ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8570 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

federation of teachers
2533 providence anchorage alaska 99508-4675 (907) 562-2580

alaska community colleges'
american fed. of teachers, local 2404, america fed. of labor — congress of industrial organizations

HOUSE RESOLUTION 12

- On May 8, 1992 the Collective Bargaining Agreement between the University of Alaska and the ACCFT was approved by the University Board of Regents. Its terms provided that "Faculty Members shall be compensated in a manner consistent with Provisions of Regents Policy and University Regulation 04.05.01-03 in effect as of the date of this Agreement, except that any compensation increases shall be subject to legislative appropriation in accordance with the provisions of AS 23.40.215 and shall be requested separately from compensation increases requested for other employees of the University" (attachment #1).

- In June, 1993 the Board of Regents suspended the above policy and deprived ACCFT faculty members of their bargained Agreement. This action caused the ACCFT to file a grievance under provisions of the Agreement and take the case to final and binding arbitration as provided by the Agreement.

- Arbitration of this case was opposed and delayed by the University but the case was finally heard in January, 1995. The arbitration decision and award was released on April 14, 1995 toward the end of last years legislative session and after the Governor's deadline for submission of FY95 supplemental. The arbitrator's decision and award is clear: " . . . the Union prevails with regard to the issue of Compensation. Therefore, **the University shall pay** the bargaining unit members the pay increase provided by the collective agreement." (attachment #2).

- On April 26 the University requested that OMB submit legislation to fund the FY 95 supplemental and the FY 96 costs. Interestingly in this communication the University claimed that: ". . . the arbitration decision said that the University **erred when it did not request funds** to cover the compensation increases called for in the contract" (attachment #3). Nowhere in the decision does the Arbitrator make such a reference or statement. Subsequently, we were told by the University that further discussions on its request were continued with House Finance Chair Mark Hanley and efforts to include their request in HB178 (the "slow track supplemental") were unsuccessful (attachment #4). To our knowledge no subsequent action to submit legislation or conduct hearings occurred and the legislative session ended shortly thereafter.

- By June the University was to claim that their request for funds had been made **". . . but the legislature rejected the request"** for the FY 95 supplemental and that the University would seek in the next legislative session **only** the FY 96 amount as a supplemental (attachment #5).

- In August the University's preparation for the FY97 Budget Request explained that funding to cover FY 95 and FY 96 costs of the ACCFT contract "was requested during the 1995 legislative session but was not approved by the legislature" and therefore the University would only resubmit the FY 96 portion of these costs as an FY 96 supplemental. The same document goes on to say that this increment "does not include funding to cover the FY 97 costs of the ACCFT contract because that agreement is being re negotiated and the FY 97 impact is unknown at this time. This increment will be revised to include these costs when better information is available" (attachment #6).

- In November the University submitted its FY 96 supplemental request to OMB. The University position regarding faculty members entitlement states that "As you know, funding to cover the FY 95 and FY96 costs of these contracts was requested during the 1995 legislative session . . . but was not approved by the legislature". Later a very different remark is made by the University stating that the request was one that ". . . the legislature did not act upon . . ." (attachment #7). It should be clear that the ACCFT Agreement is not a newly negotiated contract but rather one whose terms were approved by the Board of Regents and the Legislature in 1992 and continues in place today.

- We have reviewed last year's memorandum from the Division of Legal Services to the House Finance Committee (attachment #8) and believe that its points are appropriate. Had the University followed the terms of the Agreement, the Arbitration award or P.E.R.A our situation would not be before you or be at issue.

#1

ARTICLE 7

Salaries and Benefits

7.1 Salaries

A. Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01 - 03 in effect as of the date of this Agreement, except that any compensation increases shall be subject to legislative appropriation in accordance with the provisions of AS 23.40.215 and shall be requested separately from compensation increases requested for other employees of the University.

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WILLIAM L. CORBETT, ARBITRATOR

IN THE MATTER OF THE ARBITRATION BETWEEN:

ALASKA COMMUNITY COLLEGES' FEDERATION OF TEACHERS, LOCAL 2404,

THE UNION,

AND

UNIVERSITY OF ALASKA,

THE UNIVERSITY/EMPLOYER.

DECISION AND AWARD

Appearances:

For the Union:

William K. Jermain
Jermain, Dunnagan & Owens, P.C.
3000 A Street, Suite 300
Anchorage, AK 99503

For the Employer:

Thomas P. Owens Jr.
Owens & Turner, P.C.
1500 W. 33rd Avenue, #200
Anchorage, AK 99503

The arbitration hearing in this matter was held during a portion of the week of January 9-14, 1995, in Anchorage, Alaska. The parties stipulated to the jurisdiction of the arbitrator, presented evidence, argument, and agreed to file post-hearing briefs. Timely briefs were received from both parties.

carried forward.

The collective agreement recognizes that while the Regents may change the system of governance, the only limitation is that the new system of governance may not conflict with the prior system. Only if the new system of governance is incompatible or irreconcilable with the old, is there a conflict. Because the only real difference between the two systems of governance is the way information is carried forward, the new policy is not incompatible or irreconcilable with the old.

C. Compensation

Article 7.1 of the collective agreement states that "Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01 - 03 in effect as of the date of this Agreement." It is undisputed that, on the date the collective agreement was reached, Regents' policies 04.05.01 - 03 provided for an annual three percent (3%) raise.

At their June 3-4, 1993 meeting, the Regents suspended policy 04.05.01(B). Thereafter, on August 20, 1993, the Regents suspended indefinitely all the provisions of policy 04.05 concerning annual pay increases, including the three percent (3%) pay increase.

It is undisputed that the Union was aware of this Board action. However, this change in policy did not have any direct impact on unit members until July 1994 when the three percent (3%) pay increase became due and owing and was not paid. In

August 1993 the only faculty affected by the change in policy were those not within the bargaining unit.

The Union did not file a grievance protesting the failure of bargaining unit faculty to receive the pay raise until July 8, 1994. The contract grievance procedure requires that any grievance must be filed "within thirty (30) days from the time the aggrieved became aware or reasonably should have become aware of the event which gave rise to the alleged grievance."

The University argued that the grievance was untimely because it was filed approximately a year after the Board announced its suspension of the three percent (3%) pay raise policy.

The Union argued that its grievance was timely. It asserted that there was good reason why it waited until July 1994 to file the grievance, and that the thirty (30) day contract grievance period did not commence to run until the change in the Board policy "affected" the bargaining unit members, i.e. July 1, 1994, when they did not receive the pay raise provided for in their collective agreement.

The Union persuasively argued that at the time the Regents suspended policy 04.05, the effect was to merely suspend the pay raises for non-bargaining unit faculty. As for bargaining unit members, their collective agreement provided that they were entitled to the 3% pay increase effective in July 1994. Thus, the August 1993 suspension of the policy did not negate the University's obligation under the collective agreement to pay the

bargaining unit members a three percent (3%) pay increase.

At some time after the August 1993 suspension of the policy and before July 1, 1994, when the contract pay increase for bargaining unit members was to be paid, it became apparent to the Union that the Board intended to repudiate its pay increase obligation under the collective agreement. However, it is not clear when the Union first became aware that the University was not going to abide with the collective agreement and pay the unit members the 3% pay increase.

The parties correctly state the issue as whether the effective date of the action that gave raise to grievance occurred in August 1993 or on July 1, 1994.

As recognized by Elkouri and Elkouri, "It has been held that doubts as to the interpretation of contractual time limits or as to whether they have been met should be resolved against forfeiture of the right to process the grievance." See Elkouri and Elkouri, How Arbitration Works, 4th ed., p. 914. The authors also acknowledge that arbitrators have held that the date on which a contractual time limitation for filing a grievance commences is the date on which the "effect" of the employer's decision is felt rather than the date the decision is announced. Id. at 196, citing numerous cases. They state "[a] party sometimes announces its intention to do a given act but does not do or culminate that act until a later date." "Similarly, a party may do an act whose adverse effect upon another does not result until a later date." In such cases, it is the latter date

from which the time limitation for filing a grievance commences to run. Id.

Apart from this authority, in the instant case the Union has presented a reasonable explanation regarding why it waited to file the grievance. At the time the Board announced it decision not to pay the three percent (3%) increase, the Union reasonably believed that the decision would not affect the bargaining unit employees because their entitlement to a wage increase was governed by the collective agreement. The entitlement of the bargaining unit to that raise did not occur for some twelve months hence. Given this situation, it is reasonable that the Union did not file a grievance in August 1993.

AWARD

The University of Alaska prevails with regard to the issues of Program Assessment, Financial Exigency and Campus Governance; the Union prevails with regard to the issue of Compensation. Therefore, the University shall pay the bargaining unit members the pay increase provided by the collective agreement.[13]

DATED this 14th day of April, 1995.

William L. Corbett, Arbitrator

[13] Jurisdiction is retained for 60 days.

Marylou Burton
Director
Statewide Budget Development
211B Butrovich Building
P.O. Box 755280
Fairbanks, Alaska 99775-5280
(907) 474-6420
(907) 474-5145 FAX

University of Alaska
Statewide System of Higher Education

DATE: April 26, 1995

TO: Annalee McConnell, Director
Office of Management and Budget

FROM: Marylou D. Burton, Director
Statewide Budget Development

SUBJECT: New Legislation - Collective Bargaining Agreement

The University of Alaska requests that the Governor introduce legislation on its behalf to fund the monetary provisions of the collective bargaining agreement between the University of Alaska and the Alaska Community College Federation of Teachers (ACCFT). This is the result of an arbitration decision which said that the University erred when it did not request funds to cover the compensation increases called for in the contract. Accordingly, we are hereby requesting funds to cover a 3% increase for FY95 (retroactive to July 1, 1994) and a 3% increase for FY96, per the terms of the collective bargaining agreement.

The general fund impact of this agreement for FY95 is $495,700 ($506,906 total funds) and for FY96 is $1,006,272 ($1,029,019 total funds). This was calculated based on salaries and benefits as budgeted in PACS.

A cost worksheet is attached. Also attached is suggested language for the legislation. Please let me know if I can provide any further information.

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Wendy R	From SW BUDGET
Co.	Co.
Dept.	Phone #
Fax #	Fax #

\# 4

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF BUDGET REVIEW

May 1, 1995

The Honorable Mark Hanley
The Honorable Richard Foster
Co-Chairs, House Finance Committee
State Capitol
Juneau, AK 99801-1182

Dear Co-Chairs Hanley and Foster:

As you may be aware, additional judgments and claims have been finalized since the passage of HB137, the FY95 supplemental legislation. We were instructed by the Finance Committee to bring forward these requests when final actions had been taken. I would like to present those claims for inclusion in either HB 178 (the "slow track" supplemental), HB 268 (the capital budget), or another similar piece of legislation.

Included with those supplemental claims are several prior year overexpenditures that require legislative ratification. The Office of Management and Budget, Division of Audit and Management Services, is looking at established controls to determine if these situations have been remedied or to recommend appropriate controls to alleviate future irregularities.

Also, I have attached recommendations for amendments to existing appropriations.

Thank you for your assistance.

Sincerely,

Nancy J. Slagle

Nancy J. Slagle
Director

01 A33L4

UAforum
University of Alaska Statewide System
volume 4
number 4
june 1995

UA's FY96 Operating Budget Gets Reduced by 1.2%

The legislature approved a general fund operating budget of $167.4 million for the university for FY96, which represents a reduction of $2,047.8 million or 1.2% from the FY95 general fund authorization.

The administration proposed, and the regents approved, prorating the reduction among the four major administrative units on the basis of FY95 general fund levels, resulting in the following assessments:

UAA	($ 730.7)
UAF	($1,009.5)
UAS	($ 163.5)
Statewide	($ 144.1)

The impact of this reduction, when considered in combination with increases in tuition/fee revenues and reallocations for certain non-mandatory costs, is illustrated

FY96 Reduction/Reallocation Impacts

(General Funds and Tuition/Fees Only, in $000s)

	UAA	UAF	UAS	SW	Total
FY95:					
GF Authorization	60,448.2	83,513.9	13,529.5	11,917.9	169,409
Tuition/Fees (projected)	25,333.6	14,725.1	3,869.5	0.0	43,928
Total FY95 GF & Tuition/Fees	85,781.8	98,239.0	17,399.0	11,917.9	213,337
FY95:					
FY95 GF Authorization	60,448.2	83,513.9	13,529.5	11,917.9	169,409
Less 1.21% unallocated reduction prorated based on FY95 GF Authorized	(730.7)	(1,009.5)	(163.5)	(144.1)	(2,047
FY96 GF Authorization	59,717.5	82,504.4	13,366.0	11,773.8	167,361
Tuition/Fees (projected)	27,388.3	15,948.7	4,174.0	0.0	47,511
Total FY96 GF & Tuition/Fees	87,105.8	98,453.1	17,540.0	11,773.8	214,872
% Change FY96 over/(under) FY95 GF & Tuition/Fees	1.5%	0.2%	0.8%	(1.2%)	0.7

University Will Seek Supplemental Funds for Collective Bargaining Unit Agreements

The legislature did not approve funds to cover the monetary terms of either the new Classified Employees Association (CEA) contract or the ongoing Alaska Community College Federation of Teachers (ACCFT) contract.

Funding to cover the FY95 and FY96 costs of the CEA contract was included in HB 305, but neither this bill nor similar bills for state labor contracts were approved. The university will resubmit the FY96 portion of these costs ($367,000 general fund) as an FY96 supplemental.

As a result of an arbitration decision late in the session, the university also requested funding to cover a 3% increase for ACCFT members in FY95 and FY96. The governor's office forwarded only the FY95 supplemental portion of this request to the legislature because the deadline for FY96 submissions had passed, but the legislature rejected the request. The university will resubmit the FY96 portion of these costs ($510,600 general fund) as an FY96 supplemental.

Joe Hayes Named New Student Regent

Praising his work in student government as well as the classroom, Governor Tony Knowles named ASUAF President Joe L. Hayes, Jr. to a two-year term as student representative to the Board of Regents of the University of Alaska.

#6

University of Alaska
Statewide Programs and Services

FY97 Budget Request

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University of Alaska
Statewide Programs and Services
FY97 Budget Request

FY97 Operating Budget Request

	General Fund	Non General Fund
Systemwide Increments		
1. Implementation of Performance Based Salary Schedules	$2,900.0	$ 0.0

Since FY93 the university has been undergoing a rigorous examination of its compensation policies and practices, ranging from an evaluation of its staff benefits packages to a comparison of staff and faculty salaries with comparable salaries in other sectors and institutions. As a result of this effort, staff benefit costs have in fact decreased and the university has realized some savings in that area. The comparison and reevaluation of staff and faculty salaries, however, has been more problematic. University pay practices have been very inconsistent, and while some employees were paid more than what may be considered normal, many were also paid significantly less. As a result of these findings, the university developed a staff salary schedule that provides for an orderly and equitable career path but which also imposes maximum salaries for any given level. The Board of Regents adopted this policy in FY95 and it will be fully implemented in FY97. Similarly a faculty compensation plan is expected to be adopted in FY96 and fully implemented in FY97.

Both of these salary plans are expected to be more cost efficient than past practices in which all employees were granted increases "across the board". Moreover, a comparison of certain benchmark positions with comparable positions in stage agencies indicates that the university staff hourly salary schedule is not only lower than state hourly salary schedules currently in use, but lower than those put forth in legislation during the 1995 session. The salary plans do come at a cost, however. And while the university strongly believes that employees are entitled to fair and equitable pay it also recognizes that it cannot continually absorb these costs while still maintaining existing personnel and services. This increment requests $2,900.0 to help offset the costs of implementing the new salary schedules and to ensure that the university can continue to attract and keep top quality employees.

2. Salary Increases for Collective Bargaining Units	$ 402.6	

The university has collective bargaining agreements with the University of Alaska Classified Employees Association

University of Alaska
Statewide Programs and Services
FY97 Budget Request

		General Fund	Non General Fund
	(CEA) and the Alaska Community College Federation of Teachers (ACCFT). The monetary provisions of both agreements are, by the terms of the contracts, subject to legislative appropriation. Funding to cover the FY95 and FY96 costs of these contracts was requested during the 1995 legislative session but was not approved by the legislature. The university will resubmit the FY96 portion of these costs as an FY96 supplemental.		
	This increment requests funding to cover the FY97 costs of the CEA contract, which was newly established in late FY95 and with the exception of the monetary provisions is now in effect. FY97 costs result from the movement of CEA employees along the new salary schedule and are based on the assumption that the FY96 supplemental is funded as requested. An adjustment to the FY96 base is included in the calculations.		
	This increment as shown does not include funding to cover the FY97 costs of the ACCFT contract because that agreement is being renegotiated and the FY97 fiscal impact is unknown at this time. This increment will be revised to include these costs when better information is available.		
3.	Networks and Telecommunications Support	$ 500.0	$1,000.0
	The demand for information access from university users is increasing dramatically. Expanded networking capability is essential to avoid overloads, transmission delays, and the restriction or exclusion of new technologies. To help meet this demand the university is upgrading the network from an analog low bandwidth environment to a digital and increased bandwidth infrastructure. Equipment is also being installed which will provide the university for the first time with critical management information needed to effectively monitor network use and determine how the network costs will be allocated among the university system. This increment requests $500.0 in general funds for the increased network costs associated with these enhancements, which will provide multi-media capabilities to support distance delivery, administrative and academic requests, telemedicine and research requests for access to the existing infrastructure. This increment also includes $1,000.0 in university receipt authority for video and audio-conferencing, internet access and other services provided to K-12 schools, state agencies, the legislature and other groups outside of the university.		

#7

Marylou Burton
Director
Statewide Budget Development
211B Butrovich Building
P.O. Box 755380
Fairbanks, Alaska 99775-5380
(907) 474-xxxx
(907) 474-5xxx FAX

University of Alaska
Statewide System of Higher Education

November 17, 1995

TO: Nancy Slagle, Director
Division of Budget Review
Office of Management and Budget
Office of the Governor

FROM: Marylou Burton, Director
Statewide Budget Development

SUBJECT: FY96 Supplemental Request

The University of Alaska requests supplemental funding to cover FY96 salary increases for the University of Alaska Classified Employees Association (CEA) and the Alaska Community College Federation of Teachers (ACCFT). As you know, funding to cover the FY95 and FY96 costs of these contracts was requested during the 1995 legislative session but was not approved by the legislature. We are asking that the FY96 costs be resubmitted to the 1996 legislature as a supplemental request.

The CEA contract was newly established in late FY95 and with the exception of the monetary provisions is now in effect. Those provisions, which under AS 23.40.215(a) and the terms of the agreement are not effective without separate legislative action, have three basic elements. First, they provide for a one-time payment of $600 to each CEA member employed at the date of the signing. Second, they provide for certain one-time costs related to implementing the new contract. Third, they establish a grade/step wage schedule for CEA positions similar to the wage schedules used by the state and non-unionized university employees. This schedule ensures an orderly and equitable method of compensation, and results in an average FY96 salary increase for CEA employees of approximately 1.5%. Note that CEA employees have received no salary increases since FY93.

The total FY96 general fund impact of fully implementing the CEA contract is $455,565 ($462,279 total funds). Funding to cover the FY97 incremental cost of the contract ($390,471 general funds, $396,226 total funds) is being requested as part of the university's FY97 operating budget.

The ACCFT contract was re-established in FY92 and is currently being renegotiated. At the time the existing contract was executed, Board of Regents policy provided for an annual 3% increase for non-union employees. The ACCFT contract incorporates this policy by stating that ACCFT members shall be compensated in a manner consistent with the policy, subject to legislative appropriation. The Board suspended this policy in 1994 and in FY95 the university granted no salary increases to either unionized or non-unionized employees. ACCFT challenged this suspension and in April 1995 received an arbitration ruling that the university erred in not requesting funds to cover

the costs of a 3% salary increase for ACCFT employees. In response to this ruling, the university requested funding to cover FY95 and FY96 salary increases. The Governor forwarded the FY95 portion of this request as part of his late session "additional judgments and claims" package, but the legislature did not act upon it. We are resubmitting the FY96 portion of these costs as an FY96 supplemental request.

The total FY96 general fund impact of implementing a 3% salary increase for ACCFT employees is $473,039 ($506,422 total funds). No FY97 incremental funds are being requested at this time pending renegotiation of the contract.

Cost worksheets documenting both requests are attached. Please let me know if I can provide further information.

Attachments

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DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-3029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 6, 1995

SUBJECT: Legislative action with respect to the monetary terms of collective bargaining contracts

TO: Representative Mark Hanley, Co-chair
House Finance Committee

FROM: Teresa B. Cramer TBC
Legislative Counsel

You have asked for an explanation of the legislature's powers with respect to the monetary terms of a collective bargaining contract for state employees.

Short answer: If the legislature states in legislation that it declines to fund the monetary terms, the terms do not take effect. If the legislature appropriates money that can, under the terms of the appropriation, be used to fund the monetary terms of the contract, then the terms do take effect whether or not the legislature states that it intends them to.

Discussion

1. The legislature may decline to fund the monetary terms of a collective bargaining contract.

Under AS 23.40.215(a), the monetary terms of a collective bargaining contract "are subject to funding through legislative appropriation." This language has been held to mean that if the legislature declines to fund a contract term, the monetary terms of the contract do not take effect. Public Employees' Local 71 v. State, 775 P.2d 1062 (Alaska 1989).[1] In 1984, the state and Local 71 entered into a three-year collective bargaining contract. The contract did not call for a salary increase for the first year. In 1985, the legislature appropriated sufficient money to fund the negotiated pay increase for the second year but also adopted a resolution indicating that it would not fund the monetary terms in the following year. In 1986, the

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[1] In the Local 71 case, the court relied on the terms of the statute in reaching this result but also suggested that the state constitution would require the result. In a footnote in Municipality of Anchorage v. Anchorage Police Dep't Employees Ass'n, P.2d . (Alaska Supreme Court Opinion No. 3893, October 23, 1992), the Supreme Court disapproved this suggestion. (See footnote 28, page 28 of the slip opinion.) The Anchorage Police Dep't case involved consideration of a municipal collective bargaining contract entered into under a municipal ordinance rather than the state statutes.

legislature refused to fund the third-year salary increase, stating in the operating budget that failure to adopt a separate appropriation item for the pay raise constituted rejection of the monetary terms of the collective bargaining agreements in accordance with AS 23.40.215.[v] The court held that under AS 23.40.215 the monetary terms for the third year did not take effect, and stated

> it is clear that the monetary terms of a collective bargaining agreement are not effective until the funds are appropriated by the legislature. Each year the monetary terms of a collective bargaining agreement are subject to independent legislative approval."

Id. at 1064. (Footnote omitted.)

From the holding in Local 71, it is clear that if the legislature states in the operating budget that it is declining to appropriate money to implement a contract term, the monetary terms do not become part of the contract.

2. Disapproval of the monetary terms by resolution is probably not effective by itself to invalidate the monetary terms of the contracts.

You have asked about the effect of AS 23.40.215(b) which reads:

> The Department of Administration shall submit the monetary terms of an agreement to the legislature within 10 legislative days after the agreement of the parties, if the legislature is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

This subsection addresses one method by which the legislature can indicate to the executive branch and employee unions its response to the monetary terms of a collective bargaining

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[v] The section read, in full:

> Failure of the legislature to adopt a separate appropriation item for the pay raise constitutes rejection of the monetary terms of the collective bargaining agreements in accordance with AS 23.40.215. Money appropriated for personal services in this Act may not be used for implementation of the negotiated pay raise. Negotiation of future collective bargaining agreements will consider the definition of merit pay as recommended by the joint special committee on state employee compensation established under House Concurrent Resolution 47.

contract. The subsection states that a resolution adopted by the legislature approving the contracts is "a nonbinding, advisory expression of legislative intent." Under this language the legislature is not bound by a resolution approving the monetary terms: the legislature may subsequently (but in the same legislative session) decline to fund the monetary terms.

The statute is silent about what happens if the legislature adopts a concurrent resolution disapproving the monetary terms but then appropriates money for personal services without, in the appropriation bill, limiting the use of the appropriation. In my opinion, in that case, the appropriation serves as "funding through legislative appropriation" and the monetary terms take effect.

Under the state's constitutional system, a bill is subject to procedural requirements that a concurrent resolution is not subject to, and, unlike a resolution, a bill is subject to veto by the governor. Under State v. A.L.I.V.E. Voluntary, 606 P.2d 769, 773, (Alaska 1980), when the legislature wishes to act in an advisory capacity, it may do so by resolution. When it intends its action to have a binding effect on people outside the legislature, it may do so only by following the enactment procedures for bills. A resolution disapproving the monetary terms of a collective bargaining contract serves to advise the parties of the legislature's intention with regard to funding. The resolution cannot take the place of a bill. If there is subsequent action to appropriate money for personal services without prohibiting the state from spending the money to implement the monetary terms of a collective bargaining contract, the resolution must give way to the bill and the monetary terms take effect.

3. Failure to adopt a resolution either approving or disapproving monetary terms within the 60-day period set by statute.

The provisions in AS 23.40.215(b) suggest that the legislature must adopt a resolution within 60 days of submission of the monetary terms to the legislature. The statute is not clear as to what happens if the legislature fails to meet the 60-day deadline. The requirement for funding by the legislature in subsection (a) does not state that if the legislature fails to act within a 60-day period, the money is considered to have been appropriated. And, since a resolution can only be viewed as a nonbinding statement, failure to make such a statement should not be given more weight than the making of the statement would hold. Therefore, I believe that the 60-day time period should be viewed as a goal, not a legal requirement. Failure to adopt a resolution within the 60 days does not preclude the legislature from acting later.

4. What happens if the legislature does nothing?

This situation is less likely to occur than may appear at first glance. By definition, monetary terms of a contract require that the state spend money to implement them. (See

March 18, 1996

Representative Cynthia Toohey
Co-Chair, HESS Committee
Alaska State Legislature
State Capitol (MS3100)
Juneau, AK 99801-1182

Dear Representative Toohey:

This week Legislative hearings on House Resolution 12 are scheduled. I urge you to vote in favor of House Resolution 12.

The faculty represented by the ACCFT were entitled to the 3 percent increase as per the terms of their last contract in 1992. Also, an arbitrator ruled that under the contract, members of the collective bargaining unit were entitled to a three percent salary increase.

We accepted the contract in good faith, and a contract should be honored; not just tossed aside. Please support House Resolution 12.

Sincerely,

Gloria Hensel, Instructor UAA
Mat-Su Campus
HC01, Box 6208
Palmer, AK 99645

Please copy this message for all members of the HESS Committee.

March 18, 1996

Cynthia Toohey, Co-Chair
Con Bunde, Co-Chair
House HESS Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear HESS Committee Members:

The University of Alaska-Southeast, Ketchikan Campus, faculty are urging you to support ***House Resolution 12.*** We are teaching faculty of the University of Alaska and are greatly concerned about the University's failure to live up to its contractual agreement with us.

Please note that the small number of signatures on the petition represents the total number of full-time faculty (in a non-visiting status) on our campus. We have experienced a fifty percent drop in full-time faculty on the Ketchikan Campus since the restructuring that eliminated the community college system. We urgently need your support in encouraging the University of Alaska to live up to its contractual agreement.

Sincerely,

Priscilla Schulte

Priscilla Schulte
Professor
Anthropology-Sociology

University Of Alaska Anchorage Faculty
Urging Your Support for
House Resolution 12

Signature	Department
L Hennessy	Auto Diesel Technology
Ray Mobley	Electronics Technology
Alan R. [illegible]	E.T.
H Stutter	Speech, Communication
Peg Parnell	Physics
Barbara J. Gillis	E.T.
Eve Thoen	Technology/Voc Ed
Jon Guttenberg	Welding Tech
Robert McCauley	Welding Tech
Edward R. Knisley	Sociology
Elsie E. "Lee" Foster	Chemistry
Suzanne Foster	English
Anne Pasch	Geology
Mary Morley	AOI
[illegible]	BA
Dennis Owens	ALC
Michael J Turner	Advising & Counseling
Toni Cuff	Developmental Ed
Ron Crawford	Hist / Geography

University Of Alaska Anchorage Faculty
Urging Your Support for
House Resolution 12

Signature	Department
Gerald H Buck	CCVS
Robert Cromey	CAS - English
Deborah Stauffer	CCVE
Roy Lowe	SOE
Barbara Hawkins	SPCH COMM
Ruth Flournoy	CAS
Alice Lean	CAS - English
Constance C Ratasse	CAS - English
[illegible]	Math
Gloria Ong	CCVE
Dustin Epperson	CCVE
[illegible]	
[illegible]	Speech Communication
[illegible]	FST - CCVE
[illegible] Forney Ingram	FST - CCVE
Linnea E. Olmstead	FST - CCVE
Ernest H. Renner	ADT - CCVE
Ellen Taylor	CCVS - Dental
Colleen Kennedy	English

University Of Alaska Anchorage Faculty
Urging Your Support for
House Resolution 12

Signature	Department
Shawnalee A. Whitney	Speech Communication
Robert A. Robinson	Aviation Tech
[illegible]	Psychology
Joseph F. Cinnamon	Speech Comm, CAS
Robert D. Kuhnen	Philosophy
Nancy K. Bush	Dental Programs
Cindy J. Zimmerman	Dental Programs
Ronald W. Haney	AVIATION TECH
Charles Wale	Business Education
[illegible] Gretchen Bersch	Developmental Ed/Adult Ed.
Curt Smith	Tech.
[illegible]	Vocational Education
Lawrence J Weiss	Sociology
Cherie L. Shrader	Business
[illegible]	Foodservice Tech
Ralph Mc Grath	History, CAS
TOL M. FISHBURN	AUTOMOTIVE TECH.
[illegible] Sandi Kirk	Developmental Ed/CCCE
[illegible]	DEV. ED/CCCE

University Of Alaska Anchorage Faculty
Urging Your Support for
House Resolution 12

Signature	Department
Linda Lee	CCCE / Dev. Ed.
Antoinette A. Kahklen Jones	MSC / Student Services
Brian Williams	Electronics
Paul D. Alvarado	Electronics
Mike Buesch	ELECTRONICS
Nancy Lee Overpeck	Dietetics and Nutrition
John F Rolston	PHILOSOPHY
Judy A. Peterson	Nursing
Patricia A Long	Nursing
Carla M Logan	Nursing
Robert McCoy	Mathematics
Rena Mielke	Advising & Counseling
Deborah Kelly	Advising & Counseling
Roy F. Poole	Advising & Counseling
Becky Patterson	English
Joel Bartsch	Journalism & Public Communications
Catherine Brooks	Nursing
Pamela Wilde	Nursing
[illegible]	[illegible]
Cole Brown	History

University Of Alaska Anchorage Faculty
Urging Your Support for
House Resolution 12

Signature	Department
[illegible]	NURSING
[illegible]	Human Services
[illegible]	BUSINESS
[illegible] Mike McKeown	Human SERVICES
Robin J Wohlo	Medical Assisting
[illegible]	School of Education
[illegible]	Mathematical Sciences
[illegible]	HISTORY / GEOGRAPHY
[illegible] Don Mahr	History
[illegible]	Chemistry
[illegible]	Chemistry
[illegible]	Geomatics
[illegible]	Economics
[illegible]	Sociology
[illegible]	JUSTICE
[illegible]	Sch of Business - Acctg
[illegible]	Sch of Business - Acctg
[illegible]	"
[illegible]	Anthropology

University Of Alaska Kuskokwim Campus Faculty
Urging Your Support for
House Resolution 12

Signature	Department
Joe. Mugs	Business Technologies
Glenda Schumacher	Adult Basic Education
Chester Mark	CA.LL. PROJECT
Charles Wade	Bureau Education
Kathy Hamm	Adult Basic Education
Nancy M. Ayagarak	Box 1504, Bethel - GS/DS
Deborah K. Bey	English
David Norcross	Health Technologies
Susan Kenda	Health Technologies
Sophie D. Barnes	Yupik Language Center
Ann F. Alexie	" " "
Steve Chamberlain	Humanities
Diane D. Lee	Library

University Of Alaska Ketchikan **Campus Faculty**
Urging Your Support for
House Resolution 12

Signature	Department
Priscilla Schutte	Anthropology-Sociology
[illegible]	History
[illegible]	Bus Info Systems
[illegible]	Library Science

FAX TRANSMITTAL SHEET

March 19, 1996

To: Representative Con Bunde

From: Dayne L. Clark
Faculty Representative
Kenai Peninsula College

Subject: Support for House Resolution # 12

First , we would like to encourage you to support HR 12 because we want to continue to be the most productive faculty, offering programs to meet Alaska's educational needs and keeping Alaskans competitive.

Second, we believe the passage of HR 12 will encourage the University to honor its contractual obligations that it agreed to in 1992 and not allow the University to claim it is not accountable because the University Administration chose not to honor the contract in a timely manner.

Third, a YES vote will send a message to the University to stop wasting time and money on legal fees to try and get rid of the Union that represents the most productive faculty and also the group that strongly supports the Community College Mission which the University has recently stated it plans to eliminate.

Attached is a fairly detailed explanation as to why we believe it is important that HR 12 be sent to the floor with a due pass recommendation.

Thank you for your support and consideration.

Dayne L. Clark
Faculty Representative

Attachment: 3 pages

FAX TRANSMITTAL SHEET

March 15, 1996

To: House HESS Committee

From: Faculty at Kenai Peninsula College

Subject: Please Support House Resolution # 12 for the following reasons.

We want to continue to be the most productive faculty, offering programs to meet Alaska's educational needs and keeping Alaskans competitive. A yes vote will help us do just that. Please consider your vote carefully, we believe there is more associated with HR 12 than just a failure to abide by the terms of the contract. The breach of contract covered by HR 12 is indicative of many changes that the University Administration is trying to implement, which the majority of the faculty believe will significantly affect the University's ability to deliver stable and quality educational programs or training in the future. The faculty are the experts in their area of instruction, not the administration. Yet the administration wants the power to change programs and implement new programs at will and apparently without input from the experts, the faculty. Education it not a manufacturing process to be reengineered at the whim of administrators, but a process that should evolve from a stable faculty, that enjoys academic freedom, to ensure that the programs provide quality education and freedom of thought that promotes a free society.

University promised to continue Community College Mission. We believe that the University is trying to use *smoking mirrors* to cover up their conscious disregard of Alaska Contract Labor law and their efforts to silence the Union group that keeps reminding the University and the Legislature, that the University promised the Legislature back in 1987 that they would continue the Community College Mission if the Legislature would just trust them and allow the University to merge the Community Colleges into the University system. Now in February, 1996, a Provost of the University stated we are going to eliminate the Community College mission, just when it is becoming even more important that Alaskan citizens be able to take advantage of short educational programs that will enable them to remain competitive and employable. (This is one of the main parts of the community college mission.)

A YES vote on HR 12, will send a message to the University to quit wasting the States money trying to get rid of the Union that represents the most productive instructional faculty. Over the last three years the University has continued to try to get rid of the Union that represents the most productive instructional faculty by doing the following:

1. Hiring faculty members who teach less than four classes per semester, just to keep teachers out of the ACCFT Union, when everyone including the University claims it is trying to increase productivity.
2. Choosing to breach a negotiated and arbitrated contract by not abiding by the terms. This wastes needless time and decreases everyone's productivity, instead of trying to increase it, simply because the University chose not to follow the terms of the contract to which they agreed in 1992. Thus, teachers and administrators are wasting time trying to resolve breaches of contracts, instead of being able to focus 100% of their efforts on programs and students.

3. By doing program reviews on predominately vocational programs taught by Union faculty and using evaluation standards that many non-vocational course offerings could not even begin to meet, because the non-vocational courses usually do not develop employment skills and knowledge with which a student can use to get a job. (There was supposed to be a review of the non-vocational programs this year, but many of those programs and course offerings cannot meet the standards required of the vocational programs, so we are apparently not going to do any more program reviews.)
4. We were told in February that University has decided to do away with the Community College Mission and the University has apparently decided it cannot support many of the vocational programs. (Which happen to be taught by Union faculty members and are also taught at rural campuses.)
5. The University has stated that it plans to implement 3 to 5 year contracts for the faculty. How can a faculty experience academic freedom when they have to continually be worried about whether some administrator likes them and will renew their contract for another 3 to 5 years.

Existing Personal Services Contracts are Funded by Legislature - It is our understanding that the Legislature funds all prior existing contracts and the provisions of those contracts as part of the Personal Services Budget for each governmental agency. The University is basically claiming that the Legislature must provide funding for each part of the ACCFT contract yearly. This does not seem to hold water. The Legislature just funds the University's instructional budget and then the University decides how to spend the instructional budget. The passage of HR 12 will help clarify that the Legislature funds existing contracts as part of the regular Personal Services Budget for State Agencies.

The University Breaches the ACCFT Contract and the Arbitrator Ruled the University Shall Follow the Contract. These actions of the University did not deal with interpretation of language within the contract, but with the University unilaterally choosing to modify the terms of the contract. Alaskan labor law has already established that you cannot unilaterally change the terms of a contract. First, the University chose not to honor the COLA clause in the contract. Second, they chose not to abide by the contract and request funding from the legislature. These are specific breaches of contract that are specifically within the control of the University. However, the University is once again trying to use *smoking mirrors* to make us believe that it was beyond the University's ability to deal with and thus should not be held accountable. We believe that choosing not to abide by the terms of a contract were within the University's control and believe a Judge will agree. To not agree, we believe the Judge has to rewrite contract labor law. The last time the University chose not to honor the ACCFT contract it cost the State of Alaska over $3 million and this does not include the more than $.5 million spent on attorney fees by the University.

University knew consequences of choice to not honor contract. We believe that the University was fully aware of the consequences of their decision not to comply with the contract back in 1994. The University has dealt with contract labor law for 20 years and is well aware of what it can and cannot do. The University claims that they have tried to comply, but it is the Legislature that has prevented the University from complying. We believe the facts show University Administration has not actively tried to comply with the terms of the contract and their choice to not comply is compounding the problem and wasting University personnel time and

State funds on needless lawsuits and attorney's fees. And as mentioned previously, the last time the University chose to ignore the ACCFT contract, it cost State of Alaska over $3 million.

Actions or lack of Action by the University will impact programs needed by the students. We are concerned that the University of Alaska 's decision to not honor the ACCFT contract in a timely and responsible manner will force the University to use funds needed for programs to pay for the breach of contract.

Not Passing HR 12 would reward University for choosing not to honor the terms of a contract. While some Legislators are rightly concerned about allowing the University to benefit and get additional funding by not submitting its request in a timely manner, we are the other hand are concerned, that a governmental agency will benefit because it is not required to honor the terms of the contract because they were negligent and did not submit funding requests in a timely manner as required by Alaska Law and the ACCFT contract.

We believe the Legislature has the ability to make sure that governmental agencies operate within the law. We believe that the legislature needs to make sure that governmental agencies abide by legal contracts and Alaska Law. Passing HR 12 will send a message to the University that they are expected to honor their contractual obligations and will not benefit from not honoring the terms of their contracts.

The Benefits of Your Yes Vote for House Resolution # 12. The sooner HR 12 is passed, the sooner the University Administration will recognize the need to comply with the ACCFT contract and this will stop wasting the States resources, the Legislatures time and the University's Funding. Then we can focus 110% of our efforts on teaching, increasing instructional productivity and offering quality educational programs to keep Alaskans competitive. All of this will help to ensure we remain a free society and country.

Thank you for your time and interest in hearing our concerns about fairness and the future of education in Alaska.

The Kenai Peninsula College Faculty
Sent by Faculty Campus Representative, Dayne L. Clark
907-262-0349 wk. 907-262-3541 hm.

March 13, 1996

Kathrin W. Greenough
414 3rd Street
Juneau, Alaska 99801

Cynthia Toohey
Health Education and Social Services Committee
State Capitor (MS3100)
Juneau, Alaska 99811-1182

Dear House HESS and Labor Committee Members:

I am writing to urge you to suppport House Resolution 12. I am a member of the bargining unit for the ACCFT University of Alaska Southeast faculty. Please don't be bamboozled by the University's attempt to get the legislature to reject the appropriation for the 3% raise which is owned for this year and next years compensation As you also know this was a legally abritrated settlement which the University has refused to pay.

Please support House Resolution 12 which will hold the University accountable.

Sincerely yours,

Kathrin W. Greenough

cc: Cynthia Toohey
Con Bunde
Al Vezey
Gary Davis
Norman Rokeberg
Tom Brice
Caren Robinson
Pete Kott
Brian Porter
Beverly Masek
Kim Elton
Gene Kubina

FAX TRANSMITTAL SHEET

March 19, 1996

To: House HESS Committee

From: Dayne L. Clark
Faculty Representative
Kenai Peninsula College

Subject: Support for House Resolution # 12

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Faculty Representative

Attachment: 3 pages

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March 15, 1996

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Thank you for your time and interest in hearing our concerns about fairness and the future of education in Alaska.

The Kenai Peninsula College Faculty
Sent by Faculty Campus Representative, Dayne L. Clark
907-262-0349 wk. 907-262-3541 hm.

282 S. Hoyt
Anchorage, AK 99508

March 19, 1996

Representative Con Bunde, Co-Chair
Representative Cynthia Toohey, Co-Chair
House Health, Education, and Social Services
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801

Dear Representatives Bunde and Toohey;

I am writing this letter seeking your support for the passage of House Resolution No. 12. For many years, as University of Alaska's administrators have come and gone, one thing has remained constant: the University's disregard for union contracts and for state labor law. This disregard has historically been very costly, but unfortunately, not directly to the University.

In the past when the University has lost an arbitration award or a court ruling, it did not result in any modification of the behavior of the University or of any of its administrators. The University simply went before the legislature and requested the funds required to meet the award or ruling.

The University continues its disregard for legal contracts as demonstrated in the April 14, 1995 ruling by Arbitrator William L. Corbett.

I believe passage of House resolution No. 12 would send a very strong message to the University of Alaska that they must, both now and in the future, adhere to the conditions of legal contracts, and that they must deal with collective bargaining units in a fair, professional manner. Such a change in behavior would lead to a great reduction in the number, if not the entire elimination of, what has been till now, numerous grievances, arbitration awards, and lawsuits.

Thank you for your consideration on this matter. Please share this with your members.

Sincerely,

Ray Noble

Ray Noble

Facsimile Cover Sheet

Tuesday, March 19, 1996

To: House HESS Committee Members

Con Bunde, Co-Chair	Cynthia Toohey, Co-Chair
Al Vezey	Gary Davis
Norman Rokeberg	Tom Brice
Caren Robinson	

From: Ralph McGrath, President
Alaska Community Colleges' Federation of Teachers

Phone: (907) 562-2660
Fax: (907) 786-4095

Please provide the following <u>additional</u> information to all House HESS Committee members for the ACCFT University of Alaska, Anchorage testimony on HR12 scheduled for Tuesday, March 19 at 3:00 PM.

Pages including this cover page: 2 pages

GARY K. KRONQUEST

HC 02 Box 7853
Palmer, Ak. 99645

Fax 746-3746
Home Phone 907-746-3746
Email gkk@mtnet.com

March 19, 1996

HESS COMMITTEE

Cynthia Toohey, Co Chair	Fax 465-2317
Con Bunde, Co Chair	Fax 465-3817
Al Vezey, Member	Fax 465-3258
Gary Davis, Member	Fax 465-3835
Norman Rokeberg, Member	Fax 465-2040
Tom Brice, Member	Fax 465-2294
Caren Robinson, Member	Fax 465-2108

Subject: **Please Support House Resolution #12 for the following reasons.**

Reasons to Support - I urge you to support House Resolution #12 because the University has failed to honor its contractual obligations. A yes vote will send a message to the University Administration that they are expected to honor their contractual obligations just like other State agencies. Our 1992 Contract was approved by the Regents and the Legislature and was fully funded. However, the University has chosen not to honor all of the terms of the contract the last 2 years. We have honored our contractual obligations with the University and believe the University should honor its obligations. We hope you agree that contractual obligations should be honored.

University knew consequences of choice to not honor contract - It raises grave concern when a governmental agency chooses not to honor a negotiated contract for no valid reason. I believe that the University was fully aware of the consequences of their decision not to comply with the contract back in 1994. **The University has dealt with contract labor law for 20 years and is well aware of what it can and cannot do**. The University claims that they have tried to comply, but it is the Legislature that has prevented the University from complying. We believe the facts show University Administration has not actively tried to comply with the terms of the contract and their choice to not comply is compounding the problem and wasting University personnel time and State funds on needless lawsuits and attorney's fees.

Existing Personal Services contracts Funded by Legislature - It is my understanding that the Legislature funds all prior existing contracts and the provisions of those contracts as part of the Personal Services Budget for each governmental agency. The University is basically claiming that the Legislature must provide funding for each part of the ACCFT contract yearly. This does not seem to hold water. The Legislature just funds the University's instructional budget and then the University decides how they spend the instructional budget. The passage of HR 12 will help clarify that the Legislature funds existing contracts as part of the regular Personal Services Budget for State Agencies.

The sooner House Resolution #12 is passed, the sooner the University Administration will recognize the need to comply with the contract and this will stop wasting the States resources and the University's Funding.

Thanking you in advance for your Support.

Sincerely,

Gary K Kronquest

Gary K. Kronquest, Assistant Professor
Heating and Refrigeration, Matanuska Susitna Community College

March 21, 1996
To: HESS Committee
From: Eric Leegard , ACCFT Campus Rep for Juneau, 465-8778
PO Box 32806, Juneau, Ak. 99801

I'm here seeking your support for HR 12. I'm the Juneau campus representative for the ACCFT and have been so for the majority of my 18 1/2 year tenure at the University. I was not here when the Community College teachers voted to Unionize and were willing to walk the picket line for the right to have the opportunity to Bargain for their working conditions. One of the first things I ran across when I did come to work for Juneau Douglas Community College was difficulty in purchasing item from local vendors. The institution had the reputation of no-pay, slow-pay. I understand the driving force for unionizing in the first place was because paychecks were inconsistent, and once received, they occasionally bounced. Teachers putting their collective foot down was required to get the institution to clean up its act.

The non-represented faculty, or all those not in the community college unit, have finally been driven to the point where they also are ready to stand up for what they believe to be fair and just treatment. This group is a completely different breed of cat. To many of them a socratic seminar is enjoyment in its highest form. Having to stand together on any item, especially one as lowly as pay and working condition has to be the ultimate insult. 61% of these instructors have signed interest cards so they have the right to vote yes or no on forming a union.

The University has chosen to play cat-and-mouse with these faculty and has found a way to delay their vote to organize, which is a PERA right, by forcing an unprecedented hearing by the SLRB. The delaying tactic will probably mean that the vote may not come this year.

What has this got to do with HR 12. The only hope we employees have in receiving what we consider fair, just, and consistent treatment is the law. And, just because the law exists doesn't mean it will be followed. ACCFT is a state wide organization of teachers who have a right to the protection of Alaska law. After being unilaterally told that we didn't exist and having an arbitrators award saying we did, it took this legislative body and its purse strings to make the University follow the law. It cost the state millions of extra dollars.

We presently have an employment contract with the University, and agreed to by this legislative body. This contract states in article 7:

"Article 7.1 Salaries

A. Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01-03 in effect as of the date of this Agreement..."

FEB 21 1996

Eric J. Karolak, Ph.D.
P.O. Box 9202
Ketchikan, Alaska 99901

February 17, 1996

Cynthia Toohey
Con Bunde
Co-Chairs, House Health, Education + Social Services Cmte.
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representatives Toohey and Bunde:

I write in support of H.R. 12 and of the collective bargaining agreement between the University of Alaska and the Alaska Community Colleges' Federation of Teachers. Please hold the University accountable for fulfilling its contractual agreement to a 3% compensation increase. It is difficult to teach my students in History and Government classes about integrity, progress, and the law, when my employer — their school — refuses to honor its contractual obligations.

Allow me also to apologize for this hand-written note. I was promised a computer in my

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

March 21, 1996
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"Article 7.1 Salaries
A. Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01-03 in effect as of the date of this Agreement..."

The rest of the article deals with raises which are subject to legislative appropriations and requesting procedures for pay raises. The full text of article 7.1A is included at the end of this letter.

The University's failure to abide by this section of the contract has gone to arbitration, and the arbitrator has told the University in no uncertain terms that it is obligated to fund in accordance with its own policy. It's refusal to follow its own policy and the arbitrator has forced ACCFT into a law suit situation.

This legislative body, with the University purse strings, is the only institution in the state that has the power to make the University follow the law. In asking for you support in passing HR 12, we are simply asking that the University to be held accountable for its actions in accordance with PERA.

Thank you, Very Respectfully

Eric Leegard

Collective Bargaining Agreement Between University of Alaska and Alaska Community Colleges' Federation of Teachers Local 2404,AFT-May 8, 1992 to June 30, 1994 (good until a successor contract is agreed upon)

ARTICLE 7
Salaries and Benefits

7.1 Salaries

A. Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01-03 in effect as of the date of this Agreement, except that any compensation increases shall be subject to legislative appropriation in accordance with the provision of AS 23.40.215 and shall be requested separately from compensation increases requested for other employees of the University.

FEB 21 1996

Eric J. Karolak, Ph.D.
P.O. Box 9202
Ketchikan, Alaska 99901

February 17, 1996

Cynthia Toohey
Con Bunde
Co-Chairs, House Health, Education + Social Services Cmte.
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Dear Representatives Toohey and Bunde:

I write in support of H.R. 12 and of the collective bargaining agreement between the University of Alaska and the Alaska Community Colleges' Federation of Teachers. Please hold the University accountable for fulfilling its contractual agreement to a 3% compensation increase. It is difficult to teach my students in History and Government classes about integrity, progress, and the law, when my employer — their school — refuses to honor its contractual obligations.

Allow me also to apologize for this hand-written note. I was promised a computer in my

office as a condition of my employment in August 1995. Because the University has failed to keep that promise also and because I do not want my students' classroom experience to suffer, I am forced to keep my personal computer on campus where it is restricted to university business only.

Sincerely,

Eric J Kavolak

Eric J. Kavolak, Ph. D.
Assistant Professor of History
University of Alaska Southeast
Ketchikan Campus

P.S. - Please share this letter with the other members of the House HESS Cmte. I would like to spend the rest of my Saturday morning reading instead of laboriously copying this letter to each of them. Thank you.

Kay Brekke,
Asst. Professor of ESL
Kuskokwim Campus/UAF
PO Box 368
Bethel, AK 99559

February 19, l996

Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

To Whom It May Concern:

I urge your committee to support house resolution no. 12 supporting the collective bargaining agreement between the University of Alaska and the Alaska Community Colleges' Federation of Teachers.

The University of Alaska should be obligated to pay the three percent salary increase awarded to we members of the collective bargaining unit.

It is interesting that we as teachers continue to work year after year with no salary increase while support staff and administrators are awarded increased benefits.

Sincerely,

Dr. K. Brekke

Dr. Kay Brekke

HR 12 - Supporting the Collective Bargaining Agreement Between the University of Alaska and the Alaska Community Colleges' Federation of Teachers

Reference 1 UA/ACCFT Arbitration Award - April 14, 1995

"The University of Alaska prevails with regard to the issues of Program Assessment, Financial Exigency and Campus Governance; the Union prevails with regard to the issue of Compensation. Therefore, the University shall pay the bargaining unit members the pay increase provided by the collective bargaining agreement."

Reference 2 UA/ACCFT Collective Bargaining Agreement

Article 7.1 Salaries

A. Faculty Members shall be compensated in a manner consistent with the provisions of Regents Policy and University Regulation 04.05.01 - 03 in effect as of the date of this Agreement, except that any compensation increases shall be subject to legislative appropriations in accordance with the provisions of As. 23.40.215 and shall be requested separately from compensation increases requested for other employees of the University. (emphasis added)

B. The University agrees to request the same level of salary increase for Faculty Members as is requested of the Legislature for other University employees. If the University grants other University employees salary increases but does not receive an appropriation to fund salary increases for Faculty Members at the same level, the University agrees to submit to the Legislature at the beginning of the next regular session following the increase for University employees an amount necessary to permit Faculty Members to receive a salary increase of the same level received by University employees.

Article 12.5 Legislative Appropriations

A. No legislative appropriation requested by the University, with regard to funding this Agreement, shall be made without prior discussion with the Union pursuant to Article 11. The University shall give adequate notice to the Union of such requests as to provide reasonable response time from the Union. The University shall request and actively support full funding of this Agreement.

B. It is agreed by and between the parties that any provision of this Agreement requiring legislative action to permit its implementation, by amendment of law or by providing additional funds therefore, shall not become effective until the appropriate legislative body has given approval. (emphasis added)

Reference 3 AS 23.40.215 - State Employee Collective Bargaining Law

Sec. 23.40.215 Funding and legislative approval.

(a) The monetary terms of any agreement entered into under AS 23.40.070-23.40- 260 are subject to funding through legislative appropriation.

(b) The Department of Administration shall submit the monetary terms of an a[illegible]reement to the legislature within 10 legislative days after the agreement of the parties, if is in session, or within 10 legislative days after the convening of the next regular session. The legislature shall advise the parties by concurrent resolution if it approves or disapproves of the monetary terms within 60 legislative days after the agreement is submitted to the legislature. The approval of the monetary terms of an agreement under this subsection is a nonbinding, advisory expression of legislative intent. If within 60 legislative days after the agreement is submitted the legislature advises the parties by concurrent resolution that it disapproves the monetary terms of the agreement, the parties may resume negotiations.

NOTES TO DECISIONS

Monetary terms of agreement are not effective until funds are appropriated by legislature. Each year the monetary terms of a collective bargaining agreement are subject to independent legislative approval. Public Employees Local 71 v. State, 775 P.2d 1062 (Alaska 1989).
Applied in Hafling v. Inlandboatmen's Union 585 P 2nd 870 (Alaska 1978)
Cited in Warwick v. State ex rel Chance, 548 P 2d 384 (Alaska 1976)

Reference 4 Legislative Legal Services - Terry Cramer - Feb. 6, 1995

Last paragraph:

"If there were a monetary term of a contrct that required a separate appropriation, unrelated to other budget items, then, given the language in AS 23.40.215, that monetary term would be considered to have failed unless the legislature made an appropriation for that purpose. However, I believe that this is an unlikely factual situation. The safer course for the legislature, if it wishes to disapprove a monetary term, is to state its disapproval specifically."

March 19, 1996

Dear House HESS Committee Member

Please support House Resolution 12. I ask for your yes vote on behalf of myself and the ten other full time faculty on the Sitka Campus, as well as all faculty represented by the ACCFT.

I would like to let you know that the faculty on my campus work tirelessly on behalf of their students and their University. They more than live up to their side of the contract they have had with the University of Alaska since 1992. I am sorry I cannot say as much for the University's effort to live up to its side of the contract for our faculty members. In 1992 they reluctantly committed to a contract that followed Board of Regents Policy for all U.A. faculty. A year later they suspended compensation policies for faculty and it took an arbitrator to tell them that they still needed to follow the contract they signed with ACCFT represented faculty.

During the 1995 legislative session the University did not act quickly enough to get bills considered for funding contracted pay raises for FY 95 and FY 96. The legislature closed its session without hearings on the University's FY 95 and FY 96 contract cost legislation. Now the University claims it will not request FY 95 contract funding, because with the Legislature's failure to fund the FY 95 request the University has no responsibility for contracted raises.

Please encourage the University of Alaska to manifest integrity, at least to the level of living up to contracts it signs with employees by voting yes on House Resolution 12.

Thank you for your time.

Sincerely,

Phillip M. Slattery

Phillip M. Slattery
Sitka Campus

University Of Alaska Faculty SITKA Campus
Urging Your Support for
House Resolution 12

Signature	Department
Phillip M. Slattery	Counseling
Carol Liberty	HSM
Mandy Mak Idsinga	History
Linda S Halfon	ART
Marnie Chapman	Life Sciences
Naomi Fisher	Math
[illegible]	[illegible]
John H. Carnegie	Env. Tech.
Kathie Fenlason	BLS
Michelle Wenger	Journalism
B Mealey	English

University Of Alaska Faculty
SITKA Campus
Urging Your Support for
House Resolution 12

The UA faculty members listed below ask your support for House Resolution 12 because the University of Alaska has failed to honor its contractual obligations to us.

Your **YES** vote on **HR 12** will send a message to the University's administration that it is expected to honor their contractual obligations just like other state agencies. Our 1992 Collective Bargaining Agreement was approved by the University's Board of Regents, and the Legislature, and was fully funded. However, the University has chosen to not to honor all of the terms of the contract during the past 2 years. We teachers have honored our obligations under the contract and believe the University should honor its obligations as well. We hope you agree that contractual obligations should be honored -- even by the University.

Reasons for supporting HR 12

- ✓ Arbitrator's ruling: This cost of living increase was awarded to teachers as part of a binding arbitration decision . The University has refused to comply with this binding ruling.

- ✓ University knew consequences: Grave concerns are raised when a governmental agency chooses not to honor provisions of a negotiated contract for no valid reason. We believe that the University was fully aware of the consequences of their decision not to comply with the contract back in 1994. The University has dealt with contract labor law for 20 years and is well aware of what it can and cannot do. The University claims to have tried to comply, but insists that it is the Legislature that has prevented it from honoring the Contract. The facts however, show that the University's administration has not actively tried to comply with terms of the contract and is compounding the problem by wasting University personnel time and increasingly scarce state funds on needless lawsuits and attorneys' fees.

- ✓ Existing personnel services contracts are funded by Legislature: We understand that the Legislature funds existing contracts and the provisions of those contracts as part of the Personnel Services budget for each governmental agency. The University is claiming that the Legislature must provide funding for each part of the ACCFT contract each year. This line of reasoning does not hold water. For example, the Legislature funds the University's instructional budget and the University then decides how to expend those funds to satisfy its mission. Passage of HR 12 will help clarify that the Legislature funded our existing contract as part of the University's FY95 Personnel Services budget.

- ✓ Benefits of passing HR 12: The sooner HR 12 is passed, the sooner the University's administration will recognize that it must comply with our Collective Bargaining Agreement and should stop needlessly wasting State of Alaska and University resources.

Please Vote **YES** on **HR 12.**

SB

27

FISCAL NOTE

No 1

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL N

Bill Version: SSSB 27
(S) Publish Date: 3/1/95

Revision Date:
Dept. Affected: Alaska Court System
Title: An Act relating to child visitation rights of grandparents and other persons
BRU: Trial Courts
Components:
Sponsor: Sens. Donley, Ellis, Lincoln
Requestor:
COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: $ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Agency: Alaska Court System
Date: 02/21/95

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 02/21/95

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

02:39 PM
Rev 1/95

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 24, 1995 FURTHER REFERRALS: Judiciary

Date of Committee Action: 4/4/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: SSSB 27

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 27 MISC. GRANDPARENT VISITATION RIGHTS

"An Act relating to child visitation rights of grandparents and other persons who are not the parents of the child."

recommends it be replaced with the following committee substitute _____ [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [X] zero fiscal note(s) Court System

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Dan Bauer	✓			
[illegible]	✓			
[illegible]	✓			
Tom Brice	✓			

CHAIR'S SIGNATURE _____

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SB 27
GRANDPARENT VISITATION RIGHTS
SPONSOR STATEMENT
(March 1, 1995)

SB 27 would allow grandparents to petition the court for an order establishing reasonable visitation rights with their grandchildren. The visitation rights would only be granted if the court deemed it was in the best interest of the child. Alaska is the only state that does not allow grandparents to make such petitions.

Currently AS 25.24.150 only allows the court to on its own grant grandparent visitation rights in cases where a parent has died and in divorce and separation proceedings. AS 25.24.150 does not give the grandparents "standing" to on their own petition the court. SB 27 would give grandparents the "standing" to petition the court for reasonable visitation rights. Additionally, SB 27 would not place specific limitations on when these petitions could be made.

SB 27 is pro-family legislation intended to strengthen Alaskan families through greater grandparent participation in child development when it is in the best interest of the child.

A similar version of this bill (SB 21) passed the Senate last year by a vote of 19-1 before it died in the House during the final days of session.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907)
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 •

SPONSOR STATEMENT

MEMBER: Senate Finance Committee • Senate State A

Produced in House

C A R T A
CENTRAL ALASKA RETIRED TEACHERS
PO Box 93610
Anchorage Ak 99509-93610

FEBRUARY 23, 1995

The Honorable Dave Donley
State Capitol Offices
Juneau, AK 99801-1182

Dear Senator Donley:

As in the past members of Central Alaska Retired Teachers' Association (CARTA) strongly support all efforts to assure that grandparents have reasonable visitation rights with their grandchildren. We believe SB17, "An act relating to child visitation rights of grandparents and other persons who are not parents of the child." is a bill which would assure these rights.

As former teachers and as parents and grandparents we have witnessed the pain a child suffers when parents separate and/or divorce. Even in stable homes and especially in homes torn by the dissention of divorce parents cannot provide all the support and nurturing needed for a child to develop into a mature and stable adult. Children need the support of the wider "community" which is provided by grandparents, other relatives and, in some cases, non-relatives.

At our February meeting the CARTA membership voted unanimously to give full support to SENATE Bill 17. We were sorry to see that last year's bill on this issue did not make it through the HOUSE. We urge immediate action on this one.

Sincerely,

Lola J. Reed
President

SUPPORTING DOCUMENTS

VONA L. HALL
3590 GLACIER HIGHWAY
JUNEAU, ALASKA 99801-9531

Testimony for Senate Bill #27: March 1, 1995

AARP is in favor of this bill for Grandparents visitation to their grandchildren. After reading the brochure from AARP headquarters, I am also enthusiastically supporting the bill. The brochure is well presented, citing other State's experiences in this area. It was researched by experts.

I am not an expert -- I am a grandmother, and I would like to shift the emphasis just a bit. ~~Can you change the title to~~: "THE RIGHT OF GRANDCHILDREN TO HAVE GRANDPARENTS IN THEIR LIVES"?

Of my six grandchildren: 3 are here in Juneau, and 3 in Illinois. The thought of not seeing any of them would be devestating. When I say "I", you realize I'm part of a matched set known as "Gramma" and "Grampa".

The ages of the children run from 10 to 18. For the last couple of years, the telephone calls from the Juneau contingent have been something like this: from the grandson whose parents liue out on the Thane road; but whose girlfriend lives near me: "Gramma, can

you leave the back door open so I can sleep on the sofa after the prom and/or game?". And the granddaughter whose mother is working: "Gramma, my car won't start, and I have to be at work by four. Can you or Grampa pick me up?" The other granddaughter says: "Gramma, this week's basketball/soccer/volleyball games are Friday and Saturday at 7. Can you come?" The answer to the first two are "Yes"; and to the third, ""Probably."

To reach this kind of certainly between the generations takes a lot of individual actions over a long period of time. From buying Girl Scout Cookies; Xmas wrapping; pool laps; baseball laps; and a guaranteed audience to school programs from preschool to graduation.

When Rupe Andrews asked me to testify today, I was not keen. But he is a genius at timing. In that days mail we received a present from our daughter-in-law. A high school orchestra concert poster for March 4, in ~~Chrystal Lake~~ McHenry County, Illinois. The yellow postit note says: "Can you find your grandson? We thought this was a nice picture and wanted to share it with you. Wish you could be here for it! Love, Debbie" Picking him out was easy, didn't even take the trumpet. He's the tall handsome boy in the back row. We've had videos, and cassette tapes of both boys musical progress, and haue always been

kept informed of their grades and hobbies. When we visit we stay several weeks to get into the rythm of their lives.

When an 8 year old daughter was adopted, she adopted us as happily as we also loved her -- sight unseen.

Since the boys left Alaska as small children, they have been showered with Alaska coloring books; Alaska children stories; Alaska rocks, etc. They all know that we are close-- except for those many miles.

Senate Bill #27 kicks in when visitation is denied.

Can you pass a companion bill to ensure that for each case that comes up the judge has the wisdom of Soloman?

A judge that can discover the cause of the refusal, and can do something about it?

Tuesday afternoon once of year will never give the children what they need.

Thank you for listening.

Grandparents Issue!
Alaska's Parenting
The Monthly Newspaper for Parents
September, 1994
Complimentary Copy

Grandparents And Grandchildren Need Each Other

by Kathleen M. Foon

"I don't have a role, because they are (so) far away. I would enjoy them if I could", says a Florida grandmother of her four Alaskan grandchildren. Josephine Reinnold declares. "I try to communicate with the children through letters, but it's not the same as holding their hand and [illegible] walk along the beach. Maybe they'll remember me as the person who sent those sometimes silly, sometimes serious letters."

Grandparents across the United States struggle to develop intimate relationships with their grandchildren, but many never do. Physical distance undermines the natural bond that draws grandparents and grandchildren together. Grandparents whose grandchildren live in Alaska experience perhaps a more detached relationship due to the state's geographical remoteness.

The sense of loss, on the part of the grandparent, can be profound when they are unable to grandparent. Studies demonstrate the birth of a grandchild represents immortality and the ability to continue one's paternity. To sustain the feelings generated by the birth of a grandchild, grandparents need to interact with the child regularly.

Phillip Baker, an Anchorage psychologist, believes families are negatively affected when distance separates them. Baker comments, "Here in Anchorage, all of us suffer to some extent, but children probably suffer more. The impact on grandparents when they are unable to grandparent is they can feel deprived. This can lead them to feel disenchanted with their own offspring."

When grandparents are able to develop a closeness with their grandchildren both generations thrive. Generally, the grandparents overall health improves. The vitality of the young motivates seniors to stay physically and mentally active. As mentors they are contributing not only to the child's sense of well-being, but to society as well.

Anchorage's Foster Grandparent coordinator, Sharon Suassny, believes the interaction between senior citizens and children is important. Suassny observes, "Seniors that are contributing in the community while being paired with children live longer and are happier." Although Foster Grandparent seniors deal with children who are not related to them, the factors that contribute to emotional and physical health cross bloodlines.

Children benefit enormously from a giving relationship with a grandparent, Baker notes. Grandparents have a positive influence on child development. They help to boost a child's self-esteem through a constant kindness. Grandparents are mentors who don't have to deal with the same issues as parents. They are in a position to provide objectivity.

Children also gain a sense of family history from grandparents. The stories grandparents share about their own lives or their children's lives help children learn the interconnectedness of families. Similarly, a loving relationship with a grandparent allows children to develop positive feelings about the elderly in society.

Despite the great distance that separates Alaskan grandchildren from their grandparents, there are ways families can encourage close, long-distance relationships. Before taking steps to create a climate in which the grandparent/grandchild bond can be strengthened, both parents and grandparents must make a firm commitment to the relationship's development. Research indicates that a child's love for a grandparent is second only to the love of a parent.

The following activities nurture grandparent/grandchild love. They can be done by grandparents as well as children. And parents can help children wherever necessary. The sharing of oneself, through the following methods, will enhance the time spent together when visits occur between grandparent and grandchild.

- Scheduled telephone conversations.
- Sending videotapes of special family or school events.
- Writing letters.
- Making audiotapes of singing, reading, or reflections of an ordinary day.
- Sending photos with captions.
- Mailing stories that have been written by either grandparent or child.
- Sending children's art pieces or school work.
- Sending treasures like broken radios that can be taken apart or rocks that have been found on a day's outing.

Eva Honea of Chugiak spends a sunny afternoon with her great-granddaughters, Amber McIntire (L) and Kimberly McIntire (R)

Sharon McBride Photo

MODERN CHILD CUSTODY PRACTICE

1994 Cumulative Supplement

JEFF ATKINSON

Member of the Illinois and United States Supreme Court Bars

2

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA

Place in pocket of bound volume and recycle previous supplement.

murder of the mother (apparently by the father), the court said the aunt and uncle could file an action for custody separate from the divorce action).

For description of a custody dispute between a grandfather and step-grandmother following the death of both parents, *see supra* § 8.07, note 62 in this supplement.

§ 8.09 Burden of proof in modification actions when a third party has custody

Page 426, n. 88. Glover v. McRipley, 159 Mich. App. 130, 406 N.W.2d 246, 251 (1987) (holding that the burden of proof was on the father by a preponderance of the evidence to show reasons why there should be a change in the established custodial environment with the grandparents, who had cared for the seven year-old girl since birth; the mother had died when the child was two years old. The court, in denying the father's petition, commented: "[T]he importance of residence with a biological parent pales beside the importance of stability and continuity in the life of a child.")

Page 426, n. 90. *In re* Marriage of Stewart, 507 N.E.2d 585, 587 (Ind. Ct. App. 1986), in which the court held that the grandparents bore a "strenuous burden of proof" to show that the natural parent was unfit or had acquiesced in the custody arrangement, even though the grandparents had raised the girl for three of her four years. Custody to the grandparents was reversed and custody was given to the mother, who had recently completed parenting classes while on welfare, and who planned to become a beautician.

In re Custody of Walters, 174 Ill. App. 3d 949, 529 N.E.2d 308 (1988) (applying a presumption of parental custody even though grandmother had custody by virtue of a prior uncontested petition; nonetheless, the presumption of parental custody was overcome when maternal grandmother had raised the child for 10 years and mother's life seemed unstable).

§ 8.10 Grandparent visitation

§ 8.11 —Statutory provisions

Page 427. Replace first paragraph with:

All fifty states now have statutes which allow grandparents to seek court-ordered visitation.[95] The District of Columbia does not have a grandparent visitation statute. As of 1994, twenty-seven states specifically provide visitation upon the death of a parent (usually upon the death of the parent related by blood to the grandparent seeking visitation). Twenty-nine states also provide for visitation upon the divorce of the parents; most of the states in this group also would allow grandparents to seek visitation upon the separation of the parents. In addition, six states also specifically provide that a grandparent may seek

visitation if the grandchild has lived with the grandparent for a certain period of time (between six and 12 months);[96] and another eight states (with some overlap) allow grandparent visitation if the child is in the custody of someone other than the parent or if parental rights have been terminated.[97]

Twenty-two states have what might be called general visitation statutes which allow grandparents to seek visitation, but do not specifically limit the circumstances under which visitation may be sought (*e.g.*, limiting visitation to cases in which a parent has died or the parents are divorced). Some of these statutes are written very broadly but with some detail, apparently allowing visitation even if the mother and father are alive and their marriage is intact.[98] Other statutes are brief and somewhat vague—for example, allowing grandparent visitation if it is in the best interest of the child. If such a statute is part of a state's divorce law, a court may construe this general visitation provision as limiting visitation to cases in which the parties are separated or divorced.[99] A court, however, is not required to do so and could interpret the general provision as allowing visitation in a variety of situations, including intact marriages. Legislative history, if it is available, may be an important part of construing vague statutes.

---

[95] In 1986, Nebraska was the last state to adopt a grandparent visitation statute. For citation to the Nebraska statute and the other statutes, *see infra* the Appendix at § 8.19 in this supplement.

[96] The states with statutes specifically providing for grandparent visitation after the child has lived with the grandparent for a certain period of time are: Minnesota (twelve months), New Mexico (six months), Pennsylvania (12 months), Texas (six months within the preceding twenty-four months), West Virginia (six months), and Wyoming (six months). The absence of such a provision in the statutes of other states would not necessarily prohibit granting visitation to grandparents with whom a child had lived for a substantial period of time.

[97] The states with statutes specifically allowing a grandparent to seek visitation if the child is in the custody of a non-parent or if parental rights have been terminated are: Colorado, Georgia, Iowa, Michigan, Nevada, Oklahoma, Tennessee, and Texas.

[98] The states with very broad visitation statutes, which apparently allow visitation of children in intact marriages include: Alabama, Mississippi, Maryland, New York, South Dakota. (Illinois formerly had such a statute, but now only allows grandparent visitation for children in an intact marriage if a parent joins in the petition ... in which case one may assume the marriage

will not be intact for long.) Delaware has a general visitation statute, but prohibits grandparent visitation if husband and wife cohabit and object to visitation.

[99] *See, e.g.*, White v. Jacobs, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988); Van Cleve v. Hemminger, 141 Wis. 2d 543, 415 N.W.2d 571 (App. Ct. 1987).

Page 428, n. 100. In Farrell v. Denson, 821 S.W.2d 547 (Mo. Ct. App. 1991), the court held that paternal grandparents had a right to seek visitation of a child born out of wedlock, even though the statute did not specifically deal with this situation. The court said, "'Such grandparents wanting visitation could have been anticipated and as the legislature did not deny them visitation rights or otherwise exclude them, it is reasonable to assume that they have the same rights as the parents of a married father. . . . A child and his grandparents have the same relationship regardless of whether his parents are married.'" *Id.*, *quoting In re* C.E.R., 796 S.W.2d 423, 425 (Mo. Ct. App. 1990).

In Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 304, 305 (Ch. Div. 1986), the court held that it had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to hear a grandparent's request for visitation, even though the statute only provided for grandparent visitation upon the death or divorce of the parents and neither of those circumstances applied here. In *Thompson*, both parents were alive and still married. The grandmother had taken care of the children eight to ten hours per day, five days per week for four years. The grandmother and the children's parents had a dispute over an unpaid loan to the parents and the parents thereafter objected to visitation. The court granted the grandmother visitation on the third Saturday of each month from 10 a.m. to 6 p.m.

See also supra § 8.04, note 33.

But see In re R.A.N., 435 N.W.2d 71 (Minn. Ct. App. 1989), in which the court said that the legislature limited the court's power to allow grandparent visitation. The statute allows visitation upon death or divorce of the parents, or after the child resided with the grandparents for 12 months or more. MINN. STAT. § 257.022 (1976). In this case, the court did not allow the paternal grandparents to seek visitation after their son had murdered the mother, been sentenced to prison, and voluntarily relinquished his parental rights.

In an unusual fact situation, the court in Worley v. Worley, 534 So. 2d 862 (Fla. Dist. Ct. App. 1988) ruled that the adoption of the *adult* child of a grandparent did not preclude the grandparent from obtaining visitation with the grandchildren who were already in being. The court added that any children born to the adult child after the adult child's adoption would have no relationship with the grandparents, and thus the grandparents could not seek visitation with them.

Granting visitation to grandparents normally requires that the grandparents petition for visitation or that there be some extraordinary circumstance. *In re* Marriage of Balzell, 207 Ill. App. 3d 310, 566 N.E.2d 20, 23 (1991) (reversing an order of visitation to the maternal grandparents when the

grandparents had not petitioned for visitation and the custodial father said he would facilitate the child's strong relationship with the grandparents).

Page 428. Add at end of section:

If a grandparent seeks visitation, the burden of proof normally is on the grandparent to show that visitation is in the best interest of the child—the burden is not on the natural parent to show that visitation would be harmful to the child.[100.1]

[100.1] Kerns v. Southern, 100 N.C. App. 664, 397 S.E.2d 651, 652 (1990); Santaniello v. Santaniello, 18 Kan. App. 2d 112, 850 P.2d 269, 271 (1992) (remanding the case and holding that the burden of proof was on the paternal grandparents to show that visitation was in the best interest of the children; the burden of proof was not on the mother of the deceased father to show that visitation was not in the children's best interest).

§ 8.12 —Underlying rationale

Page 429, n. 101. In *In re* Bomgardener, 711 P.2d 92, 97 (Okla. 1985), the court found the grandmother had standing to seek visitation and commented, "The grandparents here are the child's deceased mother's parents. The importance of a continued relationship with them is perhaps more significant now than while the mother was living. . . . Equity recognizes—independent of statute—the grandparents claim to the companionship of their grandchild. Quite often it is an important source of stability and calm in the child's environment."

§ 8.13 —Determining factors

Page 429, n. 102. *Compare* Rose v. Commissioner of Social Services, 170 A.D.2d 339, 566 N.Y.S.2d 43 (1991), in which the court denied both custody and visitation to a grandmother with "psychological problems" who illegally removed the child from the county and "has acted in an inappropriate and insensitive fashion toward the child when allowed visitation").

Page 429, n. 103. *See supra* § 8.08, note 75 and § 8.11, note 100 in this supplement. *Cf. supra* § 8.04, note 33 in this supplement.

Page 430, n. 104. In Brown v. Earnhardt, 396 S.E.2d 358, 360 (S.C. 1990), the court reversed an order of visitation to paternal grandparents and held it would seldom if ever be in the best interest of the child to grant visitation to the grandparents when their child, the parent, has such rights. In this case the father regularly exercised visitation, often in the company of his parents.

Accord In re Adoption of a Child by M., 140 N.J. Super. 91, 355 A.2d 211, 214 (Ch. Div. 1976).

§ 8.14 —When court order is desirable

Page 430, n. 106. In State *ex rel.* Foley v. Landberg, 151 A.D.2d 439, 542 N.Y.S.2d 610 (1989), the court found grandparent visitation appropriate when the father did not regularly exercise visitation with his son, in part because the father was incarcerated for drug posession. The court commented, "[I]n view of the finding that the grandparents had, and in the future might resume, an important loving role in [the child's] life, we believe that visitation rights, independent of the exercise of such rights by [the father] are appropriate." 542 N.Y.S.2d at 642.

Page 431, n. 108. *Accord* DEL. CODE ANN. § 10-950(7) (Supp. 1986) (prohibiting grandparent visitation if the natural or adoptive parents are alive, living together, and object to visitation). *But cf.* the statutes of Minnesota, New Mexico, Pennsylvania, and Texas, which specifically allow grandparent visitation if the grandchild has lived with the grandparent for a significant period of time (six to twelve months, depending on the state). For citation to these statutes, *see supra* § 8.19. *Cf. also* Thompson v. Vanaman, *supra* § 8.11, note 100 of this supplement.

White v. Jacobs, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988) (holding that, in the absence of an express statutory provision, grandparents did not have a right to visitation with grandchildren of an intact marriage; the state's general provision regarding grandparent visitation contained in the dissolution statute was construed to apply only to cases in which a dissolution or nullity action was pending).

Page 431. Add new section:

§ 8.14A —Constitutionality of grandparent visitation statutes [New]

The constitutionality of grandparent visitation statutes has been attacked by both grandparents and parents: grandparents claiming the statutes are too narrow and parents claiming the statutes are too broad, and thus intruding on family privacy. In recent cases, both arguments have been rejected and the statutes have been upheld.

In a case before the Delaware Family Court, grandparents challenged a statute which did not allow grandparents to seek visitation of grandchildren in an intact marriage.[108 1] The grandparents argued that not allowing them to seek visitation, while grandparents whose adult children were divorced, separated or deceased could seek visitation, violated due process and equal protection. The court ruled against the grandparents finding that grandparents who had not had a custodial relationship with their grandchildren did not have a fundamental liberty interest in visitation which had been recognized at common law or elsewhere.

Furthermore, in response to the grandparent's equal protection argument, the Delaware court held it was reasonable for the legislature to create different standards for grandparent visitation depending on whether or not the parents cohabitated as husband and wife. The court said, "Stated simply, parents, natural or adoptive, living together as husband and wife are more likely to make decisions regarding with whom their children associate in a manner that protects the children's best interests. Personal animosity towards the other parent and his or her family is less likely to color this visitation decision."[108 2]

Another constitutional argument was raised by a custodial parent in a Florida case.[108 3] The mother challenged the constitutionality of the state's grandparent visitation statute, which allowed the paternal grandparents to seek visitation following the death of the mother's husband. The mother argued that the statute which allowed grandparents to seek court-ordered visitation was an invasion of her right of privacy and right to raise her children "as she sees fit." The appellate court rejected the argument, saying "The state has a sufficiently compelling interest in the welfare of children that it can provide for the continuation of relations between children and their grandparents under reasonable terms and conditions so long as that is in the children's interest."[108 4]

[108 1] Ward v. Ward, 537 A.2d 1063 (Fam. Ct. 1987).

Compare In re D.S., 806 P.2d 1143, 1145 (Okla. Ct. App. 1991), in which the court held, "Grandparents have no constitutional right to visitation with their grandchildren. These rights come from statutory authority." Nonetheless, the court found that the grandparents had standing in juvenile court to contest reduction of visitation which earlier had been granted by a divorce court.

[108 2] Ward v. Ward, 537 A.2d at 1070. The court also found that the statute in question did not violate principles of separation of powers between the legislature and the judiciary—particularly since no fundamental rights are involved. In closing, the court commented, "This opinion is not to be taken as the Court's endorsement of the position taken by the natural parents in this matter; indeed, the Court would remind them of what other courts have stressed: that it is the moral duty of parents to promote and strengthen association between grandchildren and grandparents."

[108 3] Bengston v. Giroud, 559 So. 2d 380 (Fla. Dist. Ct. App. 1990).

[108.4] *Id.* at 382. Although finding the statute to be constitutional, the court held that the amount of visitation granted was excessive. The trial court gave the paternal grandparents visitation one full day every other weekend, every other Wednesday evening for two hours; certain holidays, plus one week in the summer. The court held the record did not support such "extensive visitation rights." *Id.* at 383. The case was remanded for a new visitation schedule and findings in support.

§ 8.15 —When stepparent adopts child

Page 431, n. 109. Other states that have statutes allowing grandparent visitation following adoption by a stepparent include: North Carolina, Ohio, Pennsylvania, Virginia, any many others. For citation to these statutes, *see infra* § 8.19.

Loftin v. Smith, 590 So. 2d 323 (Ala. Civ. App. 1991) (following Louisiana's statute and allowing visitation by paternal grandparents after adoption of children by stepfather).

Cf. Bush v. Squellati, 154 Ill. App. 3d 727, 506 N.E.2d 972, 974-75 (1987) (holding that a grandparent visitation statute that allows grandparents to visit a child after adoption by a stepparent would not be construed to allow grandparent visitation after adoption of a child by an aunt and uncle (even though the aunt and uncle were related to the grandparents seeking visitation).

Page 431, n. 111. In Echols v. Smith, 427 S.E.2d 820 (Ga. Ct. App. 1993), the court held that the paternal grandparents could not obtain visitation with their grandchildren after the father voluntarily terminated his parental rights and the children were adopted by their stepfather. The state's grandparent visitation statute allowed grandparent visitation after adoption only if the adoption was by a *"blood"* relative. A concurring judge said the legislature's limitation on grandparent visitation was "unfortunate" and did not allow full consideration of what may be best for the child. *Id.* at 821 (Blackburn, J., concurring).

Page 432, n. 113. McVey v. Frederickson, 226 Ill. App. 3d 1082, 1084, — N.E.2d — (1992) (in a case in which the grandparents cared for the child frequently after the father's death, the appellate court stated, "we find that while a different trial court may have granted more visitation, the instant trial court's grandparent visitation order of one Saturday per month [8 a.m. to 8 p.m.] was not an abuse of discretion").

Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 301 (Ch. Div. 1986) (granting visitation to grandmother on the third Saturday of each month from 10 a.m. to 6 p.m.). For a further description of this case, see *supra* § 8.11, note 100. *See also* Sketo v. Brown, discussed in note 108.4 *supra* in this supplement.

§ 8.16 —Procedure

Page 433, n. 114. Quontella v. Ramert, 117 A.D.2d 1019, 499 N.Y.S.2d 562 (1986) (reversing an order of grandparent visitation that was entered without

an evidentiary hearing and remanding the case so that a hearing could be held).

§ 8.17 Antagonism between the parties: effect on visitation

Page 434, n. 122. In Strouse v. Olson, 397 N.W.2d 651, 655 (S.D. 1986), the court affirmed termination of the paternal grandmother's visitation with her two granddaughters, ages ten and eight, who were in the custody of the father (the grandmother's son). The court found termination of visitation to be in the best interest of the children because of the "severe ill feelings, bitterness, and animosity" between the grandmother and the father. The grandmother had threatened the father's life, demeaned his new wife, and threatened to sue them over personal property matters. In addition, the children testified that they did not wish to visit with their grandmother any more. Aside from visitation no longer being in the children's best interest, the Iowa statutory law on which the visitation originally was based was interpreted as not permitting grandparent visitation when the child of the grandparent objected to visitation.

For discussion of the effect of antagonism between the parties when a stepparent seeks visitation, *see infra* § 8.18 in this supplement.

Page 435, n. 125. *Compare* Truitt v. Truitt, 65 Ohio App. 3d 126, 583 N.E.2d 331, 334-35 (1989), in which the court held that a mother's contempt of court and lack of cooperation in providing visitation to the paternal grandparents could not serve as a basis for placing custody of the children with the department of children's services. The court adopted the language of another court for the proposition that:

> Too long have courts labored under the notion that divorced parents must somehow be perfect in every respect. The law should recognize that parents, married or not, are individual human beings each with his or her own peculiar virtues and vices. The children of married parents are expected to take their parents as they find them—as Oliver Cromwell said to his portraitist, "with warts and all." Whatever their faults, unless the married parent's conduct is harming the child, the courts will not intervene in the parent-child relationship.

583 A.2d at 334-35, *quoting* Conkel v. Conkel, 31 Ohio App. 3d 169, 171-72, 509 N.E.2d 983, 985-86 (1987). The court said other penalties for contempt could have been imposed and "We find it was unconscionable to award custody of the children to the county as punishment for contempt . . ." 583 N.E.2d at 335.

Page 435. Change title of § 8.18 to:

§ 8.18 Visitation for stepparents and other third parties

Page 435, n. 127. States which specifically provide for stepparent visitation by statute include: Oregon, Virginia, and Wisconsin. For citations to statutes see appendix at *infra* § 8.19. The Wisconsin Supreme Court, with three jus-

ties dissenting, held that the state's stepparent visitation statute applied only to actions for divorce between the stepparent and natural parent, and did not apply to a stepparent seeking visitation after death of the natural parent to whom the stepparent was married. *In re* Marriage of Cox, 177 Wis. 2nd 433, 502 N.W.2d 128 (Wis. 1993). The Chief Justice Heffernan commented in his dissent: "If the law is construed as the majority has construed it, the words of Charles Dickens in *Oliver Twist* are pertinent. 'If the law supposes that . . . the law is a ass – a idiot.'" 502 N.W.2d at 131.

Page 435, n. 128. *Cf. In re* Marriage of Goetz, 203 Cal. App. 514, 250 Cal. Rptr. 30 (1988) (holding that under California statutes, a stepparent may obtain visitation, but not joint custody).

Page 435, n. 129. *But see In re* Boland, 186 A.D.2d 1065, 588 N.Y.S.2d 485 (1992) (holding that a former stepmother lacked standing to seek visitation with her former stepdaughter). Compare this case with *In re* Ronald FF, *infra* n. 130, in which another New York court allowed a man who was led to believe he was the father to obtain visitation with a child even though he was not the father.

Page 436, n. 130. In *In re* Custody of Banning, 541 N.E.2d 283 (Ind. Ct. App. 1989), the court affirmed visitation for the stepmother following death of the father. The court noted that the stepmother had helped care for the child on a daily basis. The criteria in Indiana is: "To establish visitation, a third person must first show that a custodial and parental relationship exists and then that visitation would be in the best interest of the child." *Id.* at 284.

In Honaker v. Burnside, 388 S.E.2d 322 (W. Va. 1989), the stepfather was able to obtain "liberal" visitation following the death of the custodial mother. The court noted that after the death of the mother, the two people closest to the six-year-old girl were her stepfather and her half brother. The natural father (who had kept contact with the child) was given custody as a natural right, but the court ordered a six month transition period in which the stepfather would have custody and the father would have ever-increasing amounts of visitation until a transfer of custody after six months with visitation for the stepfather.

In *In re* Ronald FF, 117 A.D.2d 332, 502 N.Y.S.2d 823 (1986), a man who lived with the mother and child during much of the child's first two years of life and was listed on the child's birth certificate as father (although he was not the father) was found to be entitled to visitation under New York's "extraordinary circumstance" test for giving rights to third parties.

Similarly, in *In re* Marriage of Dureno, 851 P.2d 1352 (Col. Ct. App. 1983), a man who first learned at the time of the divorce that he was not the biological father of the child was able to obtain visitation. The court said, "Therefore, we hold that the trial court in a dissolution of marriage proceeding may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) the nonparent is jurisdictionally capable of litigating custody, (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest." *Id.* at 1357.

But see In re Maricopa County Juvenile Action, 134 Ariz. 407, 656 P.2d 1268 (1982), in which the court provided the following dictum in a case involving termination of parental rights: "A stepfather has no legal right to custody or control of a minor child nor even a right of visitation. To give such rights to stepfathers would invade the rights of natural parents and would further endanger the welfare of children by pitting the rights of stepparents against those of the natural parents."

Compare In re Marriage of Gayden, 229 Cal. App. 3d 1510, 280 Cal. Rptr. 862 (1991), in which the court rejected a visitation request by a woman who moved in with the custodial father and later sought visitation with the child when the relationship terminated. In *Gayden*, the woman said she lived with the custodial father and the child from the time the child was seven months old until the child was about 1¾ years old. She then moved out, but continued to see the child until the child was 3½ years old. (The father disputed the length of the time periods.) At the time the woman sought visitation, the father and his former wife were attempting to reconcile, and they both opposed visitation by the woman. The appellate court denied visitation, stating "Where the parents are unified in opposition, visitation must not be allowed unless it is clearly and convincingly shown that denial of visitation would be detrimental to the child." 280 Cal. Rptr. at 867.

In a case somewhat similar to *Gayden*, the court in Cooper v. Merkel, 470 N.W.2d 253 (S.D. 1991), held that a man who had lived with a woman and her son for seven years did not state a cause of action for visitation with the boy in the absence of an allegation that the mother was unfit or had engaged in misconduct. Under the court's ruling, the man's assistance in raising the boy was not a sufficient basis for seeking visitation. For commentary applicable to this case, see the "Comment" in *infra* § 8.18A.

Page 437, n. 134. *Cf.* Klipstein v. Klipstein, 230 N.J. 567, 553 A.2d 1384 (Ch. Div. 1988) (holding that a stepfather was not entitled to visitation when: his marriage to the child's mother lasted less than one year; the stepfather had not paid support; and the child had a natural father with whom the child apparently had a good relationship).

Page 437. Add at end of section:

As with grandparent visitation,[134.1] the existence of a high degree of animosity between the divorcing stepparent and natural parent can result in a finding that visitation with the party seeking visitation will not be in the child's best interest. In one case in which a stepmother sought visitation upon divorce from the natural father (who had custody of the children), the court commented:

> Ideally, had the parties been capable of controlling their animosity and hostility toward one another, we would agree that the trial court may well have found that continuing stepmother's visitation would have been in the chil-

legislature could expand "parental" rights to cover situations, but the courts would not do so.

In the California case, the court said that expanding the definition of "parent" to cover this case "could expose other natural parents to litigation brought by child-care providers of long standing, relatives, successive sets of step parents or other close friends of the family.... By deferring to the Legislature in matters involving complex social and policy ramifications far beyond the facts of a particular case, we are not telling the parties that the issues they raise are unworthy of legal recognition. To the contrary, we intended only to illustrate the limitations of the courts in fashioning a comprehensive solution to such a complex and socially significant issue."[134.10]

COMMENT: Just as a child can have a very significant relationship with a stepparent which could justify visitation, and even custody,[134.11] so too can a child have such a relationship with a person who has lived with the parent and child and served as a parent to the child. The fact that both "parents" are of the same sex does not diminish the child's potential attachment to both parties as well as both parties' attachments to the child. Granting custody or visitation to a party who is not related by blood or adoption to a child is an extraordinary circumstance which should be done with caution, but it nonetheless should be done if it will serve the best interest of the child.

[134.8] Alison D. v. Virginia M., 77 N.Y.2d 651, 569 N.Y.S.2d 586, 572 N.E.2d 27 (1991); Nancy S. v. Michele G., 228 Cal. App. 3d 831, 279 Cal. Rptr. 212 (1991).

But compare In re Adoption of Evan, 153 Misc. 2d 841, 583 N.Y.S.2d 997 (Sur. Ct. 1992) in which the court approved adoption of a six-year-old boy by the lesbian life-partner of the biological mother. The biological mother and her partner decided to have a child together and obtained sperm from a friend who relinquished any claims to the child. The adoption was recommended by a guardian ad litem and two licensed social workers. The court

stated, "Here this Court finds a child who has all of the above benefits and *two* adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There is no reason in law, logic, or social philosophy to obstruct such a favorable situation." 583 N.Y.S.2d at 1002 (court's emphasis). The court also cited several trial court opinions from other states approving adoptions by lesbian partners. *Id.* The court also noted that in the event the couple separated, the lesbian partner would be entitled to seek visitation.

[134.9] *In re* Interest of Z.J.H., 157 Wis. 2d 431, 459 N.W.2d 602 (Ct. App. 1990).

[134.10] 228 Cal. App. 3d at —, 279 Cal. Rptr. at 219.

[134.11] For discussion of visitation and custody for stepparents and other third parties, see *supra* §§ 8.06, 8.07 and 8.18.

§ 8.19 Appendix: Grandparent visitation statutes

Pages 438-447. Add new text:

The grandparent visitation statutes cited in this section are part of the divorce statutes of the respective states unless otherwise indicated. For discussion of the significance of including a general grandparent visitation provision as part of a divorce statute, *see supra* § 8.11 and the cases cited under California and Wisconsin, in this supplement.

Alabama: Ala. Code § 30-3-4 (1989), allowing visitation on death or divorce of parents, and under general provision if grandparent has been unreasonably denied visitation with the child for a period exceeding 90 days.

Alaska: Alaska Stat. § 25.24.150 (Supp. 1991), allowing visitation on death, divorce, or separation of parents.

Arizona: Ariz. Rev. Stat. Ann. § 25-337.01 (West 1991), allowing visitation on death or divorce of parent, or if parent has been missing three months.

Arkansas: Ark. Code Ann. § 9-13-103 (1991), allowing visitation on death, divorce, or separation of parents.

California: Cal. Fam. Code §§ 3102—3104 (West 1994), allowing visitation on death, divorce, or sepa-

ration of parents, but not if parents live together in an intact marriage, unless one of the parents joins in a petition of the grandparent who seeks visitation.

Colorado: Colo. Rev. Stat. § 19-1-117 (West 1990), recodifying statute allowing grandparent visitation on death or divorce of parents, or upon child being placed with party other than parent.

Connecticut: Conn. Gen. Stat. Ann. §§ 46b-57, 46b-59 (1986), allowing visitation to "any person" according to the best interest of the child.

Delaware: Del. Code Ann. § 10-950(7) (Supp. 1988), containing a general provision for grandparent visitation, but prohibiting an order of visitation if both parents object and they cohabit and live as husband and wife.

Georgia: The parallel provision to the Official Code is Ga. Code Ann. § 74-112 (Harrison Supp. 1989), allowing visitation on death or divorce of the parents, or upon termination of parental rights.

Illinois: 750 Ill. Comp. Stat. § 5/607(b) (West 1993), allowing grandparent or sibling visitation on separation, divorce, or death of parent, or if a parent joins in the petition for visitation. The statute, as amended in 1991, does away with a former provision which allowed a court to give grandparents or siblings visitation for children in intact marriages even if both parents opposed visitation.

Indiana: Ind. Code Ann. § 31-1-11.7-2 (Burns Supp. 1993), allowing visitation on death or divorce of parents or if child is born out of wedlock.

Iowa: Iowa Code Ann. § 598.35 (West Supp. 1990), allowing visitation on death or divorce of

parents, or upon foster placement of the child.

Kentucky: Ky. Rev. Stat. Ann. § 405.021 (1984), general visitation provision.

Louisiana: La. Rev. Stat. Civ. Code Ancillaries § 9:572 (West 1991), allowing visitation on death or divorce of the parents; however, a grandparent may seek visitation only if the parent to whom the grandparent is related does not have custody.

Maine: Me. Rev. Stat. Ann. tit. 19, § 752(6) (West Supp. 1989), providing "[t]he court may award reasonable rights of contact with a minor child to any 3rd persons."

Maryland: Md. Fam. Law Code § 9-102 (Michie Supp. 1993), allowing grandparent visitation if it is in the best interest of the child (and deleting former requirement that visitation was granted only on death or divorce of parent).

Massachusetts: Mass. Gen. Laws Ann. § 119-39D (West Supp. 1992), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, and as part of paternity proceedings.

Michigan: Mich. Comp. Laws Ann. §§ 722.27(b) & 722.27b (Supp. 1990), allowing grandparent visitation on death or divorce of parents, or upon placement of custody of the child with a person other than a parent.

Minnesota: Minn. Stat. Ann. § 257.022 (West Supp. 1991), providing grandparents may seek visitation on death or divorce of parents, or if child has lived with grandparent 12 months or more; a non-grandparent may seek visitation if the child has lived with that person more than two years.

Mississippi: Miss. Code Ann. §§ 93-16-1 & 93-16-3 (West Supp. 1990), allowing visitation on death or divorce of the parents, or upon termination of parental rights. The statute also provides a general grandparent visitation provision (§§ 93-16-3(2)—93-16-3(4)) under which any grandparent may petition for visitation and obtain visitation rights if the grandparent "had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child; and ... visitation rights of the grandparent with the child would be in the best interests of the child." "Viable relationship" requires financial support of the grandchild for six months and frequent visitation, including occasional overnight visitation, for not less than one year. This general grandparent provision will be repealed automatically on July 1, 1992, unless there is further action by the legislature.

Missouri: Mo. Rev. Stat. § 452.402 (Vernon Supp. 1990), recodifing statute allowing grandparent visitation on death or divorce of parents. The statute also allows visitation when "[a] grandparent is unreasonably denied visitation with the child for a period exceeding 90 days."

Montana: Mont. Code Ann. § 40-9-102 (1989), containing general provision for grandparent visitation.

Nebraska: Neb. Rev. Stat. §§ 43-1801—43-1803 (1986), allowing visitation on death or divorce of the parents.

Nevada: Nev. Rev. Stat. Ann. §§ 125A.330 & 125A.340 (Supp. 1989), recodifing statute allowing grandparent and sibling visitation on

death, divorce, or separation of parents, or upon termination of parental rights.

New Hampshire: N.H. Rev. Stat. Ann. §§ 458:17(VI), 458:17-d (Supp. 1990), general grandparent visitation provision enumerating eight factors for consideration relating to quality of grandparent-grandchild relationship and degree of conflict between grandparent and parent.

New Jersey: N.J. Stat. Ann. § 9:2-7.1 (West Supp. 1990), allowing grandparent or sibling visitation on death, divorce, or separation of parents. See also Thompson v. Vanaman, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (holding that the court had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to grant visitation in circumstances other than death and divorce of the parents). *Thompson* is described further in § 8.11, note 100 *supra* of this supplement.

New Mexico: N.M. Stat. Ann. §§ 40-9-1—40-9-4 (1989), allowing visitation on death or divorce or parents, or if child has lived with grandparents six months or more.

New York: N.Y. Dom. Rel. Law §§ 72 & 240(1) (McKinney Supp. 1990), allowing visitation on death, divorce, or separation of parents. The statute (§ 72) also contains a general visitation provision: "Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions may exist which equity would see fit to intervene," the grandparent may seek visitation.

Ohio: Ohio Rev. Code Ann. § 3109.051 (Page's Supp. 1990), allowing visitation to grandparent, relative, or any other person if action relates to divorce or support; the statute lists

15 factors for consideration. §3109.11 provides for visitation upon death of parent.

Oklahoma: Okla. Stat. Ann. tit. 10, §5 (West Supp. 1990), allowing visitation upon termination of parental rights; plus a general visitation provision—not in the divorce statute—providing: "any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child."

Oregon: Or. Rev. Stat. Ann. §§109.119, 109.121 & 109.123 (Butterworth 1990), general visitation and custody provision, allowing "any person" including, but not limited to, a grandparent, stepparent, relative by blood or marriage, and foster parent who has "established emotional ties creating a parent-child relationship" to seek visitation or custody regardless of whether other proceedings are pending (a "parent-child relationship" includes providing day-to-day care for the child); the statute also provides that third parties with an "ongoing personal relationship with substantial continuity for at least one year with the child" (or three years for foster parents) may seek visitation; another provision of the statute applying specifically to grandparents allows grandparents to seek visitation if: "(A) The grandparent has established or has attempted to establish ongoing personal contact with the child; (B) The custodian has denied the grandparent reasonable opportunity to visit the child."

Pennsylvania: Pa. Cons. Stat. Ann. tit. 23, §§5311-5314 (Purdon Supp. 1990), allowing visitation on death or divorce of the parents or after the child had lived with the grandparent for one year.

Rhode Island: R.I. Gen. Laws §§15-5-24.1—15-5-24.3 (Supp. 1988), allowing visitation on death or divorce of parents; the grandparents must present "clear and convincing evidence" to rebut a presumption that the parents' refusal of visitation was reasonable.

South Dakota: S.D. Codified Laws Ann. §§25-4-52—25-4-56 (Smith 1984 & Smith Supp. 1990), general grandparent visitation provision: "The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if it is in the best interest of the grandchild." The statute is part of South Dakota's divorce laws, but the general nature of the visitation provision is reflected by the legislature's repeal of a section of the law which limited visitation to cases involving the death of divorce of the parents.

Tennessee: Tenn. Code Ann. §36-6-301 (Michie Supp. 1990), general "best interests" visitation provision, including for children in the custody of non-parents.

Texas: Tex. Fam. Code Ann. §14.03(e) (Vernon Supp. 1990), allowing visitation in a variety of circumstances, including: the death, divorce, separation, or incarceration of the parents; abuse or neglect of the child; termination of parental rights; and cases in which the child resided with the grandparent for at least six months.

Utah: Utah Code Ann. §30-3-5(4) (Michie Supp. 1993), providing: In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child." (The phrase "other members of the immedi-

ate family" was substituted for the phrase "other relatives.")

Vermont: Vt. Stat. Ann. tit. 15, §§ 1011-1016 (1989), allowing visitation on death or divorce of the parents.

Virginia: Va. Code § 20-107.2 (1990), allowing visitation upon divorce of the parents; visitation can be for grandparents, stepparents, or other family members.

Washington: Wash. Code Ann. 26.09.240 (West Supp. 1990), providing, "The court may order visitation rights for a person other than the parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances."

West Virginia: W. Va. Code §§ 48-2-15(b)(1) & 48-2B-1 — 48-2B-9 (Michie Supp. 1993), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, or if child had resided with grandparent for six consecutive months during the preceding two years, or when child was born out of wedlock.

Wisconsin: Wis. Stat. Ann. § 767.245 (West 1990), allowing visitation to grandparents, stepparents, and other persons who have maintained a relationship with the child similar to a parent-child relationship. *Van Cleve v. Hemmunger*, 111 Wis. 2d 543, 115 N.W.2d 571 (App. Ct. 1987), holding that Wisconsin's former general visitation statute which allowed visitation if "it is in the best interest and welfare of the child" did not include a right to seek visitation of grandchildren in an intact marriage.

Wyoming: Wyo. Stat. Ann. §§ 20-2-113(c) & 20-7-101 (Michie Supp. 1993), allowing visitation of grandparent in several circumstances, including death, divorce, or separation of parents, or if child had lived with grandparents for six consecutive months, or in connection with juvenile proceedings.

1989

APPENDIX A

GRANDPARENT VISITATION STATUTES*

	State	Citation to Statute	On Death[1] of Parent	On Divorce[2] of Parents	After Living with[3] Grandparent	General[4] Provision
1.	Alabama	Ala. Code §30 3 3 (1983)	X	X		X
2.	Alaska	Alaska Stat. §25.24.150 (1983)	X	X		
3.	Arizona	Ariz. Rev. Ann. §25-337.01 (Supp. 1987)	X	X		
4.	Arkansas	Ar. Stat. Ann. §9-13-103 (Supp. 1987)	X	X		
5.	California	Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987)	X			X
6.	Colorado	Colo. Rev. Stat. §19-1-116 (1986)	X	X		
7.	Connecticut	Conn. Gen. Stat. Ann. §§46b 59, -59a (West 1986 & Supp. 198d)				X
8.	Delaware	Del. Code Ann. tit. 10, §950(7) (Supp. 1986)		X		X
9.	Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10.	Georgia	Ga. Code Ann. §19-7-3 (Supp. 1988)	X			
11.	Hawaii	Haw. Rev. Stat. §571.46(7) (1985)		X		
12.	Idaho	Idaho Code §32-1008 (1983)				X
13.	Illinois	Ill. Ann. Stat. ch.40, para. 607(b) (c) (Smith-Hurd Supp. 1988)	X	X		
14.	Indiana	Ind. Code Ann. §§31-1-11.7-1 to .7-8 (Burns 1987 & Supp. 1988)	X	X		

*Reprinted, with minor editorial and substantive changes, from J. Atkinson 2 Modern Child Custody Practice §8.19 (1986 & Supp. 1987)

FOOTNOTES

1 Under this type of provision, visitation could be granted to a grandparent whose son or daughter (the parent of the child) died.

2 Several statutes also specifically provided for grandparent visitation while the parents are separated, where the marriage was annulled, or where there are or have been child custody proceedings.

3 The length of the time in which the child lived with the grandparent triggered the right of the grandparent to seek visitation: twelve months (Minnesota and Pennsylvania) and six months (Texas and New Mexico)

4 "General provision" refers to visitation statutes which did not specify or restrict the circumstances under which a grandparent could obtain visitation.

	State	Citation to Statute	of Parent	of Parents	Grandparent	Provision
15.	Iowa	Iowa Code Ann. §§598.35 .36 (West 1987 & Supp. 1988)	X	X		
16.	Kansas	Kan. Stat. Ann. §60-1616(b) (Supp. 1987)				X
17.	Kentucky	Ky. Rev. Stat. Ann. §405.021 (Baldwin 1984)				X
18.	Louisiana	La. Rev. Stat. Ann. §9:572 (West Supp. 1988)	X	X		
19.	Maine	Me. Rev. Stat. Ann. tit. 19, §752 (Supp. 1988)				X
20.	Maryland	Md. Fam. Law Code Ann. §9-102 (1984)		X		X
21.	Massachusetts	Mass. Gen. Laws Ann. ch.119, §39D (West Supp. 1988)	X	X		
22.	Michigan	Mich. Comp. Laws Ann. §§722.72(b), 722.72b (West Supp. 1988)	X	X		
23.	Minnesota	Minn. Stat. Ann. §257.022 (West 1982 & Supp. 1988)	X	X	X	
24.	Mississippi	Miss. Code Ann. §§93-16-1, -3, -5, -7 (Supp. 1988)	X	X		X
25.	Missouri	Mo. Ann. Stat. §§452.400, .402 (Vernon 1986)	X	X		
26.	Montana	Mont. Code Ann. §§40-9-101 to -102 (1987)				X
27.	Nebraska	Neb. Rev. Stat. §§43-1801 to -1803 (Supp. 1986)	X	X		
28.	Nevada	Nev. Rev. Stat. §§125A.330, .340 (1987)	X	X		
29.	New Hampshire	N.H. Rev. Stat. Ann. §458:17 VI (1983)		X		X
30.	New Jersey	N.J. Stat. Ann. §9:2-7.1 (West Supp. 1988)	X	X		
31.	New Mexico	N.M. Stat. Ann. §§40-9-1 to -4 (1986 & Supp. 1988)	X	X	X	
32.	New York	N.Y. Dom. Re. Law §§72, 240(1) (McKinney 1986 & 1988)	X	X		X
33.	North Carolina	N.C. Gen. Stat. §§50-13.2(b1), .2A, .5(j) (1987)		X		
34.	North Dakota	N.D. Cent. Code §14-09-05.1 (Supp. 1987)				X
35.	Ohio	Ohio Rev. Code Ann. §3109.05(B) (Anderson Supp. 1987)		X		
36.	Oklahoma	Okla. Stat. Ann. tit. 10, §5 (West 1987)	X	X	X	
37.	Oregon	Or. Rev. Stat. §§109.121, .123 (1987)	X	X		X

	State	Citation to Statute	On Death[1] of Parent	On Divorce[2] of Parents	After Living with[3] Grandparent	General[4] Provision
38.	Pennsylvania	23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1988)	X		X	
39.	Rhode Island	R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1987)	X	X		
40.	South Carolina	S.C. Code Ann. §20-7-420(33) (Law. Co-op. 1976)				X
41.	South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		X
42.	Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43.	Texas	Tex. Fam. Code Ann. §14.03(e)-(g) (Vernon Supp. 1988)	X	X	X	
44.	Utah	Utah Code Ann. §30-3-5(4),(7) (Supp. 1988)				X
45.	Vermont	Vt. Stat. Ann. tit. 15, 1011-1016 (Supp. 1988)	X	X		
46.	Virginia	Va. Code Ann. §20-107.2 (Supp. 1988)		X		
47.	Washington	Wash. Rev. Code Ann. §26.09.240. (Supp. 1988)				X
48.	West Virginia	W. Va. Code §§48-2-15(b)(1), 48-2B-1 (1986)	X	X		
49.	Wisconsin	Wis. Stat. Ann. §767.245 (West Supp. 1988)				X
50.	Wyoming	Wyo. Stat. §20-2-113(c) (Supp. 1988)	X	X		

Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION AND SOCIAL SERVICES

PLEASE! FILL IN ALL AREAS OF this FORM!

DATE: APRIL 4, 1995

PLACE: Capitol Room 106

SUBJECT OF MEETING:

SB 27: MISC. GRANDPARENT VISITATION RIGHTS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
JANET ARMSTRONG	SEN. DAVIS					(Y)	N	SB 27
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	