringe benefits. As a result, many nonunion contractors will be forced to enter into collective bargaining agreements voluntarily in order to obtain access to the union hiring hall.

Nonunion employers will also face top-down organizing efforts based upon so-called "corporate campaign" strategies. This strategy, which was successfully utilized in the famous 1986 campaign at the Saturn plant in Tennessee, involves a broad appeal to the public, state legislators, and pressure groups to assist the union in its efforts to obtain a collective bargaining agreement with the

¹² 782 N.L.R.B. No. 184 (1937). *1991 Wiley Construction Law Update*

reluctant owner. Rather than responding with the traditional dual gate system, the employer will have a harder time responding to adverse publicity, consumer boycotts, targeting of financial institutions that do business with the employer, and political lobbying. These campaigns will increase as the unions repair their tattered public image.

"Job targeting" will be another controversial form of top-down organizing which will place competitive pressure upon the nonunion contractor. In order to set up a job targeting program, the union must set aside funds or ask its members to participate in a voluntary assessment to create such funds. The union employer, when competing against a nonunion contractor, can then petition the union to have access to these funds. If successful, the union employer will be allowed to bid the project at the nonunion wage rate and the employees will be paid the difference between the union wage rate and the nonunion wage rate from the reserve fund. In some cases, the funds go directly from the union to the employees. In others, funds are funnelled through the employer.

The legality of the job targeting program will be subject to attack on several grounds because of the source and nature of the funding. One such challenge may come from the Internal Revenue Service (IRS) which may treat the monies as "wages" for which the requisite tax deduction must be made. Apparently, several of the union job targeting programs are sloppy in explaining employer requirements under the Internal Revenue Code (IRC) and have been subject to attack. A second basis for IRS challenge is that such funding programs may deprive the union of its tax exempt status under § 501(c)(5) of the IRC.

Union job targeting programs may also be challenged before the federal Department of Labor's Wage and Hour Division. According to the challengers, the differential funds constitute wages under the Fair Labor Standards Act and therefore must enter into overtime computations. In addition, such contributions may constitute deductions under the federal Copeland Anti-Kickback Act.¹³ As such, these deductions must conform to several statutory requirements including individual employee approval of these assessments.

Finally, the job targeting program may be subject to attack under the federal Davis-Bacon Act. Those who challenge the union program may allege that direct payments by the union to employees cannot be credited toward satisfying the "prevailing wage" obligation under the Act. Time will tell whether job targeting programs will be a lawful union tool in the 1990s.

Finally, organized labor's traditional tool for top-down organizing — picketing — will continue. In the recent case of *Laborers Local Union No. 1185 (NVE Constructors)*,¹⁴ the NLRB held that a union could picket for the object of inducing an employer to sign a pitchire agreement under § 8(f) of the NLRA. Employers had argued that pitchire agreements were exempt from recognitional picketing since, by law, the § 8(f) agreements must be entered into voluntarily.

¹³ 15 U.S.C. § 374.

¹⁴ 296 N.L.R.B. No. 165 (1989).

§ 17.4 BOTTOM-UP ORGANIZING

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The NLRB disagreed and held that there was no statutory exemption for prehire construction contracts and that the union could picket for a reasonable period of time in order to obtain such a contract. Had the NLRB ruled otherwise, organized labor would have been dealt a grievous blow to their already weakened top-down organizing strategies.

§ 17.4 Agenda Item 3: Engage in More Aggressive Bottom-Up Organizing

As a result of the decrease in open shop receptivity to the top-down organizing strategy, unions will be forced to beef up their bottom-up organizing campaigns. The unique characteristics of the construction employee and the construction industry make successful bottom-up organizing difficult. Construction projects are short-lived, the complement of employees varies on a daily basis, the management-to-work crew ratio is typically high, and the construction employee tends to be relatively independent and therefore not subject to peer pressure. In addition, because of the blurred distinction between management and rank-and-file prevalent among open shop contractors, organizing efforts can typically be spotted at an early stage.

Even if the organizing campaign has been successfully carried through to the petition stage with a resulting election, the construction employer can utilize the NLRB process to obtain more time prior to the election, to limit or expand the scope of the bargaining unit in the employer's favor, and to effectively prepare a campaign which will address employee concerns. Despite these obstacles and long odds, construction unions have no choice. They must either organize or disappear. Based upon the following phenomena which will increase into the 1990s, the unions are doing their best to adapt to an increasingly hostile environment in the construction industry. Again, the key element to successful bottom-up organizing in the 1990s will be the labor force shortage.

First, unions will engage in widespread "salting" of nonunion projects. "Salting" refers to the phenomenon of planting union supporters among the ranks of nonunion contractors. Contrary to the traditional practice of convincing an existing nonunion employee to spearhead a union campaign, organized labor is taking advantage of the nonunion contractor's desperate need for trained employees. The application process offers the union ready access to the nonunion contractor's work situs and its employees. Realizing this, unions have trained their apprentices in organizing techniques so that they may spearhead bottom-up organizing efforts once they obtain employment in the nonunion construction industry.

In addition, business agents are obtaining application forms from unsuspecting nonunion employers and distributing these forms to out-of-work union construction workers. These applicants are able to survive the relaxed scrutiny of nonunion employers desperate for applicants and commence a successful organizing campaign. Even if these applicants are revealed as union adherents in the

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-2600
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April 20, 1990
HAND DELIVERED

Senator Patrick M. Rodey
Room 113-C, Capitol
Juneau, Alaska 99811

Re: SB 529 - project labor agreements

Dear Senator Rodey:

You have asked us to review a proposal by the International Brotherhood of Electrical Workers (IBEW) whereby the Alaska Energy Authority (AEA) would enter into project labor agreements which, it suggests, will permit the state to accomplish local hire objectives otherwise prohibited by the United States and Alaska constitutions. State v. Enserch Alaska Construction, Inc., No. 3539 (Alaska Supreme Court, December 13, 1989); Robison v. Francis, 713 P.2d 259 (Alaska 1986)

We have reviewed two memoranda by IBEW's counsel, the March 20, 1990 memorandum by legislative legal services attorney Teresa Cramer (No. 6-2330), and our own opinion of January 19, 1990. 1990 Inf. Op. Att'y Gen. (January 19; 631-90-0255). Each of IBEW's memoranda contains a different version of the proposal, but as nearly as we can make out, it suggests that AEA enter into agreements with building and construction trades unions to work on AEA projects and then require project general contractors to use the labor for which the state has contracted. It proposes legislation which would amend the Public Employment Relations Act (PERA) to permit public employers to enter prehire agreements to assure that such an arrangement would not be treated as an unfair labor practice under AS 23.40.110. SB 529 has been introduced to make this amendment to PERA.

IBEW suggests that internal union rules requiring persons who wish to be sent out from union hiring halls to be residents of the state or area where the construction is located will be immune from state court scrutiny because the unions in question would be governed exclusively by the National Labor Relations Act (NLRA) which preempts state action. It argues that the concern expressed in our January 19, 1990 opinion that requiring contractors to hire a particular labor force may constitute an anticompetitive practice under the Alaska procurement code is unfounded, as labor unions governed by the NLRA are generally exempt from prosecution under federal antitrust laws.

PERA and NLRA are mutually exclusive in their coverage; a single collective bargaining agreement between an employer and a unit of its employees cannot be both public sector and private sector. Thus, IBEW's proposal must be read as a choice by AEA between two alternatives: (1) hiring state employees and (2) requiring contractors to hire union labor. NLRA does not apply to public employers. Sec. 2 (2), NLRA, 29 U.S.C. sec. 152. Necessarily, any collective bargaining agreement between a state agency and a union would be outside NLRA, and any employees hired under such an agreement would be state employees. Temporary project employees are not entitled to participate in PERS or group health insurance, but hiring project employees does require the state to incur unemployment, workers' compensation, and other costs (including SBS, if AEA is a participating agency), and we imagine that such employees' bargaining representatives would seek at least health insurance in bargaining for their members. 1/ The state may be able to require contractors to use such employees in AEA's construction projects. However, it may be that AS 44.83.189, which provides that AEA's new projects are to be treated as public works of the state, can be read to make AS 35.15.010, disapproving construction by the state's own work force in most circumstances relevant here, applicable to AEA projects. 2/

We conclude, as did assistant legislative attorney Teresa Cramer, that an agreement between the state and labor unions would be subject to constitutional attack to the extent it required Alaska hire on AEA projects. In addition, we believe that our previous advice, that requiring contractors to use union labor may be unduly restrictive of competition under the procurement code, and vulnerable to constitutional attack under Enserch, is correct. In addition, after reviewing the authority cited by IBEW, we conclude that in fact such a requirement may pose antitrust problems, problems we did not consider in our earlier opinion. It appears to us that SB 529 is somewhat beside the point as far as local hire is concerned.

The time allowed us for a response to your inquiry is too brief to cover the legal questions raised by this issue in any detail, but we do explain our conclusions at some greater length below.

1/ But See 2 AAC 10.220(b)(2), which suggests that persons not eligible for retirement benefits are not employees under PERA.

2/ As AS 35.15.010 refers to construction by the department of transportation and public facilities, it could also be argued that it would not apply to AEA.

1. Collective bargaining agreements between the state and the building trades unions which require resident hire will be vulnerable to constitutional challenge.

Legislative legal counsel's analysis of the legal problems presented by imposing a residency requirement is correct: a local hire requirement in an agreement to which the state is a party is subject to constitutional challenge under the federal privileges and immunities clause. Cramer memorandum at 2, citing Robison. Such a scheme may also offend the equal protection clause of the Alaska Constitution. Enserch, slip op. at 25.

IBEW suggests in its March 22, 1990, letter to you that the jurisdiction of the Alaska Labor Relations Agency over unfair labor practices would preclude the jurisdiction of the court in a constitutional challenge to the collective bargaining agreement. Id. at 3. This is clearly incorrect; there is no doubt that the courts of this state have the jurisdiction to hear and decide cases where the constitutionality of the state's conduct is challenged. AS 22.05.010. The fact that an administrative tribunal has primary jurisdiction in a dispute does not preclude either the court's general jurisdiction, or appellate review; indeed the ALRA's decisions are reviewable under AS 44.62.560 and AS 22.05.010(c). See AS 23.40.130.

IBEW suggests in the same paragraph in which it addresses the above issue that the NLRA preempts any consideration by the Alaska courts of discrimination by unions covered by federal labor legislation. This assertion would be correct if the collective bargaining agreement were between the contractor and its workers, rather than the state and the building trades unions, and if the state did not require local hire in its contract with the successful bidder. However, it is our understanding that whether there is an agreement between the state and labor unions, or a contract between the state and its contractors requiring them to hire union labor, the idea of the proposal is that resident hire would be a condition of the contract. There would seem to be little difference between requiring the contractor to hire residents and requiring the union hiring hall to accept only resident applicants under either the federal or state constitutions. cf. Enserch; Robison. The NLRA cannot protect the state from an Enserch or Robison challenge if such conditions are imposed by a state contract. 3/ If a union hiring hall happens to

3/ The authority cited by IBEW for the proposition that unions may discriminate in favor of local residents does not involve state
(continued...)

impose a resident requirement, it may be that local hire will occur in the manner suggested by the IBEW. However, it must happen without the compulsion or involvement of the state to be protected by the NLRA.

2. Requiring contractors to hire only union labor may constitute an anticompetitive practice.

If the intent of the IBEW's proposal is that AEA require its contractors to hire union labor on its projects, and if the contractors are not restricted to local hire, a different question is presented. As we observed in our January 1990 opinion, the procurement code, AS 36.30, applies to AEA projects. The code prohibits unduly restrictive specifications and anticompetitive practices. AS 36.30.060(c); AS 36.30.920; AS 36.30.930. See also 2 AAC 12.090; 2 AAC 12.790. Requiring contractors to hire labor from a particular source would seem to offend these provisions, and may, as we noted, be subject to an Enserch challenge as well.

The procurement code exempts collective bargaining agreements from its provisions. See AS 36.30.990(15), excepting collective bargaining agreements from the definition of "services". However, that exemption is addressed to the state's entry into collective bargaining agreements, not to the specifications which may be imposed upon its contractors. 4/

3/ (...continued)

action. IBEW has also cited in support of its position the collective bargaining agreement between Public Employees Local 71 and the state, which calls for preferential hiring for residents. Federal courts have upheld residency (of no particular duration) and continued residency requirements for municipal police and fire employees. See, e.g. McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976) (per curiam). Some state courts have upheld such requirements as well. See, e.g. Detroit Police Officers Ass'n v. City of Detroit, 190 N.W. 2d 97 (Mich. 1971); Ector v. City of Torrance, 514 P.2d 433 (Cal. 1973). However, the question of whether public employment is subject to the federal privileges and immunities clause has been referred to as unsettled. Internat'l Organization of Masters, Mates, and Pilots, 831 F.2d 842, 846 (9th Cir. 1989). We leave to another day the question of the validity of the Local 71 contract provision in light of Robison and Enserch. See also, State v. Wylie, 515 P.2d 142 (Alaska 1973).

4/ IBEW suggests at page 10 of its January 30, 1990 internal memorandum that because AEA is involved in the construction of utility services, the allowance by the procurement code of sole

(continued...)

If the union's proposal (see March 22, 1990, letter at 6) can be construed as an agreement between building trades unions and AEA that AEA will require union labor on its projects, it may also have antitrust consequences. United Mine Workers of America v. Pennington, 381 U.S. 657 (1965), is cited in IBEW's January 30, 1990 memorandum in support of an argument that unions are broadly exempt from the requirements of antitrust statutes. In Pennington the United States Supreme Court noted that a union is not entitled to exemption from antitrust laws if it enters an agreement with a group of employers to impose terms and conditions of employment on bargaining units not covered by its collective bargaining agreement, even where the agreement concerns bargainable subjects such as wages. Id. at 665-6. Relying on similar reasoning, the court held in a later case that an agreement between a union and a contractor was not exempt under antitrust laws where it excluded all nonunion subcontractors from a portion of the market. Connell Co. v. Plumbers and Steamfitters, 421 U.S. 616, 623 (1975). Such an agreement would not be a collective bargaining agreement with an employer, or an agreement among employees for mutual aid and protection under AS 45.50.572. Thus such an agreement would not appear to be exempt from antitrust scrutiny.

This is not to suggest that we are certain an antitrust violation exists; the law of labor exemptions to antitrust legislation continues to evolve, rendering any meaningful advice on the subject difficult at best. C.A. Hills, Antitrust Advisor, sec. 13.13 at 832-3 (3d ed. 1985). However, we are bound to point out that restrictions such as those proposed by IBEW are not always protected by the labor exemption in the private sector, and may not be protected here. Connell presents ready analogy for interpreting state antitrust and procurement code provisions concerning anticompetitive practices and restrictive specifications.

The fact that subcontracting is a mandatory subject of bargaining in the private sector has no bearing here, where there is no state bargaining unit whose work is to be contracted out. See IBEW March 22, 1990 letter at 6.

3. SB 529 will have no impact on local hire; it is not clear that it is necessary for any other purpose.

4/ (...continued)
source contracts for the procurement of utility services applies. 2 AAC 12.410(d)(4). This regulation is clearly intended to apply to obtaining electricity, telephone, and other utility services usually delivered by monopolies, not to the construction of utility facilities.

Sen. Patrick M. Rodey
Project labor agreements

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SB 529 would exempt prehire agreements with the building trades (agreements between unions and employers entered into before a workforce is hired) from the unfair labor practices prohibited by AS 23.40.110. Such agreements are permitted under the NLRA for the construction industry.

A public employer may voluntarily recognize a labor organization as the exclusive representative of a unit of its employees. AS 23.40.100(d). The ALRA may approve such an arrangement if it is able to verify the majority status of the labor organization. 2 AAC 10.130. SB 529 would not alter this requirement, as it merely prevents the imposition of sanctions on an employer for entering into an agreement before such a determination is made. The legislation would not protect the state from constitutional litigation if a resident hire requirement were challenged. It would likely be little used, given AS 35.15.010.

SB 529 would not convert recruiting, selection, and hiring into a mandatory subject of bargaining. See IBEW January 30, 1990 memorandum at 24. While it is true that the NLRA has instructive value, and that the ALRA will give great weight to relevant National Labor Relations Board (NLRB) decisions when determining unfair labor practice cases (2 AAC 10.250(c)), it does not follow that in all matters it is an appropriate interpretive guide for PERA. In particular, hiring, recruiting, selection, and classification of employees are critical components of Alaska's constitutionally mandated merit system, and are among the "general policies describing the function and purpose of a public employer," not recognized by the NLRA, and excepted from those wages, hours, and working conditions required to be collectively bargained under PERA. AS 23.40.250(8). See also Order and Decision No. 110 (Alaska Labor Relations Agency, August 26, 1987). 5/

You may wish to consult with the department of administration's division of labor relations as to any policy implications of the bill. There seem to be no legal issues other than those mentioned above.

5/ The state's contracts with Local 71 do allow for the use of their hiring hall, in recognition that the positions Local 71's members hold have not lent themselves to traditional merit system recruiting and selection devices. However, the use of the hiring hall remains a permissive subject.

Summary and additional comments

In summary, we cannot assure you that AEA (or any other state agency) can enter into an agreement, either with collective bargaining representatives or with contractors, limiting labor on its projects to residents, without being subject to an Enserch or Robison challenge. If resident hire requirements are omitted from such agreements, AEA can (a) enter into collective bargaining agreements and thereby acquire its own work force, although its use of such a force for construction of public works may be restricted by AS 35.15.010 or (b) enter into agreements with labor unions that it will require its contractors to hire union labor, although this may constitute a violation either of the procurement code or antitrust legislation.

Another option not fully addressed in IBEW's proposals (although it may be what they had in mind when they wrote their March 22, 1990 letter to you) is a project labor agreement in which the owner of a project agrees with a union or group of unions as to the terms and conditions of employment which will govern the relationship between labor and the contractors on a project, including the requirement that all hiring be done through the unions' hiring hall(s). Such an arrangement was approved by the Massachusetts Commissioner of Labor for the Boston Harbor clean-up project on the theory that a no strike/ no jurisdictional dispute agreement by the union for the 10 year duration of the project was in the public interest. 35 Construction Labor Rept. 1264 (February 28, 1990). We are not familiar with the Massachusetts procurement code, but we would observe that under Alaska's procurement code (which is interpreted by regulations in the department of administration, not department of labor rulings), such an agreement is not a collective bargaining agreement, and thus AEA would have to put the project labor agreement itself out to bid. In addition, resident hire could not, under Robison and Enserch, be a condition of such a labor agreement. We must also point out that the Boston Harbor agreement has been challenged in federal district court on the grounds that it is anticompetitive, a violation of antitrust laws, of various provisions of the NIRA, the Employee Retirement Income Security Act (ERISA), and of the equal protection and due process guarantees of the United States Constitution. 36 Construction Labor Rept. 3 (March 7, 1990). The challengers also dispute the ruling that the agreement is in the public interest, claiming that it will increase the cost of the project. Id.

Sen. Patrick M. Rodey
Project labor agreements

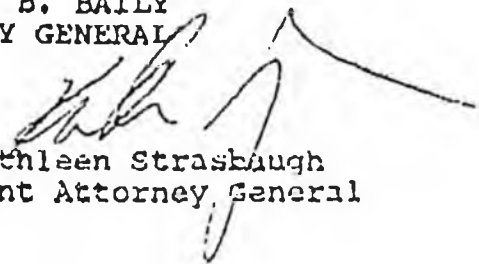
April 20, 1990
Page 8

Please advise us if we can be of any further assistance
in this matter.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Kathleen Straskaugh
Assistant Attorney General

KS:me

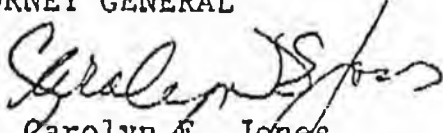
MEMORANDUM

State of Alaska
Department of Law

TO: Robert F. LeResche
Executive Director
Alaska Energy Authority

DATE: March 15, 1990
FILE NO: #661-90-0255
TEL NO: 276-3550
SUBJECT: Project labor agreements

FROM: DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Carolyn E. Jones
Assistant Attorney General

In our memorandum of advice dated January 19, 1990, we advised you that the state procurement act probably prohibited the Alaska Energy Authority (AEA) from entering into a project labor agreement with a union. We further noted that such an agreement would be vulnerable to constitutional attack.

We have since reviewed a memorandum prepared by legal counsel for the International Brotherhood of Electrical Workers (IBEW) which was apparently drafted in response to our memorandum of January 19th. Nothing in the IBEW memorandum has persuaded us to revise our opinions in the memorandum of January 19th.

As we understand the concept of a project labor agreement, it is an agreement where a prime contractor agrees to use only organized labor on the construction of a particular project. In this case, the AEA would sign a project labor agreement with, for example, IBEW. Then AEA would require every contractor on a particular project to procure its labor force from IBEW. The difficulty which AEA has in executing and implementing such an agreement is twofold.

The state procurement act and its enabling regulations specifically prohibit the use of specifications or contract terms and conditions that limit competition or require procurement from a sole source unless no other description or requirements will suffice. AS 36.30.060(c); 2 AAC 12.090. The AEA would have to demonstrate that requiring prospective contractors to use organized labor was the only available means to assure the construction.

In discussing the state procurement act, the IBEW memorandum, however, confused the concept of project labor agreements with contracts for construction. While there is abundant case law endorsing the use of collective bargaining agreements between labor and an employer, that case law does not solve our problem under the state

Robert E. LeResche
Executive Director
Alaska Energy Authority

March 15, 1990
Page 2
661-90-0255

procurement act. In the latter circumstances, we are dealing with the state as owner -- not as employer. 1/ Obviously, the concerns we mention here could be solved if the legislature amended the procurement law.

Our second concern poses an even bigger problem. In our view, an arrangement that would limit potential bidders to a particular labor agreement is quite vulnerable to a constitutional attack. In State v. Enserch Alaska Construction, Inc., No. 3539 (Alaska Supreme Court, December 18, 1989), the Alaska Supreme Court struck down the Regional Preference Law because it attempted to favor one economic group over another.

The IBEW memo suggests that a project labor agreement between the state and a union whose administrative rules prefer state residents would avoid the constitutional problems of the past. While the memo cites federal case law that has endorsed the use of resident hire through project labor agreements, those cases dealt with private contractors -- not with the state or a political subdivision as contractor. The memo does not help us deal with the problems under Alaska constitutional law. In fact, given the Enserch decision, we question whether any set of facts would satisfy the equal protection problem with project labor agreements.

2/

CEJ/jds

1/ We note that AS 36.30.995(15) specifically excludes collective bargaining agreements and employment contracts from the definition of "services." We read that exemption to apply to the state in its role of employer, i.e., the state procurement act would not apply vis a vis the state as employer and e.g., the Alaska State Employees Association.

2/ Quite apart from the legal issues discussed here, the decision to limit potential bidders to a particular labor arrangement is a policy issue that is better suited for legislative action than individual agency agreements.

MEMORANDUM

State of Alaska

Department of Law

TO: Robert E. LeResche
Executive Director
Alaska Energy Authority

DATE: January 19, 1990

FILE NO.: 661-90-0255

TEL NO.: 276-3550

SUBJECT: Project labor agreements

FROM: DOUGLAS B. BAILY
ATTORNEY GENERAL

By: *Carolyn E. Jones*
Carolyn E. Jones
Assistant Attorney General

You have asked two questions: whether the Alaska Energy Authority (AEA) may negotiate and execute a project labor agreement with one or more unions, and whether the authority may then require, as a contract condition, that the successful bidder on a construction procurement operate within the terms of the project labor agreement. While the authority may execute contracts for construction of power projects, it probably cannot execute a project labor agreement that prefers the hire of employees who are members of a labor union.

The authority has the power to contract for the construction of a power project and "to enter into contracts or agreements with respect to the exercise of any of its powers...." AS 44.83.080(10), 44.83.080(14). Presumably, the authority may enter into a project labor agreement with one or more unions unless a general prohibition exists for all state agencies.

I have examined federal and state labor law. Title 29 of the United States Code Annotated and Title 23 of the Alaska Statutes are silent on this question. The state procurement act, however, is not.

The procurement of construction of state facilities -- including projects by the authority -- is governed by AS 36.30. The commissioner of the department of administration is responsible for adopting regulations governing the preparation, revision, and content of specifications for construction required by an agency. AS 36.30.060(a). The specifications required by the agency "must promote overall economy for the purposes intended and encourage competition in satisfying the state's needs, and may not be unduly restrictive." AS 36.30.060(c). Not only is competition encouraged in state procurements but anticompetitive practices are strictly forbidden and may subject an offeror or bidder to prosecution of a class C felony. AS 36.30.920; AS 36.30.930(2).

Robert E. LeResche
Executive Director
Alaska Energy Authority

January 19, 1990
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661-90-0255

The commissioner has implemented AS 36.30, in part, by adopting regulations that

(1) prohibit the use of specifications that have "the effect of exclusively requiring a proprietary ... construction item, or procurement from a sole source, unless no other manner of description will suffice," 2 AAC 12.090;

(2) prohibit the use of contract terms and conditions that "have the effect of unnecessarily limiting competition or exclusively requiring a proprietary ... construction item or procurement from a sole source unless no other requirements will suffice," 2 AAC 12.790.

A requirement that the successful bidder on a procurement contract hire its labor force from a single source would appear to come within the statutory and regulatory prohibitions contained in AS 36.30.060, AS 36.30.930(2), 2 AAC 12.090, and 2 AAC 12.790. A specification or contract term of this nature would only be permissible upon a showing that no other manner of description and no other requirement would suffice. 2 AAC 12.090, 2 AAC 12.790. Making this showing could prove to be a very heavy -- if not impossible -- burden for the authority.

An arrangement that would limit potential bidders to a particular labor agreement is also vulnerable to a constitutional attack. In the recent case of State v. Enserch Alaska Construction, Inc., No. 3539 (Alaska Supreme Court, December 18, 1989) the Alaska Supreme Court struck down on equal protection grounds the Regional Preference Law, a statute requiring local hire for publicly funded projects constructed in economically distressed areas. Many features of the proposed arrangement resemble those of the Enserch case.

AEA would give a preference to (or impose an absolute requirement on) contractors on its projects who employed union labor. Presumably, the rationale for such a preference is that unionized labor is better paid and protected than nonunion labor, and that this is a social and economic benefit to the state which outweighs the emphasis placed in public contracting on getting the best price.

The court in Enserch rejected a similar goal under the Regional Preference Law. The state had argued that, by conferring an economic benefit on the residents of a particular region, unemployment would be reduced and the social harms resulting from chronic unemployment could be remedied. Enserch, slip op. at 29. While such goals were important, they could not be achieved by the

Robert E. LeResche
Executive Director
Alaska Energy Authority

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disparate treatment of unemployed workers in another region. Id.,
at 30. 1/

Arguably, since all prospective contractors would be required to hire union labor, they would not be treated differently at least as to competition amongst themselves. However, if a contractor has no existing relationship with the trade unions or union subcontractors, they may be disadvantaged.

Construction workers not currently members of unions would be required to obtain membership in order to be employed on a project when the bid is ultimately awarded. Assuming that employment must be obtained through a hiring hall, and that some sort of seniority system were in force for referrals, nonunion workers would at a minimum be delayed in obtaining work, if not foreclosed altogether. This result is acceptable in the private sector. However, it may not be acceptable where occasioned by government action.

Having determined that the right to engage in an economic endeavor is an important right, the Alaska Supreme Court takes a dim view of government action which favors one economic group over another. Enserch, slip op. at 27 and 30. In Enserch, the court concluded that favoring one group of similarly situated workers over another was not a legitimate goal.

CONCLUSION

The Alaska Energy Authority has the power to enter into project labor agreements as long as they do not conflict with the language and intent of laws generally applicable to state agencies. A project labor agreement that required a project contractor to hire employees directly from one source -- that is, a labor union -- would probably discourage competition and be overly restrictive. Such a contract term would be permissible under the state procurement act only if the authority could demonstrate that it had no other alternative. Even if the agreement survived a challenge under the state procurement act, it would still be constitutionally vulnerable where it preferred one group of laborers over another.

CEJ/jds

1/ Even if we assume ~~that~~ the goal of protecting labor by ensuring better wages, this goal is already being served by existing prevailing wage legislation such as the Little Davis-Bacon Act, AS 36.05.

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

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January 4, 1991

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Re: ABC et al. vs. City of Seward and IBEW Local 1547
United States District Court No. A91-001 Civil
Our File 15200-004

Gentlemen:

We enclose herewith a copy of the complaint filed with the District Court in this matter on Wednesday, January 2, 1991. Helene Antel, attorney for the IBEW Local 1547 accepted service on behalf of the IBEW. The City of Seward was served by certified mail on January 3, 1991. We do not anticipate any challenge regarding service or jurisdiction.

Also enclosed is a Joint Motion for Expedited Status Conference. The Motion sets forth dates for the briefing schedule in this matter, as agreed between the parties. According to the schedule, our opening motion and memorandum are due Wednesday, January 23; the opposition memoranda are due Wednesday, February 18; and our reply memorandum is due February 25. Oral argument will be scheduled by the court for some date thereafter.

We will forward a draft of our opening memorandum to you on or about Wednesday, January 15. We welcome any comments you may have

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ASSOC. CONTRACTORS

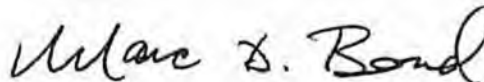
DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

Charles Irby
Aaron Downing
William Spencer
Henry Springer
January 4, 1991
Page 2

at that time. Should you have any questions regarding this matter,
please do not hesitate to contact us.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.



Marc D. Bond

cc: Maurice Baskin
William F. Reeves

Marc D. Bond
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Reitman & Brubaker, Inc.
1007 West 3rd Avenue, Suite 400
Anchorage, Alaska 99501
907-279-3581

FILED

JAN 03 1991

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

70 _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATED BUILDERS AND)
CONTRACTORS, INC., a Maryland)
corporation, ASSOCIATED GENERAL)
CONTRACTORS OF ALASKA, an)
Alaska nonprofit corporation,)
IRBY CONSTRUCTION COMPANY, a)
Mississippi corporation, IRBY/)
ALASKA UTILITIES CONSTRUCTION)
COMPANY, an Alaska corporation,)

Plaintiffs,)

vs.)

CITY OF SEWARD, an Alaska home)
rule municipality, and)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL UNION)
1547 (IBEW), a labor union,)

Defendants.)

Case No. A90-001 Civil

JOINT MOTION FOR EXPEDITED STATUS CONFERENCE

Plaintiffs and defendants in this matter hereby move for an expedited status conference to establish a briefing schedule and a time for oral argument on a Motion for Preliminary Injunction and Summary Judgment, to be filed by plaintiffs in this matter.

This matter involves a project to construct a high voltage

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(907) 279-3581

electric transmission line near the City of Seward, now scheduled to be let for bid in the spring of this year, and constructed during the summer of 1991. All parties concur in the necessity of early construction of the transmission line to insure a steady, adequate power supply for the City of Seward service area.

It appears there are no genuine issues of material fact which would preclude resolution of this matter on a dispositive motion. Counsel for the City of Seward is in the process of drafting a stipulation of facts which will provide the basis for argument on the legal issues raised by the complaint.

The City of Seward needs to erect this line during the 1991 construction season. None of the parties desires to endanger the completion of the project during 1991, but all desire an expeditious resolution of their legal rights in this matter.

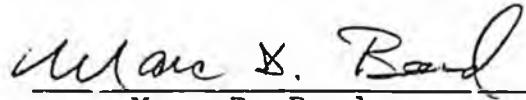
Accordingly, counsel for all parties have conferred, and suggest the following briefing and oral argument schedule: (1) Motion for Preliminary Injunction and Summary Judgment (and supporting Memorandum) filed and served January 23, 1991; (2) Oppositions filed and served February 18, 1991; (3) Reply filed and served February 25, 1991; and (4) Oral argument to be scheduled as soon thereafter as the court deems appropriate.

The parties respectfully request a status conference to

discuss these matters with the court, and to establish a time for oral argument.

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.
Attorneys for Plaintiffs

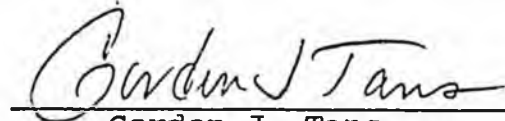
Date: 1-3-90



Marc D. Bond

PERKINS COIE
Attorneys for City of Seward

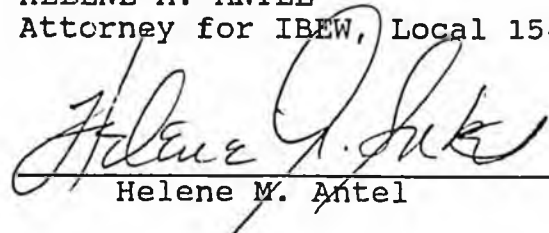
Date: 3 JAN 1991



Gordon J. Tans

HELENE M. ANTEL
Attorney for IBEW, Local 1547

Date: Jan 1, 1991



Helene M. Antel

Stephen M. Ellis
Marc D. Bond
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATED BUILDERS AND)
CONTRACTORS, INC., a Maryland)
corporation, ASSOCIATED GENERAL)
CONTRACTORS OF ALASKA, an)
Alaska nonprofit corporation,)
IRBY CONSTRUCTION COMPANY, a)
Mississippi corporation, IRBY/)
ALASKA UTILITIES CONSTRUCTION)
COMPANY, an Alaska corporation,)

Plaintiffs,)

vs.)

CITY OF SEWARD, an Alaska home)
rule municipality, and)
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL UNION)
1547 (IBEW), a labor union,)

Defendants.)

Case No. ~~A90-~~ ^{A91-} 001 Civil

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
AND FOR MONEY DAMAGES

This complaint concerns the letting for bid and construction of an electrical transmission line project near the City of Seward. The complaint seeks a judgment declaring illegal a certain bid pre-qualification requirement, a preliminary and

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permanent injunction against enforcement of the requirement, an award of compensatory and treble damages, and the recovery of costs, interest, and attorney fees.

I. JURISDICTION

This is an action dealing with the rights of the parties under federal labor, employee benefits, antitrust and civil rights laws, as well as certain laws of the State of Alaska. The district court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 [federal question], 28 U.S.C. § 1337(a) [commerce and antitrust regulation], 28 U.S.C. § 1343(a)(3) [civil rights], 29 U.S.C. § 1132 [ERISA], 28 U.S.C. § 2201(a) [declaratory judgment], Civil Rule 57 [declaratory judgment], and the doctrine of pendent jurisdiction.

II. VENUE

The unlawful conduct and actions which are the subject of this complaint have been, are being, and (without relief from this court) will be committed within the District of Alaska, and will affect the interstate trade and commerce being conducted within and through the District of Alaska. All of the defendants reside, do business, or may be found in the District of Alaska.

III. GENERAL NATURE OF CONTROVERSY

3.1 This action seeks relief from an unlawful pre-qualification bid specification imposed by the City of Seward on a \$9.5 million project for the construction of an electric transmission line from Lawing to Fort Raymond in the Seward's utility service district (the Project).

3.2 The City of Seward has required that, as a condition of qualifying to bid on the project, all contractors be signatories to a labor agreement with the International Brotherhood of Electrical Workers, Local 1547 (IBEW) "that will assure that work traditionally performed by employees represented by the IBEW will be performed by such workers."

3.3 The IBEW signatory requirement is unreasonable, unlawful and anti-competitive. It constitutes unlawful municipal regulation of private collective bargaining in violation of the National Labor Relations Act. It unreasonably restricts competition in violation of federal and state antitrust laws. It deprives the plaintiffs of equal protection and due process of law under the United States and Alaska Constitutions. It violates the provisions of the City of Seward Code concerning public contracts.

3.4 Seventy percent of all construction work in this country is performed on a non-union basis. Only 21% of all employees in the construction industry are union members. The

effect of the "union contract" requirement in the pre-qualification process is to force the plaintiffs to become parties to a union labor agreement not negotiated or executed by their free will. This unlawful restriction will cause irreparable harm to the plaintiffs by depriving them of the opportunity to participate in a multi-million dollar construction project. The restriction is also in conflict with the public interest, in that it will deprive the City of Seward and its ratepayers of full and open competition in the bid process.

3.5 Accordingly, the plaintiffs seek a declaration that the restrictive bidding qualification is unlawful and unenforceable. The plaintiffs also seek a preliminary injunction against the enforcement of the restriction during the pendency of this litigation, and a permanent injunction. The plaintiffs seek money damages for violations of their rights, and an award of costs, interest and attorney fees.

IV. PARTIES

4.1 Plaintiff Associated Builders and Contractors, Inc. (ABC), is a national trade association of over 18,000 merit shop construction contractors, that is, those contractors that use both union and non-union labor. Since its founding in 1950, it has been

the objective of ABC, its local chapters and their member companies to provide high quality, low cost, and timely construction work, which benefits businesses, consumers, and taxpayers. ABC is filing this action on behalf of its individual members who have been and will continue to be damaged by the loss of business opportunity resulting from the enforcement of the IBEW signatory requirement.

4.2 Plaintiff Associated General Contractors of Alaska (AGC) is an Alaska non-profit corporation whose members include merit shop construction contractors. AGC was founded in 1954, and its objectives include the provisions of high quality, low cost, and timely construction work. AGC is filing this action on behalf of its individual members who have been and will continue to be damaged by the loss of business opportunity resulting from the enforcement of the IBEW signatory requirement.

4.3 Plaintiff Irby Construction Company (Irby) is a Mississippi corporation. Irby is one of the largest contractors engaged in the erection of electrical transmission lines in the United States, having constructed high tension and other electrical lines in all states and several foreign countries. Irby is qualified to do business in the State of Alaska, and has filed its last biennial report due, and paid all necessary corporate and franchise fees.

4.4 Plaintiff Irby/Alaska Utilities Construction JV (Irby/AUC) is a joint venture composed of Irby Construction Company, and Alaska Utilities Construction Company. AUC is an Alaska corporation with many years of experience in constructing electric transmission lines for virtually every major utility in the State of Alaska. AUC is in good standing, and has filed its last biennial report due, and paid all necessary corporate and franchise fees.

4.5 Defendant City of Seward (Seward) is a home rule municipality incorporated under the laws of the State of Alaska.

4.6 Defendant International Brotherhood of Electrical Workers, Local Union 1547 (IBEW) is a labor union organized under the National Labor Relations Act.

V. FACTUAL BASIS OF THE COMPLAINT

5.1 During the 1990 legislative session, the Alaska Legislature approved a grant appropriation of \$9.5 million to the City of Seward for the construction of an electric transmission line from Lawing to Fort Raymond. 208 SLA 1990, §144. Exhibit A.

5.2 On July 23, 1990, the State of Alaska and City of Seward enter into a "Standard Agreement Form for Municipal Grants" (Grant) for \$9,500,000 for the construction of electrical line and attendant structures. Exhibit B. The Grant is known as Department

of Administration Grant No. 7/91-956, and was accepted by Seward in City of Seward Resolution No. 90-086.

5.3 In October of 1990, the City of Seward caused to be published a "Request for Contractors to Pre-Qualify to Bid on Construction of the Seward 115KV Transmission Line Lawing to Fort Raymond" (Request). Exhibit C. The Request required the submission of a pre-qualification form to Seward by October 29, 1990. The Request includes the following language:

The City of Seward is a signatory to a collective bargaining agreement with the International Brotherhood of Electrical Workers (IBEW), Local Union 1547. In order to preserve work traditionally performed by employees represented by the IBEW and to avoid destruction of wages, hours and conditions of employment achieved through the collective bargaining process, the City has agreed that, to the extent permitted by law, it will not contract, or allow the subcontract, for the construction of the 115 KV main electrical transmission intertie line between Lawing and Fort Raymond Subdivisions within the City of

Seward for work traditionally performed by the IBEW except to a party with an appropriate current labor agreement with the IBEW.

The Request for Pre-Qualification shall be submitted on the contractor's letterhead in a format to address each of the following subjects. . . .

6. A statement attesting that the contractor is a party to an appropriate current labor agreement with the IBEW that will assure that work traditionally performed by employees represented by the International Brotherhood of Electrical Workers, local union 1547 ("IBEW") will be performed by such workers.

(The requirement stated in ¶6 is hereafter referred to as the IBEW signatory requirement.)

5.4 On October 1990, Irby submitted a request to be pre-qualified to bid on construction of the line.

5.5 On October 1990, Irby/AUC submitted a request to be pre-qualified to bid on construction of the line.

5.6 On November 16, 1990, Everett P. Diener, Manager of

Engineering & Utilities for Seward, wrote letters to Charles Irby of Irby, and Aaron Downing of Irby/AUC. The letters requested additional information concerning the companies' Alaska experience and the identity of the key employees would be on the job. The letter also noted Irby's and Irby/AUC's objection to Item #6, said they would likely recommend to the City Council that Irby and Irby/AUC be found not qualified, and invited Irby and Irby/AUC to change its response to Item #6. Exhibit D.

5.7 On November 26, 1990, Aaron Downing responded, submitting additional information on Irby/AUC's Alaska experience, and designating the key employees. The letter also elaborated on the objection to Item #6. Exhibit E. On the same date, John Nye of Irby responded, submitting additional information on Irby's Alaska experience, and designating the Irby key employees. The letter declined to amend the objection to Item #6. Exhibit F.

5.8 On November 30, 1990, Mr. Diener sent a letter to Charles Irby stating: "We find you qualified to perform except for Item #6 which states that you must be a party to a current labor agreement with the IBEW. Consequently, I have no alternative but to omit your company from the list of contractors I will submit to the City Council as qualified bidders on this project. Therefore, if the City Council approves the recommendation a bid will not be

accepted from Irby Construction Company." Exhibit G.

5.9 On December 3, 1990, Mr. Diener responded to the November 26 submission from Irby/AUC. By letter, Mr. Diener stated: "We find you qualified to perform except for Item #6 which states that you must be a party to a current labor agreement with the IBEW. Consequently, I have no alternative but to omit your company from the list of contractors I will submit to the City Council as qualified bidders on this project. Therefore, if the City Council approves the recommendation a bid will not be accepted from Irby/Alaska Utility Construction JV." Exhibit H.

5.10 On November 30, 1990, Mr. Diener sent a memorandum to the Seward Mayor and City Council, finding Irby and Irby/AUC to be not qualified for failure to comply with the requirement of a current labor agreement with IBEW. Exhibit I.

5.11 On December 10, 1990, the Seward City Council met and approved the list of bidders, omitting Irby and Irby/AUC on the basis of Item #6. Resolution No. 90-152, Exhibit J.

5.12 The City of Seward intends to proceed with the bidding process in order to commence construction of the project as soon as weather permits in the spring of 1991.

5.13 Unless the IBEW signatory requirement is enjoined and declared illegal, the plaintiffs will suffer irreparable injury by

their inability to participate in the project.

FEDERAL CLAIMS

COUNT ONE: THE NATIONAL LABOR RELATIONS ACT

6.1 Section 7 of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157, provides that employees have the right to join "labor organizations to bargain collectively through representatives of their own choosing," and "shall also have the right to refrain from any or all of such activities..."

6.2 Sections 8 and 9 of the NLRA, 29 U.S.C. §§ 158 and 159, provide that employers are required only to negotiate in good faith with unions who represent a majority of their employees. These sections also prohibit both employers and unions from interfering with employees in the exercise of their rights under Section 7 of the NLRA, 29 U.S.C. § 157.

6.3 The City of Seward is a public agency created pursuant to the laws of the State of Alaska. The City has impermissibly promoted the interests of the IBEW by forcing all would-be Project bidders to recognize and deal with the IBEW, regardless of whether the bidders' employees have chosen to join or bargain through the IBEW, and regardless of whether the bidders can come to mutually agreeable terms with the IBEW. This action is in

violation of the NLRA, which preempts state regulation of labor-management relations.

6.4 By forcing would-be bidders to not only negotiate with the IBEW, but to enter into an agreement with the IBEW as a condition of bidding on the Project, the City of Seward leaves little bargaining strength for would-be bidders. The IBEW, knowing that the would-be bidder must come to terms, is obviously unlikely to negotiate less favorable terms with such a bidder than other agreements IBEW has with other bidders. Thus, the IBEW signatory requirement indirectly dictates the terms of the agreement between the IBEW and all would-be bidders, in violation of the NLRA.

6.5 Plaintiffs' employees have chosen not to belong to or be represented by any labor organization, let alone the IBEW in particular. By imposing the IBEW signatory requirement upon would-be bidders, the City has deprived the employees of rights protected by the NLRA, including the right to refrain from union membership, the right to negotiate individual terms and conditions of employment, and, in the event the employees seek union representation, the right to join and be represented by the union of their choice.

6.6 The IBEW signatory requirement constitutes impermissible state regulation of private labor relations under the

NLRA. The requirement affects the substantive aspects of the free collective bargaining process to an extent forbidden by the NLRA. The requirement undermines the policies upon which the comprehensive labor relations law embodied in the NLRA are based.

6.7 Plaintiffs are entitled to a preliminary and permanent injunction against the enforcement of the IBEW signatory requirement, and a declaration that the requirement is illegal.

COUNT TWO: THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

7.1 The City of Seward requires would-be bidders to enter into a labor agreement with the IBEW. The IBEW typically demands, as part of all of labor contracts, that the employer contribute to a variety of specified employee benefit plans.

7.2 In order to bid on the Project, any contractor would therefore be required to agree to contribute to IBEW employee benefit plans, which will undoubtedly be different from those which the various plaintiff-employers now have in place for their employees.

7.3 The IBEW signatory requirement thus regulates and dictates the terms of the employee benefit plans of all would-be bidder on the Project.

7.4 The Employee Retirement Income Security Act ("ERISA")

preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 114(a).

7.5 The IBEW signatory requirement relates to employee benefit plans and is being imposed under color of state law. It therefore violates ERISA.

7.6 Plaintiffs are entitled to a preliminary and permanent injunction against the enforcement of the IBEW signatory requirement, and a declaration that the requirement is illegal.

COUNT THREE: THE SHERMAN ANTITRUST ACT

8.1 The Project requires that materials and labor travel in interstate commerce.

8.2 Through the artifice of pre-qualification requirements, the City of Seward and the IBEW have entered into a conspiracy to restrain free competition and interstate commerce by imposing the IBEW signatory requirement on all prospective bidders. The conspiracy reflected in the IBEW signatory requirement effectively excludes from the bidding process all contractors whose employees do not wish to be represented by the IBEW.

8.3 Defendants executed the Agreement as part of a general scheme to reduce competition and eliminate non-union contractors from the construction of electrical transmission lines

in the State of Alaska.

8.4 Defendants at all times relevant to the allegations set forth herein were acting as the agents and/or co-conspirators of each other, with a common anti-competitive purpose or design.

8.5 The City of Seward also acquiesced to threats, intimidation and coercion employed by the IBEW to secure the IBEW signatory requirement.

8.6 Defendants' unlawful conduct has prevented non-union contractors from bidding on the Project, and thus substantially reduces competition and substantially raises the likely price of the Project. Defendants' activities and conduct have had and continue to have a substantial impact on interstate commerce in violation of 15 U.S.C. § 1.

8.7 Defendants' unlawful conduct has injured plaintiffs in their businesses, property, and person in that they have suffered and will continue to suffer substantial injury to the goodwill of their businesses, lost business opportunities, and the loss of profits and employment.

8.8 Neither the City of Seward nor the IBEW enjoy absolute or qualified immunity with respect to their participation in the anti-competitive activities described in the complaint. The IBEW signatory requirement does not comport with the sovereign

policies of the State of Alaska. There is no requirement in the legislature's appropriation that bidders on the Project be bound by a labor agreement with the IBEW. Similarly, there is no requirement in the Grant that bidders on the Project be bound by a labor agreement with the IBEW.

8.9 Plaintiffs are entitled to a preliminary and permanent injunction against the enforcement of the IBEW signatory requirement, and a declaration that the requirement is illegal. Plaintiffs are also entitled to treble damages for injury suffered because of the illegal activities.

COUNT FOUR: EQUAL PROTECTION OF THE LAW

9.1 The Fourteenth Amendment to the United States Constitution declares that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws."

9.2 Acting under color of state law, defendants engaged in conduct with the knowledge that such conduct would have the effect of denying plaintiffs' equal protection rights under the Fourteenth Amendment.

9.3 The IBEW signatory requirement has the effect of precluding the award of the Project to non-union contractors (in fact, any contractor, union or otherwise, without a contract with

the IBEW) as a class. No hearings on the IBEW signatory requirement were held, nor were any findings supported by substantial evidence made, which might provide a rational basis for this distinction.

9.4 The bidding requirements could have been more narrowly drafted to achieve any legitimate objectives without unlawfully requiring any bidders to agree to representation by the IBEW.

9.5 The arbitrary and capricious distinction made by the defendants is a violation of the equal protection rights of the plaintiffs. As a result of that distinction, plaintiffs have sustained and continue to sustain damages which are difficult to calculate, and for which a declaratory judgment and injunction are appropriate remedies.

COUNT FIVE: DUE PROCESS OF LAW

10.1 The Fourteenth Amendment to the United States Constitution declares that "no state shall ... deny to any person of life, liberty, or property, without due process of law"

10.2 Acting under color of state law, defendants engaged in conduct with the knowledge that such conduct would have the effect of denying plaintiffs' due process rights under the Fourteenth Amendment.

10.3 Irby and the Irby/AUC are ready, willing and able to bid on and to perform the Project. Both have been found qualified to bid with the sole exception that neither has a labor agreement with the IBEW. Because of the unreasonable IBEW signatory requirement, plaintiffs have been deprived of an opportunity to obtain work on the Project. The requirement deprives plaintiffs of a property interest in contract awards without due process of law.

10.4 The arbitrary and capricious distinction made by the defendants is a violation of the due process rights of the plaintiffs. As a result of that distinction, plaintiffs have sustained and continue to sustain damages which are difficult to calculate, and for which a declaratory judgment and injunction are appropriate remedies.

COUNT SIX: 42 U.S.C. § 1983 CIVIL RIGHTS

11.1 42 U.S.C. § 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to

the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

11.2 Acting under color of state law and municipal ordinance, defendants engaged in conduct with the knowledge that such conduct would have the effect of denying plaintiffs' rights under the United States Constitution, and the laws of the United States, including the NLRA, ERISA, the Sherman Act and other laws.

11.3 As a result of the violations of plaintiffs' rights, plaintiffs have sustained and continue to sustain damages which are difficult to calculate, and for which a declaratory judgment and injunction are appropriate remedies.

11.4 Pursuant to 42 U.S.C. § 1988, plaintiffs are entitled to an award of reasonable attorney fees as part of the costs of this action.

STATE CLAIMS

COUNT SEVEN: EQUAL PROTECTION OF THE LAW

12.1 Alaska Constitution, Art. I, § 1 provides that "all persons are equal and entitled to equal protection under the law..."

12.2 Acting under color of state law, defendants engaged in conduct with the knowledge that such conduct would have the effect of denying plaintiffs' equal protection rights under the Alaska Constitution.

12.3 The IBEW signatory requirement has the effect of precluding the award of the Project to non-union contractors (in fact, any contractor, union or otherwise, without a contract with the IBEW) as a class.

12.4 The IBEW signatory requirement does not have a fair and substantial relation to a legitimate government interest.

12.5 The unfair distinction made by the defendants is a violation of the equal protection rights of the plaintiffs. As a result of that distinction, plaintiffs have sustained and continue to sustain damages which are difficult to calculate, and for which a declaratory judgment and injunction are appropriate remedies.

COUNT EIGHT: DUE PROCESS OF LAW

13.1 Alaska Constitution, Art. I, § 7 provides in

pertinent part: "No person shall be deprived of life, liberty, or property, without due process of law."

13.2 Acting under color of state law, defendants engaged in conduct with the knowledge that such conduct would have the effect of denying plaintiffs' due process rights under the Alaska Constitution.

13.3 Irby and the Irby/AUC are ready, willing and able to bid on and to perform the Project. Both have been found qualified to bid with the sole exception that neither has a labor agreement with the IBEW. Because of the unreasonable IBEW signatory requirement, plaintiffs have been deprived of an opportunity to obtain work on the Project. The requirement deprives plaintiffs of a property interest in contract awards without due process of law.

13.4 The arbitrary and capricious distinction made by the defendants violates the due process rights of the plaintiffs. As a result of that distinction, plaintiffs have sustained and continue to sustain damages which are difficult to calculate, and for which a declaratory judgment and injunction are appropriate remedies.

COUNT NINE: ALASKA ANTITRUST LAWS

14.1 AS 45.50.562 and .572 prohibit restraint of trade and the monopolization of any part of trade or commerce.

14.2 Through the artifice of the bidding specifications, the City of Seward and the IBEW have entered into a conspiracy to restrain free competition and interstate commerce by imposing the IBEW signatory requirement on all prospective bidders. The conspiracy reflected in the IBEW signatory requirement effectively excludes from the bidding process all contractors whose employees do not wish to be represented by a labor union, or who prefer to deal only with a union designated by a majority of their employees.

14.3 Defendants wilfully executed the Agreement as part of a general scheme to reduce competition and eliminate non-union contractors from the construction of electrical transmission lines in the State of Alaska.

14.4 Defendants at all times relevant to the allegations set forth herein were acting as the agents and/or co-conspirators of each other, with a common anti-competitive purpose or design.

14.5 The City of Seward also acquiesced to threats, intimidation and coercion employed by the IBEW to secure the IBEW signatory requirement.

14.6 Defendants' unlawful conduct has prevented non-union contractors from bidding on the Project, and thus substantially reduces competition and substantially raises the likely price of the Project.

14.7 Defendants' unlawful conduct has injured plaintiffs in their businesses, property, and person in that they have suffered and will continue to suffer substantial injury to the goodwill of their businesses, lost business opportunities, and the loss of profits and employment.

14.8 Neither the City of Seward nor the IBEW enjoy absolute or qualified immunity with respect to their participation in the anti-competitive activities described in the complaint. The IBEW signatory requirement does not comport with the sovereign policies of the State of Alaska. There is no requirement in the legislature's grant that bidders on the Project be bound by a labor agreement with the IBEW. Similarly, there is no requirement in the Standard Agreement Form for Municipal Grants executed by the City and the Alaska Department of Administration that bidders on the Project be bound by a labor agreement with the IBEW.

14.9 Plaintiffs are entitled to a preliminary and permanent injunction against the enforcement of the IBEW signatory requirement, and a declaration that the requirement is illegal. Plaintiffs are also entitled to treble damages for injury suffered because of the illegal activities.

MUNICIPAL CLAIMS

COUNT TEN: CITY OF SEWARD PROCUREMENT CODE

15.1 The City of Seward Code provides: "When a procurement involves the expenditure of state or federal grant, assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory state or federal law and regulation." Code § 6.01.020. The Code also provides that procurement contracts "shall be let by the city council to the lowest qualified responsive and responsible bidder." Code § 6.10.230.

15.2 Nothing in the Code authorizes Seward to require as a qualification for bidding on a project that the bidder have a current labor agreement with any labor union.

15.3 The IBEW signatory requirement violates federal and state laws, and the City of Seward Code, by mandating a current labor agreement with the IBEW, and thereby imposing additional costs on plaintiffs.

15.4 Plaintiffs are entitled to a preliminary and permanent injunction against the enforcement of the IBEW signatory requirement, and a declaration that the requirement is illegal.

REQUESTED RELIEF

WHEREFORE, having stated their complaint, plaintiffs pray for the following relief:

1. Declaratory Judgment: A judgment declaring the IBEW signatory requirement: (a) is null and void as preempted by the NLRA and ERISA to the extent it requires plaintiffs to recognize and deal with a non-majority representative union and to be bound to enter an agreement with the IBEW; (b) works a denial of plaintiffs' rights to equal protection and due process in contravention of the Constitutions of the United States and the State of Alaska, and 42 U.S.C. § 1983; and (c) is unenforceable against the plaintiffs.

2. Injunction: A preliminary and permanent injunction against the defendants and their agents, employees, successors, attorneys, and all those acting in concert or in participation with them, prohibiting enforcement against plaintiffs of those portions of the bid qualifications, including in particular the IBEW signatory requirement, which would require plaintiffs to recognize or deal with any union or to adhere to any collectively bargained terms or conditions of employment.

3. Money damages: Judgment in favor of plaintiffs and against defendants for damages, including treble the amount of actual damages found to have been sustained by plaintiffs as a result of defendants' unlawful conduct under 15 U.S.C. § 1 and AS 45.50.576.

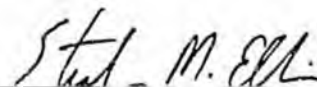
4. Costs and Fees: Judgment in favor of plaintiffs and

against defendants for costs, interests and attorney fees in bringing and prosecuting this action pursuant to 42 U.S.C. § 1988, AS 45.50.576(a), and any other applicable Alaska law.

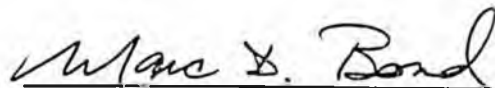
5. Other Relief: Such other relief as the court may deem equitable and just under the circumstances.

DATED at Anchorage, Alaska this 28th day of December, 1990.

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.
Attorneys for Plaintiffs



Stephen M. Ellis



Marc D. Bond

Editor's notes.--Sections 139--142 of this chapter will not be set out in the Alaska Statutes. Keep this pamphlet for future references to these sections. Copies of this chapter are also available from the Legislative Affairs Agency or any Legislative Information Office.

Chapter 208

AN ACT

Making, amending, and repealing capital and operating appropriations; and providing for an effective date.

~~Section 1. The unexpended and unobligated balance of the appropriation made in sec. 10, ch. 172, SLA 1988, page 15, line 9 (Petersburg-Solid Waste Incineration - \$800,000) is repealed and reappropriated to the Department of Administration for payment as a grant under AS 37.05.315 to the City of Petersburg for solid waste disposal.~~

~~Section 2. The unexpended and unobligated balance of the appropriation made in sec. 227, ch. 117, SLA 1989, page 86, line 6 (Petersburg-Wastewater Treatment/Solid Waste Projects - \$500,000) is repealed and reappropriated to the Department of Administration for payment as a grant under AS 37.05.315 to the City of Petersburg for solid waste disposal.~~

* Sec. 3. Section 158, ch. 3, FSSLA 1987, page 53, line 6 is amended to read:

	APPROPRIATION	GENERAL FUND
	ITEMS	
Wrangell Solid Waste		
Projects (INCINERATOR)		
(EE 1)	306,000	306,000

* Sec. 4. Section 286, ch. 50, SLA 1980, page 64, line 16 is amended to read:

	APPROPRIATION	GENERAL FUND
	-1-	SCS CSHB 463(FIN)

Chapter 208

* Sec. 144. The sum of \$9,500,000 is appropriated from the Railbelt energy fund (AS 37.05.520) in the general fund to the Department of Administration for payment as a grant under AS 37.05.315 to the City of Seward for the design and construction of the Seward transmission line from Lawing to Fort Raymond substation.

* Sec. 145. The sum of \$9,000,000 is appropriated from the Railbelt energy fund (AS 37.05.520) in the general fund to the Alaska Railroad Corporation for the purchase of locomotives, rolling stock, and associated equipment costs.

* Sec. 146. Contingent upon the execution of a long-term, no-cost lease between the Alaska Railroad Corporation and the Municipality of Anchorage that designates the Alaska Railroad Corporation's Government Hill bluff land as open space or for public use, the sum of \$2,500,000 is appropriated from the Railbelt energy fund (AS 37.05.520) in the general fund to the Department of Administration for payment as a grant under AS 37.05.315 to the Municipality of Anchorage for road and bridge improvements for the Anchorage Ship Creek Original Townsite Redevelopment Project, including extension of Warehouse Avenue, realignment of C Street, and construction of a Ship Creek pedestrian bridge.

* Sec. 147. (a) The sum of \$1,600,000 is appropriated from the Railbelt energy fund (AS 37.05.520) in the general fund to the Department of Community and Regional Affairs for weatherization and energy conservation and for the energy efficient residential housing incentive program under sec. 9 of SCS CSSH 358 (FIN) am 5 (old fid), enacted by the Sixteenth Alaska State Legislature.

(b) The sum of \$600,000 is appropriated from the Railbelt energy fund (AS 37.05.520) in the general fund to the Department of Community and Regional Affairs to match federal receipts for the weatherization and energy conservation program.

EXHIBIT A

STANDARD AGREEMENT FORM
FOR MUNICIPAL GRANTS

This agreement is executed between the State of Alaska, Department of Administration (Hereinafter called the "State"), and the City of Seward (Hereinafter called the "Grantee");

WITNESSETH that:

Whereas, the Grantee is willing to undertake the performance of this grant under the terms of this agreement;

Whereas, the Grantee has the authority under the State law or local charter to provide the services for which funds were appropriated;

Whereas, the State has the authority to enter into this agreement by AS 37.05.315;

Whereas, unexpended funding for this grant lapses on the five year anniversary date of July 10, 1990 if the project is not substantially underway or upon completion of the project if work is completed prior to the five year anniversary date or if substantial, ongoing work stops after the five year date is reached;

Whereas, the grant number is; 7/91-956

Whereas, the grant amount is; \$9,500,000

Whereas, the grant purpose is; Design and construction of the Seward transmission line from Lawing to Fort Raymond substation

Whereas, the Grantee intends to use these funds as explained below;

The project consists of replacing approximately 24 miles of 69 KV line with a new 115 KV and 3 miles of new 69 KV transmission line; rebuilding Seward Substation to accommodate 115 KV; relocating existing transformers from Lawing and Spring Creek Substations to Seward Substation; relocating existing transformers from Seward Substation to Spring Creek Substation; rebuilding Spring Creek Substation as required to accept the transformers; replacing existing and constructing new distribution lines and services and other work necessary for a complete operational electrical transmission and distribution system serving customers within the Seward Electric Utility Service Area.

JUL 23 1990

OFFICE OF THE
CITY CLERK

RECEIVED
JUL 26 1990

Dept. of Administration
Administrative Services

EXHIBIT B

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I. GRANT CONDITIONS.

The Grantee:

- (1) will spend the grant only for the purposes specified above.
- (2) will allow, on request, an audit by the State of the uses made of the grant.
- (3) assures that, to the extent consistent with the purpose of the appropriation, the facilities and services provided with the grant will be available for use of the general public.
- (4) will return to the State all grant funds received for construction of a public facility, if the State, upon reviewing the documentation provided and other evidence, determines that substantial, ongoing work on the project has not begun within five years of the date it was appropriated.
- (5) will, for all grants for construction of a public facility, operate and maintain the facility for its practical life and that it will not look to the State to operate or maintain the facility or pay for its operation and maintenance. This does not apply to a grant for money for repair or improvement of an existing facility operated or maintained by the State at the time the grant is accepted if the repair or improvement for which the grant is made will not substantially increase the operation or maintenance costs to the State.
- (6) will submit a monthly municipal grant financial report until the project is completed. A final municipal grant financial report is due within 90 days of project completion.
- (7) will retain for a period of three years after project completion all contracts; invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to matters covered by the grant.
- (8) will return all unexpended grant monies to the State within 90 days of project completion.
- (9) will not allow any of the grant monies to be used for the purpose of lobbying activities before the Alaska Legislature.
- (10) will comply with the minimum wage and employment provisions of Alaska's public construction contract law as set out in AS 36.05.010 (copies of which are available through the Department of Labor).

ARTICLE II. TERMS OF PAYMENT

Twenty percent of the grant shall be paid to the grantee, as an advance, within 10 days of the effective date of this agreement. The remainder of the grant will be paid after the entire advance is expended. The payments will be based on grantee expenditures that exceed the advance amount. These expenditures must be reported to the Department of Administration on a municipal grant financial report. Expenditures are herein defined as actual cash outlays or current payables.

The State will reimburse from financial reports signed by the Mayor or persons designated in writing by the Mayor to certify.

NOTE: Signing of this agreement does in no way excuse the recipient of the municipal grant of any other law, Alaska State Statute or City code regulations. Recipient must in all cases consult and adhere to all local, State, or Federal laws that pertain to public funds.

The grantee recognizes that 02. AAC 45.010 establishes specific audit requirements for grant agreements executed after August 1, 1985. If the grantee does not have a copy of 02. AAC 45.010, one should be obtained from the Department of Administration.

The Grant Administrator, by written notice, may terminate this agreement, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of the agreement as amended for services rendered before the effective date of termination.

The amount of the grant is full consideration of the grantee's performance.

ARTICLE III. ADDITIONAL CONTRACT PROVISIONS.

The effective date of this grant is the date the agreement is signed by the State.

IN WITNESS WHEREOF, the parties have executed this agreement.

Approved by Ordinance/Resolution # 90-086 dated 07/23/90.

Grantee will attach a copy of Ordinance/Resolution.

Grantee

By: Michael DeJany
Deputy City Manager
(Official Title)

State of Alaska

By: Frank Baxter
Commissioner of Administration
(Official Title)

Date: 7/24/90

Date: 7-27-90

DISTRIBUTION:

Grantee []

State [x]

For State Use Only	
Budgeted funds are available for the period and purpose of this expenditure.	
<u>Karen Brooks</u>	<u>8-14-90</u>
Certifying Officer	Date

REQUEST FOR CONTRACTORS TO PRE-QUALIFY TO BID
ON CONSTRUCTION OF THE SEWARD 115KV TRANSMISSION LINE
LAWING TO FORT RAYMOND

The City of Seward desires to receive requests for pre-qualification from electrical construction contractors deservng to bid on construction of approximately 24 miles of 115KV transmission line and associated work extending from Lawing Substation, Mile 24 Seward Highway, to the Seward substation in Seward. Bids will be accepted only from contractors who have been pre-qualified.

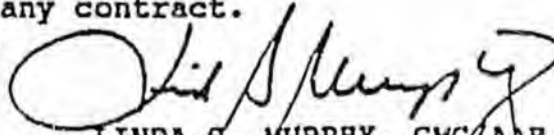
In order to be considered for qualification to bid this project, the contractor must be licensed to perform work in the state of Alaska and maintain an office in Alaska where business and contract matters may be conducted. Also, the contractor and their subcontractors must be a party to an appropriate current labor agreement with the IBEW that will assure that work traditionally performed by employees represented by the International Brotherhood of Electrical Workers, local union 1547 (IBEW) is performed by such employees.

A pre-submittal conference will be held at the Seward City Council Chambers, Fifth & Adams Streets, Seward, at 1:30 p.m. on Wednesday, October 17, 1990. Interested contractors are encouraged to attend the conference.

A copy of the pre-qualification form and related documents may be obtained at the office of the City Engineer, PO Box 167, Seward, Alaska 99664.

The requests for pre-qualification must be submitted to the city clerk no later than 5:00 p.m. on Monday, October 29, 1990. Proposals submitted after that date and time shall be returned unopened to the sender and will not be considered.

The selection of qualified bidders will be at the sole discretion of the city of Seward, and the city reserves the right to reject any and all requests for pre-qualification. This solicitation does not commit the City of Seward to award any contract for construction of the line or preclude the City from subsequent advertisement for contractors to pre-qualify or to advertise for bids without requiring pre-qualification. This solicitation does not commit the city of Seward to pay any cost incurred in the preparation of the request for pre-qualification or to award any contract.


LINDA S. MURPHY, CMC/AEE
CITY CLERK

Notice to Publisher - SEWARD PHOENIX LOG - Publish 10/11/90
ANCHORAGE DAILY NEWS - Publish 10/13 & 14/90
FAIRBANKS NEWS MINER - Publish 10/13 & 14/90
PENINSULA CLARION - Publish 10/13 & 14/90

EXHIBIT C

Request for pre-qualification for
construction of the 115KV transmission line
Page 2

POSTED: 10/08/90

MAILED OR DELIVERED: 10/08/90

City Hall bulletin board
U. S. Post Office
Harbormaster's Building

Seward Phoenix Log
Anchorage Daily News
Fairbanks News Miner
Peninsula Clarion

REQUEST FOR CONTRACTOR TO PRE-QUALIFY TO BID
ON CONSTRUCTION OF SEWARD'S LAWING TO FORT RAYMOND
TRANSMISSION LINE

The City of Seward desires to receive "Requests for Pre-qualification" from electrical construction contractors desiring to bid on all or a part of construction of approximately 24 miles of 115 KV Transmission Line and associated works extending from Lawing Substation, Mile 24 Seward Highway, to the Seward Substation in Seward. Bids will be accepted only from contractors who have been pre-qualified. Request for Pre-Qualification must be submitted to the Seward City Clerk not later than 5:00 p.m. on the 29th of October, 1990.

The project is being funded from a 9.5 million dollar grant from the State of Alaska to the City of Seward. Due to the timing of the Grant and the urgent need for upgrades to the system within budgeted funds, it is expected that the work will be bid in several phases with bids being requested for the first construction contract in the Spring of 1991. The City anticipates providing major material components, including poles, insulators and conductors. The contracts requiring pre-qualifications include the following work, however, the scope of work included in each contract may vary significantly from the phases described below, or a phase may be broken into several contracts.

PHASE I - Construction of a 115 KV electrical transmission line from approximately mile 19 Seward Highway to Seward Substation. This work would include construction of a wood pole 115 KV line, 25 KV underbuilt distribution line, removal or rehabilitation of existing 69 KV line, connection of services and associated work. Clearing of the rights of way may not be included in the work and if bid as a separate contract will not require pre-qualification.

PHASE II - Construction of a 115 KV electrical transmission line from the Lawing Substation, Mile 24 Seward Highway to Mile 19 Seward Highway. This would include construction of a wood pole 115 KV transmission line, 25 KV underbuilt distribution line, rehabilitation or removal of existing 69 KV transmission line, connection of services and associated work. Clearing of the rights of way may not be included in the work and if bid separately will not require pre-qualification.

PHASE III - Construction of the balance of work necessary to upgrade the power from 69 KV to 115 KV. This would include relocating several large transformers, rebuilding substations to handle higher voltages and all other work necessary to complete the project to serve Seward from the new 115 KV transmission line.

The work is currently being designed by Dryden and LaRue Engineers, Inc. of Anchorage. The schedule for bidding will depend upon design time, material delivery dates and other factors which may not be under control of the City.

In order to be considered for qualification to bid this project a contractor must be licensed to perform the required work in the State of Alaska and maintain an office in Alaska where business and contract matters may be conducted. The City of Seward is a signatory to a collective bargaining agreement with the International Brotherhood of Electrical Workers (IBEW), Local Union 1547. In order to preserve work traditionally performed by employees represented by the IBEW and to avoid destruction of wages, hours and conditions of employment achieved through the collective bargaining process, the City has agreed that, to the extent permitted by law, it will not contract, or allow the subcontract, for the construction of the 115 KV main electrical transmission intertie line between Lawing and Fort Raymond Subdivisions within the City of Seward for work traditionally performed by the IBEW except to a party with an appropriate current labor agreement with the IBEW.

The Request for Pre-qualification shall be submitted on the contractor's letterhead in a format to address each of the following subjects. In order to simplify review, each subject shall be included in a similarly lettered paragraph or tab. Additional information may be submitted in additional paragraphs or tabs.

1. Name, address of firm and individual or primary owners of the firm.
2. Name, address and telephone number of person(s) who will be directly responsible for the contract work.
3. Summary of firm's experience in constructing similar projects in Alaska, including the names of key persons involved with projects.
4. Names, addresses and telephone numbers of individuals, firms and agencies who may be contacted as references.
5. A copy of the firm's most recent financial statement and a statement from a bonding company attesting to the firm's capability to obtain performance and payment bond in excess of 5 million dollars or if less the limits of the firm's bonding capability.
6. A statement attesting that the contractor is a party to an appropriate current labor agreement with the IBEW that will assure that work traditionally performed by employees represented by the International Brotherhood of Electrical Workers, local union 1547 ("IBEW") will be performed by such workers.