

January 25, 1990
HAND DELIVERY

Rep. Lyman Hoffman, Co-Chair
House Finance Committee
Alaska House of Representatives
Capitol - Room 507-C
Juneau, AK 99811

Re: CSSB 15(fin) am - school employee
collective bargaining

Dear Representative Hoffman:

You have asked the following questions regarding the above bill, which brings school employees under the coverage of AS 23.40.070 -- 250.

1. Whether the Public Employment Relations Act ("PERA") provision allowing political subdivisions to opt out of its coverage would apply to school districts and REAA's; and

2. Whether the Alaska Supreme Court's holding in Kenai Peninsula School Dist. v. Kenai Peninsula Educ. Ass'n, 572 P.2d 416 (Alaska 1977) will be affected by the enactment of SB 15, which would repeal AS 14.20.550 -- 610.

1. Local governing bodies may still be able to opt out of PERA under this proposed legislation

Section 4, ch. 113, SLA 1972 provides:

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

In a case in which a union of municipal employees challenged the newly formed Municipality of Anchorage's ordinance opting out of PERA, the Alaska Supreme Court held that Section 4 of PERA was permanent, and that there is no time limit on the exercise of the option, provided it is not done in a way which interferes with established rights of employees. Anchorage Mun. Employees Ass'n

v. Mun. of Anchorage, 618 P.2d 575, 579 (Alaska 1980). A local governing body must also exercise its option promptly, and not to avoid an existing obligation to bargain. Id. See also State v. Petersburg, 538 P.2d 263, 267 (Alaska 1975), holding that the right of a local government to reject the act becomes subordinate to the rights provided by the act once the local government becomes aware of substantial organizational activities on the part of its employees.

A question not answered by the cases is whether a local governing body which was previously obliged to bargain (and had bargained) under AS 14.20 would have an opportunity to opt out nonetheless. The supreme court has held that a city which validly opted out of PERA, bargained for several years with employee organizations, and at the expiration of an agreement refused to bargain any further, did not become covered by PERA, having never suggested to its employees that they were entitled to its protections. City of Fairbanks v. Fairbanks AFL-CIO, 623 P.2d 321, 323 (Alaska 1981). It would thus seem that if a local governing body acted in good faith, it may be permitted to opt out. However, the outcome of litigation is likely to depend heavily on the facts of the case, including any bargaining history.

Because of the short time we had to answer your request, we have not researched or addressed any problems there may be including school districts and REAA's in the definition of "political subdivision." That is not to suggest that there is a problem, only that we have not been able to research the issue.

2. The impact of the bill on the holding in Kenai is probably limited, but we cannot give a definitive answer

Your memorandum also asks whether the passage of SB 15 would have any impact on the law established by the Alaska Supreme Court in Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, 572 P.2d 416 (Alaska 1977). In the Kenai decision, the court interpreted the standard of negotiability under the teacher bargaining law (AS 14.20.550 -- 610). (The court also upheld the constitutionality of teacher collective bargaining in the Kenai decision. This part of the decision, based largely on a body of cases upholding similar "delegations" of power, can be expected to apply to teacher bargaining under PERA.)

Because the reasoning set out in the Kenai decision would appear to apply to teacher bargaining under PERA, it seems likely that a court would follow the Kenai holding in determining

whether issues are bargainable for teachers under PERA. Because teacher bargaining would occur under a new statute, a court could, however, re-evaluate the findings in Kenai, and it is possible that a court might evaluate the negotiability of certain issues differently.

The statutory standard defining the topics that must be negotiated is phrased differently under PERA than under the teacher bargaining law. Under the teacher bargaining law, the duty to negotiate applies to "matters pertaining to their employment and the fulfillment of their professional duties" (AS 14.20.550). Under PERA, the duty applies to "matters of wages, hours, and other terms and conditions of employment" (AS 23.40.070). A court might rely on this difference in wording to modify the holding in Kenai. However, that semantical argument is likely to be less compelling than the more substantive discussion of the Kenai opinion involving educational policy versus economic impacts.

The Kenai opinion relies on court decisions from other states which interpret different statutory standards of negotiability. Although the opinion quotes those standards, it does not note any meaningful distinction either between those different standards or with the Alaska standard. Additionally, there is a considerable body of case law from other states which defines the negotiability of various teacher bargaining issues. This law seems to be based more on general analysis of educational policy versus economic impact, rather than fine distinctions in the phrasing of the statutory duty to negotiate.

In the Kenai decision, the court interpreted AS 14.20.610 in determining the scope of the districts' duty to negotiate. AS 14.20.610 states that nothing in the teacher bargaining law may be construed to abrogate or delegate the "legal responsibilities, powers, and duties of the school board, including its right to make final decisions on policies." With the enactment of SB 15, AS 14.20.610 will be repealed, but the assumption underlying that section would continue to apply. AS 14.20.610 does not create those "legal responsibilities, powers, and duties." Those responsibilities, powers, and duties are established independently by constitution and statute. Even with the repeal of AS 14.20.610, those "responsibilities, powers, and duties" remain intact. Again, according to the general body of teacher bargaining law from other states, teacher collective bargaining does not impair the rights and responsibilities of school boards.

Further, it is at least arguable that some of the

concerns addressed by AS 14.20.610 can be included in PERA's exceptions to collective bargaining. AS 23.40.250(1) indicates that the parties must bargain wages, hours, and the terms and conditions of employment. Excluded from the definition of "terms and conditions of employment" are "the general policies describing the function and purposes of a public employer." AS 23.40.250(8). The function and purposes of a public school would arguably include those matters included in AS 14.20.610.

Despite the above comments, we are not in a position to predict how a court would interpret the duty to negotiate for teachers under PERA. Defining the boundaries of that duty, even with great specificity, is clearly within the power of the legislature. Indeed, the court has gently suggested that this area could use legislative clarification. Kenai, 572 P.2d at 423.

Please let us know if you would like us to further research this question for you.

Sincerely yours,

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