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# Alaska Labor Relations Agency 2003 Annual Report



*Alaska Labor Relations Agency  
P. O. Box 107026  
3301 Eagle Street, Suite 208  
Anchorage, Alaska 99503*

*Submitted October 2004*

# 2003 ANNUAL REPORT

Submitted October 2004  
(In accordance with AS 23.05.370)

## INTRODUCTION

The Alaska Labor Relations Agency, or ALRA, administers the Public Employment Relations Act (PERA) for the State, municipalities, public schools, and the University. The Agency also administers the railroad labor relations laws for the Alaska Railroad Corporation. It determines petitions for certification or decertification of bargaining representatives, petitions to clarify the composition of public employee bargaining units and to amend the certification of units, and charges of unfair labor practices from labor organizations, public employers, and public employees. The Agency enforces terms of collective bargaining agreements, determines strike eligibility of workers, and rules on claims for religious exemption from the obligation to pay fees to a bargaining representative.

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## PERSONNEL

### BOARD MEMBERS

A board of six members who serve staggered three-year terms governs the Agency. The members must have backgrounds in labor relations, and two members each must be drawn from management, labor, and the general public. AS 23.05.360(b). Not more than three members may be from one political party. The following individuals comprise the current Board:

Gary P. Bader, Chair	Appointed March 24, 2004	Public
Aaron T. Isaacs, Jr., Vice Chair	Reappointed Jan 18, 2002	Public
Colleen E. Scanlon, Board Member	Appointed April 28, 2003	Management
Dennis Niedermeyer, Board Member	Appointed March 24, 2004	Management
Randall Frank, Board Member	Appointed July 16, 2003	Labor
Vacant		Labor

### STAFF

Mark Torgerson, Administrator/Hearing Examiner  
Jean Ward, Hearing Officer/Investigator  
Margie Yadlosky, Human Resource Specialist I  
Sherry Ruiz, Administrative Clerk III

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STATUTES

Relevant statutes appear in AS 23.05.360--23.05.390; AS 23.40.070--23.40.260 (PERA); and AS 42.40.705--42.40.890 (railroad).

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REGULATIONS

The Agency's regulations appear in 8 AAC 97.010--8 AAC 97.990.

## 2003 HIGHLIGHTS.

*Legislation Affecting Alaska Statute 23.40 (PERA).* One bill affecting PERA was signed into law by Governor Murkowski in the 23<sup>rd</sup> Legislative session: SB 95 72-Hour Notice of Teacher Strike, CHAPTER 130 SLA 03 05/28/03. This bill is titled "An Act relating to strikes by employees of a municipal school district, a regional educational attendance area, or a state boarding school, and requiring notice of at least 72 hours of a strike by those employees." The bill, sponsored by Senator Lyda Green, requires that a bargaining unit of school employees must give at least 72 hours advance notice of a strike, before the strike may begin. Senator Green noted during a committee meeting that some of her constituents were concerned that a last-minute strike could leave their school-age children unattended. Senator Green said that advance notice should help alleviate this concern. The advance notice idea conforms to notice requirements in other states that allow school employees to strike.

Two other bills also affected the Public Employment Relations Act. Governor Murkowski signed HB 83, Revised Uniform Arbitration Act - CHAPTER 170 SLA 04 07/26/04; and HB 282, University Employee Research Contracts - CHAPTER 22 SLA 04

04/23/04. These bills have minimal effect on the Public Employment Relations Act. We provide a brief overview of these bills at page 27 and 28.

Proposed legislation that received considerable hearing comment included HB 518 and SB 352, "*Managers Not Employees Under P.E.R.A.*". These bills were titled "*An Act amending the Public Employment Relations Act to exclude from collective bargaining individuals who perform confidential or managerial duties for a public employer and relating to those exclusions; and providing for an effective date.*" After a number of legislative hearings, the legislation died in committee during the 23rd session.

*Agency Regulations.* There were no regulatory changes or proposals during 2003. However, Agency staff spent considerable time working on a proposal to charge fees for services. This proposal would have required per capita contributions based on the size of each collective bargaining unit. The proposal would have been drafted as either legislation or regulations. However, this proposal was ultimately rejected.

*New Board Appointments.* Governor Frank Murkowski appointed three new members to fill Agency Board positions. The Governor appointed Gary P. Bader of Anchorage to a Public seat on the ALRA board effective March 24, 2004. Mr. Bader was also appointed the Chair of the Board. Randall C. Frank from Fairbanks was appointed effective July 16, 2003, to fill one of the Labor seats. The third appointee is Dennis Niedermeyer from Eagle River. Mr. Niedermeyer began serving as a Management member effective March 24, 2004.

The Agency has one vacancy as of September 2004, for a labor position on the Board. The Governor appoints Agency board members, who must then be confirmed by the Legislature.

*Agency Caseload Increases.* Streamlined procedures, implemented in 1998 and 1999, enabled the Agency to put a significant dent in a caseload backlog that developed in the mid-1990's. The total number of pending cases decreased from 170 in 1999 to 56 in 2001, due to changes in operational efficiencies and reduced case filings. However, the current trend demonstrates an increase in the number of filings and open cases. The total number of open cases in January 2003 was 83, a significant increase from totals in 2002 (60) and 2001 (56). There were 80 open cases reported at the beginning of August 2004.

Cases filed in 2003 totaled 62, a 12.75% decrease from 2002 (71). Although case filings decreased in 2003 from 2002, the total is still markedly higher than filings in the prior two years (52 in 2001, 49 in 2002). There have been 51 new cases filed as of August 1, 2004.

The Agency's backlog developed primarily due to the large number of cases filed in the 1995-to-1998 period, which averaged 149 per year. Due to an ongoing lean

budget, the agency continued to work this increased caseload with the same number of staff. As demonstrated in the past few years, the number and type of total cases filed each year is unpredictable. Factors that may affect case filings include expiration of collective bargaining agreements and related contract negotiations, and economic factors such as reduced government budgets.

*Unit Clarification Petitions.* In 2003, filing of unit clarification (UC) petitions decreased by 56% from 2002's total, compared to a 130 percent filing increase from 2001 to 2002. (See "Overview" page 8). Parties filed 30 UC petitions in 2002 and 17 in 2003. Although these filings decreased from the number filed in 2002, the 2003 filings are comparable to filings in 2000 (16) and 2001 (13).

UC petitions usually concern the supervisory status of State employees. An employee's status as supervisor or non-supervisor affects the employee's bargaining unit placement. While the issue of supervisory status affects all State employee bargaining units, UC disputes filed with the Agency primarily involve the State of Alaska, the Alaska State Employees Association (ASEA) (the largest State union, representing the general government unit), and the Alaska Public Employees Association (APEA) (representing the State supervisors' unit). A significant increase in the number of petitions began in 1995 after the Board amended the regulation defining "supervisory employee." The validity of this amendment was challenged in the courts. On October 15, 1999, the Alaska Supreme Court affirmed the regulation's validity. (*See Alaska State Employees Ass'n/AFSCME Local 52 v. State of Alaska*, 990 P.2d 14 (Alaska 1999)).

After the UC caseload increased to 207 by November 1997, Agency staff analyzed alternatives to improve efficiency while still providing due process. The old procedure, holding a hearing in each case, became impossible to keep up with, given staffing and budget limitations. To reduce the backlog and improve production, staff streamlined procedures in 1998 and reduced the hearing load. These new procedures succeeded. In 2003, the Agency completed 32 investigations. Although the Agency reduced the UC caseload significantly, total case filings increased in 2002 and 2003. (See "Final Disposition" page 8, discussion at pages 15 - 16, and trends chart page 10). The Agency has no direct control over cases filed by parties.

*Unfair Labor Practice Complaints.* Although the Agency did not experience an increase in the number of unfair labor practice (ULP) charges filed for 2003, the ULP caseload is still the largest caseload. This caseload is also the most time-consuming due to its investigatory requirements. The number of ULP charges filed in 2003 (28) continues a rising trend in this caseload. The five-year trend shows a general rise over prior years. (See "Cases Filed" page 8, discussion at pages 17 - 18, and trends chart, page 10). ULP filings in 1999 (20) and 2000 (19) were followed by significant increases in 2001 (27), 2002 (28) and 2003 (28). Parties have already filed 23 ULPs in the first eight months of 2004. Fifty-two percent of the ULPs filed to date in 2004 are State related cases. The remaining 48% include 26% education-related cases, 9% railroad-

related, and 13% for political subdivisions. It is possible that this trend could continue because less money is currently available to fund public employee contracts. However, the parties have agreed to dismiss some disputes recently after they reached agreement on new collective bargaining contracts. Whether these agreements will have a new reduction on the Agency caseload remains to be seen.

Bad faith bargaining charges increased from 53% of the ULP filings in 2002 to 70% in 2003. These charges often arise in the context of collective bargaining; one party believes the other party has failed to bargain in good faith. The issue in 14% of the 2003 ULP charges was interference with protected rights, such as organizing and collective bargaining. Four percent concerned the duty of fair representation; another four percent concerned unilateral changes. The remaining eight percent concerned retaliation or a violation of Weingarten rights (the right to have a union representative present at an investigatory interview that could lead to discipline). None of the 2003 charges concerned restraint or coercion.

Effective January 1, 1999, the Agency implemented new procedures designed to reduce time to complete ULP investigations. It took a lengthy period to work through the caseload to resolve all cases filed prior to 1999. Staff has now accomplished that goal. The average number of days to complete all investigations was reduced substantially for cases resolved in 2002 and 2003. Agency staff completed 26 ULP investigations in an average of 143 days in 2003. This compares to 29 investigations averaging 91 days in 2002, and 21 averaging 187 days in 2001. Staff investigated 11 high priority cases in 2003, compared to 6 in 2002, and 2 in 2001. The increase in average number of days to conclude investigation of high priority cases in 2003 (60) over 2001 (42) and 2002 (44) was likely due to the larger number of investigations required in this category. Staff finished 15 regular priority ULP investigations in 2003, compared to 19 in 2001 and 23 in 2002. Time needed to investigate these charges in 2003 (190 days), is slightly less than 2001 (202) but longer than 2002 (103). Several factors affect time needed to complete investigations, including case complexity, staff efforts on informal resolution, and the investigating staff members other caseload and work priorities. In addition, sheer volume of high priority ULP filings can affect completion time. (See trends chart page 10).

The Agency received two election petitions in 2003. One petition requested certification of a bargaining representative; the second petition requested decertification of the current bargaining representative and certification of a new bargaining representative. This compares to six filed in 2002, seven filed in 2001, six in 2000, and four in 1999. In addition, parties filed four petitions for unit amendment where amendment of certification was filed to reflect changed circumstances such as change in name, affiliation, site or location.

The Agency has conducted two elections in 2003 that resulted in the certification of a new bargaining representatives. The result of the election activity in 2003 was a net

increase in the number of public employees covered by collective bargaining under PERA. This increase continues a recent trend.

There was one strike petition filed in 2003, compared to two in 2002 and none in 2001. (See "Cases filed" page 8). Petitions filed in past years were generally attributable to the expiration of multi-year contracts between employers and labor organizations. This case involved the Valdez City School District and the teachers' bargaining unit. The District asked the Agency to put the case in abeyance, while it went to mediation and advisory arbitration.

The Agency continues to emphasize informal resolution of disputes. As a result, 22 unfair labor practice charges were resolved informally in 2003, compared to 26 in 2002, and 13 in 2001. The Agency's hearing officer/investigator works with parties to settle unfair labor practice charges, and has expanded mediation services to include collective bargaining agreement enforcement petitions. Successful mediation saves the parties, the Board, and the Agency the cost and time that would have been required for litigation of the disputes. The Agency hopes to train other staff to assist in mediation efforts. However, budget and time constraints have precluded this training thus far.

*Industrial Relations Research Association (IRRA).* During 2003, the Agency continued to play a proactive role in revitalizing the Alaska chapter of the Industrial Relations Research Association (IRRA). IRRA is the one organization in the country in which professionals from all aspects of industrial relations and human resources can share ideas and learn about new developments and practices in the field. IRRA sponsors and publishes research. It promotes education and provides a forum for the exchange of ideas on employment issues. IRRA does not take partisan positions on policy issues; rather, it serves as a resource to labor and management professionals, including advocates and neutrals, government, and the academic community. An active Alaska chapter provides Alaska employment professionals with opportunities for networking and training, and it serves as a resource within the state.

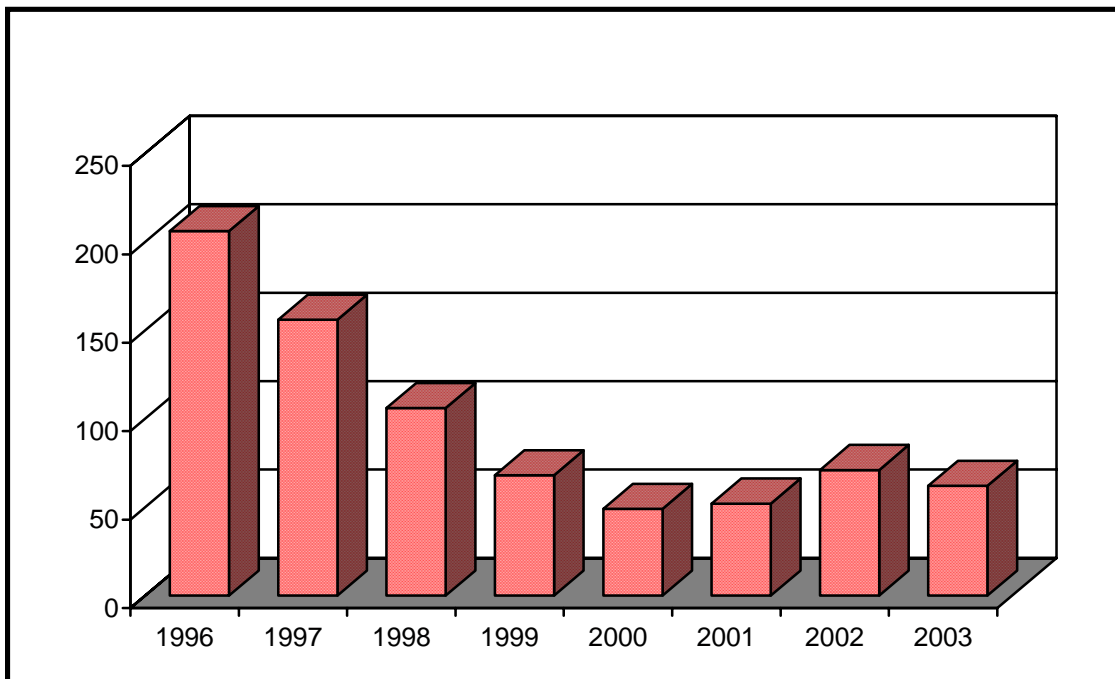
The Alaska chapter met several times in 2003. Luncheon meetings were highlighted by speaker presentations. Speakers addressed a variety of issues, including a presentation on arbitration, which met CLE credits for the Alaska Bar Association. Other speakers included Anchorage Mayor Mark Begich, who provided an overview of labor relations under his administration.

The Agency provides information on its Internet web site, accessible through the State of Alaska's home page (<http://www.state.ak.us>) or directly at <http://www.labor.state.ak.us/laborr/home.htm>. The site contains a link to contact the administrator by e-mail, and information about agency programs and resources. In addition, a person can research all Agency decisions by typing a word or phrase into a search field. The Agency continues to add new materials such as creating a cross-

reference list of Agency cases appealed to the Alaska Superior and Supreme Courts, including the decisions issued.

## CASE STATUS SUMMARIES

### CASE LOAD COMPARISON BY YEAR





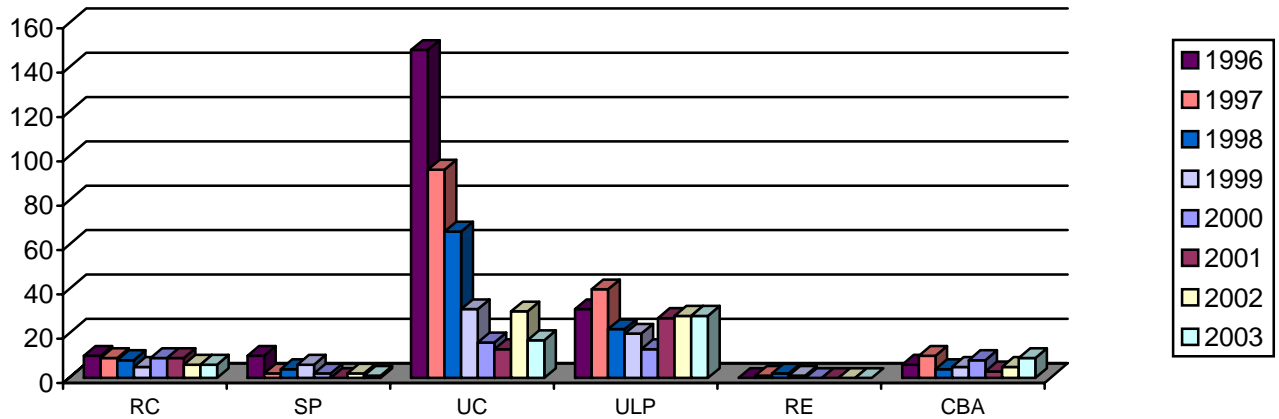
## OVERVIEW

<b>CASES FILED</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>	<b>1996</b>
Amended Certification (AC)	4	0	0	3	1	1	1	1
Representation (RC)	1	5	7	6	1	6	6	5
Decertification (RD)	0	1	1	0	1	1	1	2
Decert. to certify a new rep.(RC/RD)	1	0	1	0	2	0	1	2
Strike notice or strike class petition (SP)	1	2	0	2	6	4	2	10
Unit Clarification (UC)	17	30	13	16	31	66	94	148
Unfair Labor Practice Charge (ULP)	28	28	27	13	20	22	40	31
Religious Exemption Claims (RE)	0	0	0	0	1	2	1	0
Contract Enforcement (CBA)	9	5	3	8	5	4	10	6
Other (OTH)	1	0	0	1	0	0	0	1
<b>TOTAL</b>	<b>62</b>	<b>71</b>	<b>52</b>	<b>49</b>	<b>68</b>	<b>106</b>	<b>156</b>	<b>206</b>
<b>AGENCY ACTIVITY</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>	<b>1996</b>
Unfair Labor Practice Investigations	26	29	22	10	31	24	26	20
Unit Clarification Investigations	32	12	11	48	93	NC	NC	NC
Decisions and Orders Issued	4	4	5	5	6	9	25	12
Other Board Orders Issued	1	1	5	1	16	NC	NC	NC
Hearing Officer Orders Issued	11	3	2	5	3	NC	NC	NC
Elections Conducted (includes AC)	8	8	6	3	3	6	7	6
<b>TOTAL</b>	<b>82</b>	<b>57</b>	<b>51</b>	<b>72</b>	<b>152</b>	<b>39</b>	<b>58</b>	<b>38</b>
<b>FINAL DISPOSITION</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>	<b>1996</b>
Notices of dismissal issued	28	18/43	13/38	48	89	67	27	15
Cases settled or withdrawn	31	25	25	23	45	87	69	25
Cases that went to hearing	6**	8**	4	6	7	3	10	29
Impasse matters settled or withdrawn	0	1	0	0	5	2	0	1
Cases deferred to arbitration	0	1	3	1	1	1	0	1
<b>TOTAL</b>	<b>65</b>	<b>53/78</b>	<b>45/70</b>	<b>78</b>	<b>147</b>	<b>160</b>	<b>106</b>	<b>71</b>

\*NC = not counted

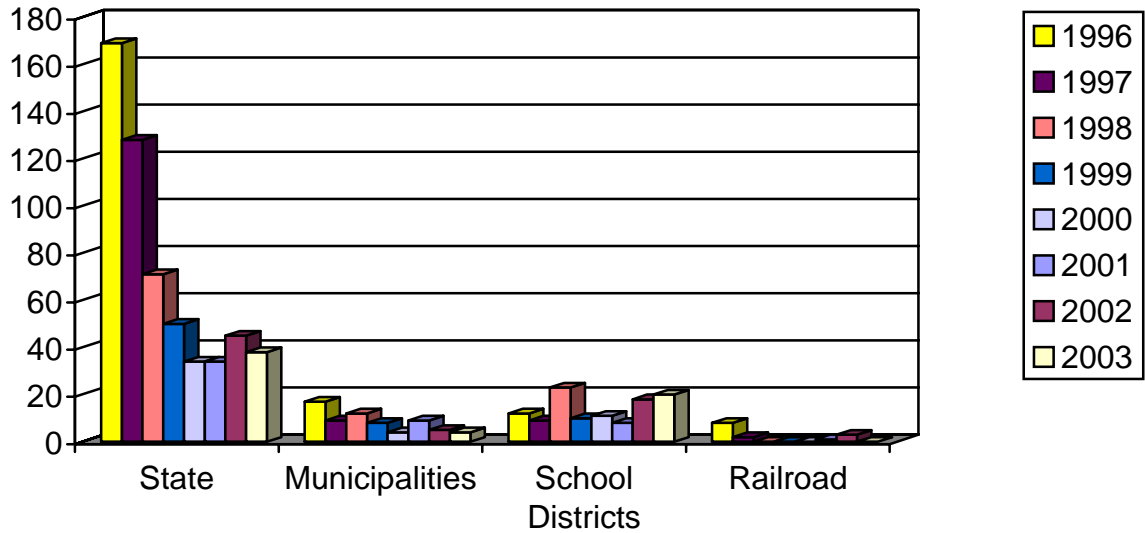
\*\* 4 cases consolidated for purpose of holding hearing due to limited travel funds (2003 and 2002)

**CHARTS**

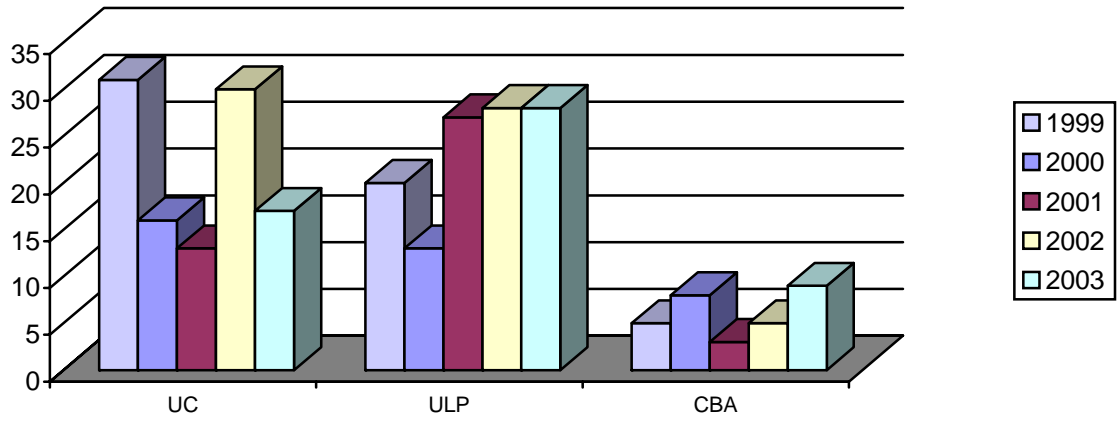


**PROGRAM COMPARISON BY YEAR**

- |                                 |                                  |
|---------------------------------|----------------------------------|
| RC Representation petitions     | ULP Unfair labor practice charge |
| SP Strike notices and petitions | RE Religious exemption claim     |
| UC Unit clarification petitions | CBA Contract Enforcement         |



**EMPLOYER COMPARISON BY YEAR**



**PROGRAM FIVE YEAR TRENDS**

UC Unit clarification petitions  
ULP Unfair labor practice charge  
CBA Contract Enforcement

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## REPRESENTATION PETITIONS (AS 23.40.100; AS 42.40.750)

Representation petitions are filed by labor organizations, employers, or employees to initiate a secret ballot election for certification or decertification of an employee representative for collective bargaining. Less frequently, a petition is filed to advise the agency that the employer consents to the labor organization's representation of a particular unit of employees. This notification of consent to recognition does not require the Agency to conduct an election. At any rate, most petitioners seek an election. Before an election can be conducted, the Agency must resolve any objections to the election or the composition of the bargaining unit. Often a hearing before the Agency is needed. Petitions for representation of a municipal bargaining unit frequently require examination of the validity of a municipality's rejection of PERA under the opt-out clause in legislation adopting PERA, section 4, ch. 113, SLA 1972. Employer objections to the unit that the labor organization seeks to represent also are common. The Agency conducts the election, rules on objections or challenges to the conduct of the election, and certifies the results. If the petitioner seeks to sever a group from an existing unit, the petitioner must demonstrate that the existing unit was not fairly representing the interests of the smaller group, and that the smaller group is an appropriate unit, among other factors.

The Agency conducted two elections in 2003 that resulted in certification of new bargaining units. In one election tally held on April 2, 2003, the classified employees of the Southeast Island School District voted for representation by the Southeast Island Education Association, NEA-AK/NEA. In the election, 16 employees voted for representation and 7 employees voted for no bargaining representation. The results of the election were certified and the election certificate was issued on April 11, 2003.

In the second election tally held on May 13, 2003, 29 employees of the Haines Borough voted for representation by Public Employees Local 71, AFL-CIO and 6 employees voted for no bargaining representation. The results of the election were certified and the election certificate was issued on May 20, 2003.

One decertification/representation petition was filed by the Public Safety Employees Association (PSEA) in 2003. Objections were filed, and the Board heard the objections on June 27, 2003. In this case, PSEA seeks to carve out adult probation and parole officers from the general government unit. A decision and order is pending in this case.

Unit amendment petitions are filed to obtain an amendment of certification due to changed circumstances, such as a change in name, affiliation, site, or location. Although there were no unit amendment petitions filed in 2002, the Agency received four petitions for amendment of certification of a unit in 2003. These petitions were all filed by the

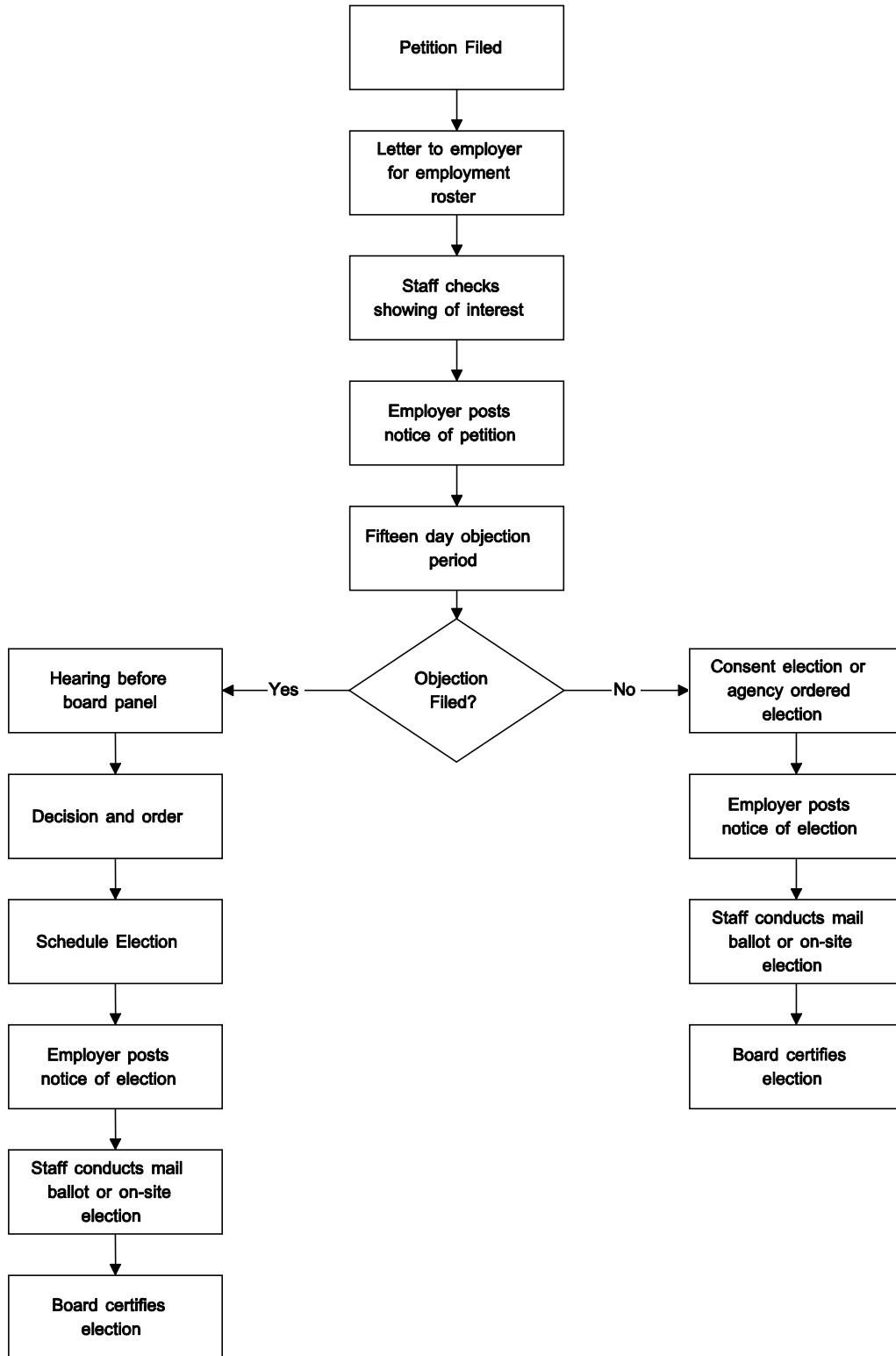
National Education Association-Alaska (NEA-AK). One petition sought to show disaffiliation with bargaining unit members of the Yukon-Koyukuk Educational Support Personnel Association after Y-K Assn failed to meet minimum standards of affiliation with NEA-AK. The amendment of certification was issued on April 29, 2003 for this case.

Two amendment petitions were filed to show a change of name to better reflect the responsibilities of certified teachers and non-certified staff of the Haines School District. Amendments of certification were issued for both bargaining units on September 29, 2003 showing a change in the name from the Haines Teachers Association, NEA-Alaska/NEA to the Haines Education Association, NEA-Alaska/NEA, for the bargaining units of the certified teachers and non-certified staff.

The last amendment petition filed by NEA-AK alleged that Hydaburg Education Association failed to meet the minimum standards of affiliation with NEA. The required information according to 8 AAC 97.015 and 8 AAC 97.015 was never received and the case was dismissed due to inaction.

<b>REPRESENTATION PETITIONS FILED</b>	<b>6</b>
Employer	
State	1
Municipalities	1
Public Schools	4
Type	
To certify a new unit	1
To decertify the unit	0
To change representatives	1
To amend certificate	4
Hearings conducted	1
Petitions that proceeded to election	1

**REPRESENTATION PETITION FLOW CHART**



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**STRIKE AND STRIKE CLASS PETITIONS (AS 23.40.200; 8 AAC 97.300; AS 42.40.850)**

Public employees under PERA are divided into three classes, depending on their right to strike. Under PERA the agency hears disputes about strike classifications and impasse matters. Effective May 18, 2003, the Agency repealed 8 AAC 97.300, which had given it some oversight of strike vote elections held by labor organizations. School district bargaining representatives must submit to advisory arbitration before the employees may strike, and before districts may implement their last best offer. 8 AAC 97.300.

There was one strike petition filed during 2003 compared to two filed in 2002. There were no strike petitions filed in 2001.

The strike petition filed in 2003 involved employees of the Valdez City School District, represented by the Valdez American Federation of Teachers, APEA/AFT. In this case, the Valdez City School District alleged the parties were at impasse and requested appointment of a mediator. In July 2004, the Agency's Hearing Officer dismissed the request after the District's representative advised the Agency that the parties had completed both mediation and advisory arbitration. The case was closed.

**STRIKE PETITIONS FILED**

1

Employer

State	0
Municipalities	0
Public Schools	1
Railroad	0

Hearings Conducted	0
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## UNIT CLARIFICATION AND UNIT AMENDMENT PETITIONS (8 AAC 97.050)

Unit clarification and unit amendment petitions are filed to resolve disputes over unit composition. An employer's reorganization of its staff, or adding or eliminating positions can raise a question of the appropriate unit. Representation may not be an issue in a unit clarification petition, and unit issues that come up in the process of handling a representation petition are not counted here.

Historically, most unit clarification disputes have arisen as objections to State transfers of employees from one bargaining unit to another. For example, the State may change a position's job duties, which may affect the position's unit placement. Transfers between the State's general government unit (GGU) and the supervisory (SU) or confidential (CEA) units comprise most of the disputes. If investigation shows there is reasonable cause to believe that a question of unit clarification exists, the case requires a hearing that includes the State and both interested labor organizations.

Disputes arose substantially, over from the State's shift of employees to the supervisory unit from the general government unit, following the Agency's 1995 amendment to the definition of "supervisory employee." The amendment, intended to simplify determining who is a supervisor, has been controversial. However, on October 15, 1999, the Alaska Supreme Court upheld the validity of the regulation defining "supervisory employee." (*See Alaska State Employees Ass'n/AFSCME Local 52 v. State of Alaska*, 990 P.2d 14 (Alaska 1999)).

The Supreme Court decision seemed to effectively reduce the number of UC petition filings. After several years of increased activity that challenged Agency resources, the UC caseload is becoming more manageable. Although the number of unit clarification case filings in 2003 (17) decreased from the number filed in 2002 (30), the 2003 total is generally comparable to the trend for the past five years. (See trends chart page 10). As in prior years, most UC petitions 2003 were state-related disputes.

In 1998, the Agency tackled the significant rise in UC cases by implementing streamlined procedures and adjusting caseloads. As a result, the Human Resource Specialist I took over responsibility from the Hearing Officer to handle initial investigations. Under the revised procedure, the Agency sends the parties a comprehensive questionnaire to gather relevant information, rather than waiting for the parties to provide it, or proceeding to hearing, as was done previously. (For example, 28 UC disputes went to hearing in 1996. These hearings are rare now.)

The revised procedures have enabled the Agency to conclude 344 UC disputes since 1998. In January 2003, there were 46 open UC petitions. By December 31, 2003, 17 UCs had been filed with 34 having been resolved. By August 2004, additional UC filings increased the UC caseload back to 46 open cases. The Agency's Hearing Officer

previously handled UCs. The Hearing Officer's only remaining tasks for UCs are to review and act on the Human Resource Specialist's recommendations, and hold hearings if there is reasonable cause to believe that a question of unit clarification exists. This reduced UC responsibility enables the Hearing Officer to devote more time to unfair labor practice investigations, mediation, and other important duties.

**UNIT CLARIFICATION PETITIONS FILED** 17

Employer

State	15
Public Schools	2
Municipalities	0
Railroad	0

Hearings conducted 0

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## UNFAIR LABOR PRACTICE CHARGES (AS 23.40.110; AS 42.40.760)

Employers, employee representatives, and individual employees may file unfair labor practice charges. Charges against employers include retaliation for union membership or exercise of employee rights, coercion, domination or interference with an organization, and bad faith bargaining. Charges against unions include coercion, bad faith bargaining, dues disputes, and interference with the employer's selection of its collective bargaining representative.

Unfair labor practice filings in 2003 (28) equaled 2002's total and exceeded 2001 (27) slightly. The general trend shows a significant increase in case filings the past few years. (See trends chart, page 10, and table, page 23). Of the 28 charges filed in 2003, more than two-thirds (20) concerned bad faith bargaining. Other charges included interference with protected rights, the duty of fair representation, domination or interference with the formation, existence, or administration of an organization, retaliation, unilateral action by an employer, and violation of Weingarten rights.

The Agency ranks ULPs by level of priority. For example, collective bargaining and other disputes that affect a large number of employees receive higher priority. Eleven of the 28 ULPs filed in 2003 were classified as high priority. Six of these cases were dismissed after the parties settled, one was dismissed because an investigation found no probable cause, and four are held in abeyance at the complainant's request. High priority filings were unusually large in 2003. (There were only three such filings in 2002). A large number of high priority cases filed in a short time frame impacts average investigative time. Moreover, several of the high priority cases stemmed from school district disputes. Summer recess delays completion of investigative interviews of teachers and other district employees.

There were 30 open unfair labor practice cases on December 31, 2003. There are currently 33 open unfair labor practice cases as of August 2004. One of the open cases was filed in 2000, five in 2002, 12 in 2003, and 15 ULP cases have already been filed as of August 2004. The open case from 2000 was deferred to arbitration. When a case is deferred, the Agency puts the case on hold (or in abeyance) until the parties complete the arbitration process.

The Agency concluded 26 investigations in 2003, similar to totals in 2002 (29) and 2001 (22). The Agency completed these 26 investigations in an average of 135 days. The Agency's implementation of a more streamlined, efficient unfair labor practice procedure effective January 1, 1999, has been instrumental in reducing the time to conclude investigations in 2003. (See timeliness chart page 23).

Of the 26 investigations concluded in 2003, 11 were high priority and 15 were normal priority. The average number of days to conclude a high priority ULP for 2003 was 60 days, with 190 the average number of days to conclude the normal priority cases. Complexity of cases, whether high or normal priority, varies considerably. The nature of the case and its complexity affects staff's ability to complete investigations within the Agency's time targets. The Agency's ability to complete investigations timely is affected negatively when case filings rise significantly. Regardless of the extent of this rise and the total caseload, the Agency must work the caseload with the same number of staff.

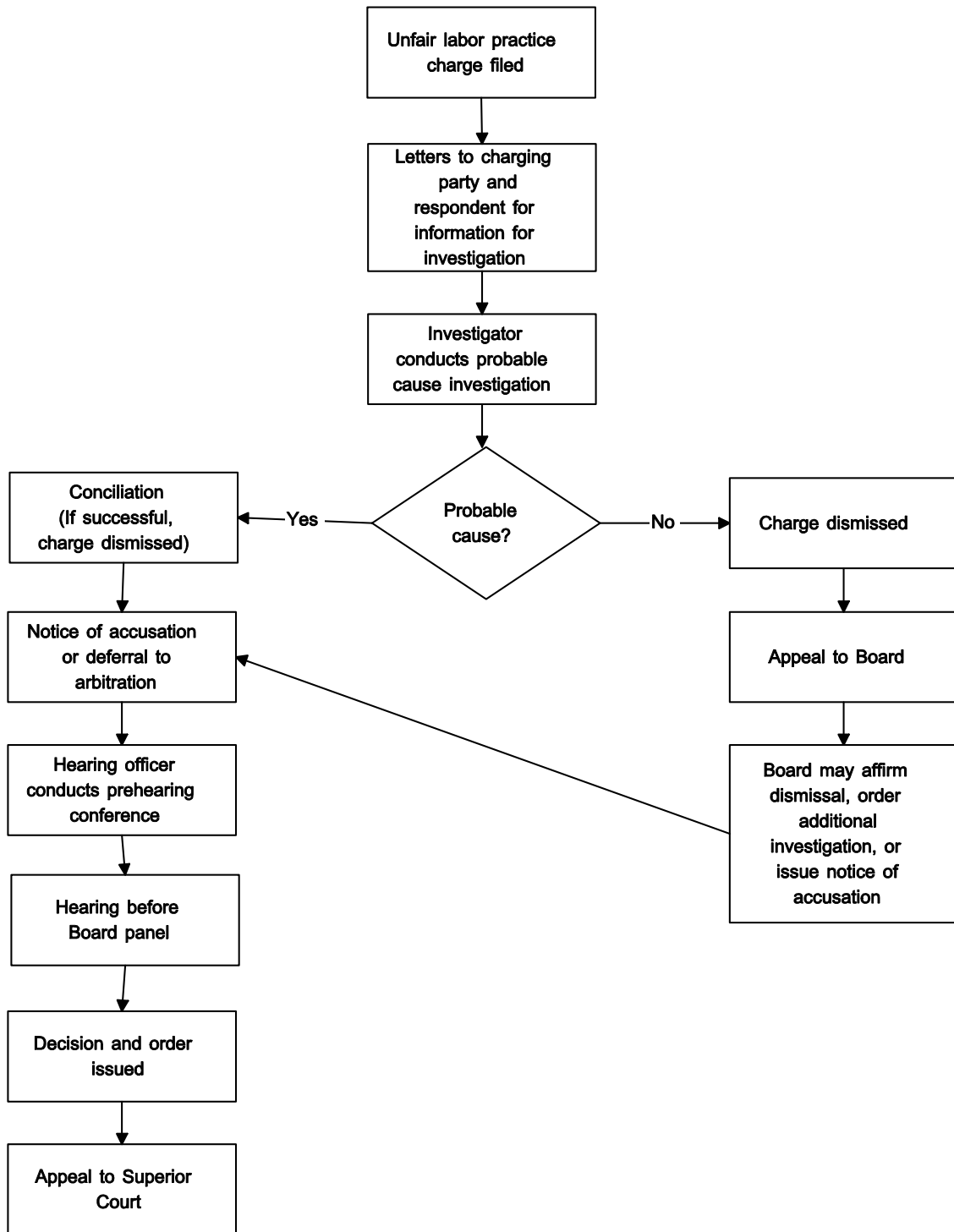
**UNFAIR LABOR PRACTICE CHARGES FILED** 28

Employer	
State	15
Municipalities	2
Public Schools	11
Railroad	0
Type	
Arbitration related	0
Bad faith bargaining	20
Retaliation	1
Interference with protected rights	1
Domination or interference (a)(2)	3
Union duty of fair representation	1
Employer action without bargaining	1
Information request	0
Scope of bargaining	0
Weingarten	1
Discrimination	0
Impasse	0
Other	0
Investigations	26
Hearings conducted	4
Other resolution	
Dismissals (no probable cause)	3
Deferrals to arbitration	0
Settled or withdrawn	20
Dismissed, inaction	3
Dismissed, final order	0
Dismissed, Insufficient	0
Remand	0
Other	0

**COMPARISON BY ULP COMPLAINANT**

<b>Complainant</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>
Alaska Public Employees Ass'n	3	3	2	0	1	4
Alaska State Employees Ass'n	3	3	8	3	6	1
I.B.U.P.	2	0	1	0	1	0
I.B.E.W.	0	0	0	0	3	0
UA Classified Employees Ass'n	0	0	0	0	0	0
ACCFT	2	2	0	0	0	5
Other Unions	6	7	8	3	0	1
School Unions	9	8	1	2	0	6
Individuals	1	2	6	4	7	3
Employers	2	3	1	1	2	2
<b>Total ULPs filed</b>	<b>28</b>	<b>28</b>	<b>27</b>	<b>13</b>	<b>20</b>	<b>22</b>

### UNFAIR LABOR PRACTICE CHARGE FLOW CHART



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**CLAIMS FOR RELIGIOUS EXEMPTION (AS 23.40.225; AS 42.40.880)**

AS 23.40.225 and AS 42.40.880 allow a public employee to seek an exemption from union membership or agency fee payment on the basis of religious convictions.

<b>CLAIMS FILED</b>		<b>0</b>
Employer		
	State	0
	Municipalities	0
	Public Schools	0
	Railroad	0
Hearings conducted		0

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**PETITIONS TO ENFORCE THE COLLECTIVE BARGAINING AGREEMENT  
(AS 23.40.210; AS 42.40.860(b); 8 AAC 97.510)**

AS 23.40.210 and AS 42.40.860(b) authorize the agency to enforce the terms of a collective bargaining agreement (CBA). Because all agreements under AS 23.40.210 must contain an arbitration clause to handle disputes under the agreement, 8 AAC 97.510 requires that parties first exhaust the arbitration clause or show that it does not apply before filing a petition with the agency to enforce the agreement.

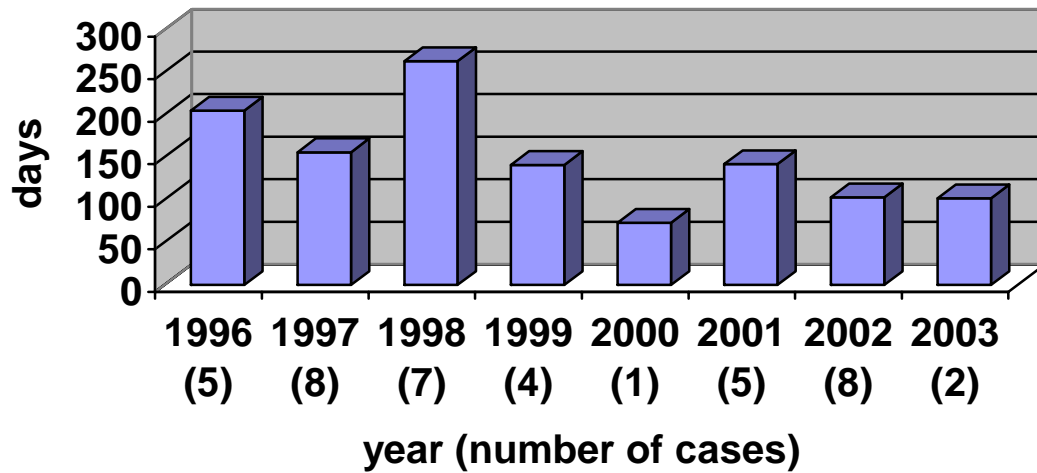
Nine such petitions were filed in 2003, which exceeds totals for 2002 (5) and 2001 (3). The 2003 total more than doubles the average number of CBA petitions filed yearly in the 1993 – 1996 period (4). The largest number of CBA petitions was filed in 1997 (10).

<b>CBA PETITIONS FILED</b>		<b>9</b>
Employer		
	State	6
	Municipalities	1
	Public Schools	2
	Railroad	0
Hearings conducted		2

## TIMELINESS

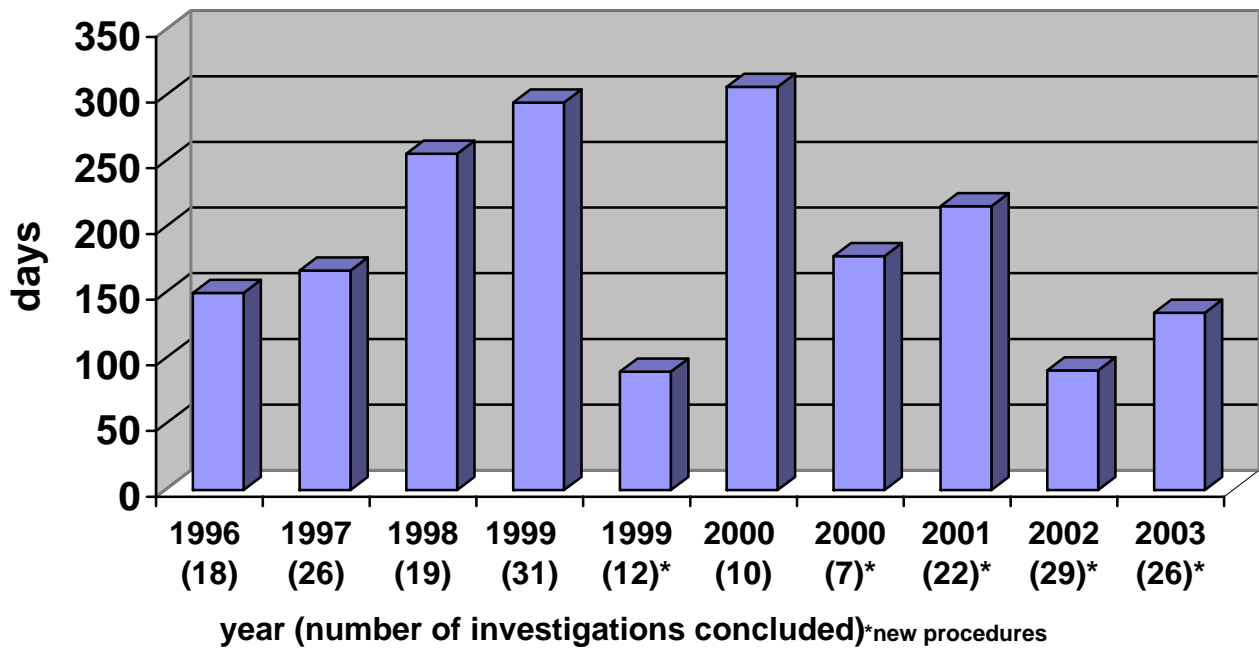
### ELECTIONS

NUMBER OF DAYS TO CERTIFICATION OF ELECTION.



### UNFAIR LABOR PRACTICE INVESTIGATIONS

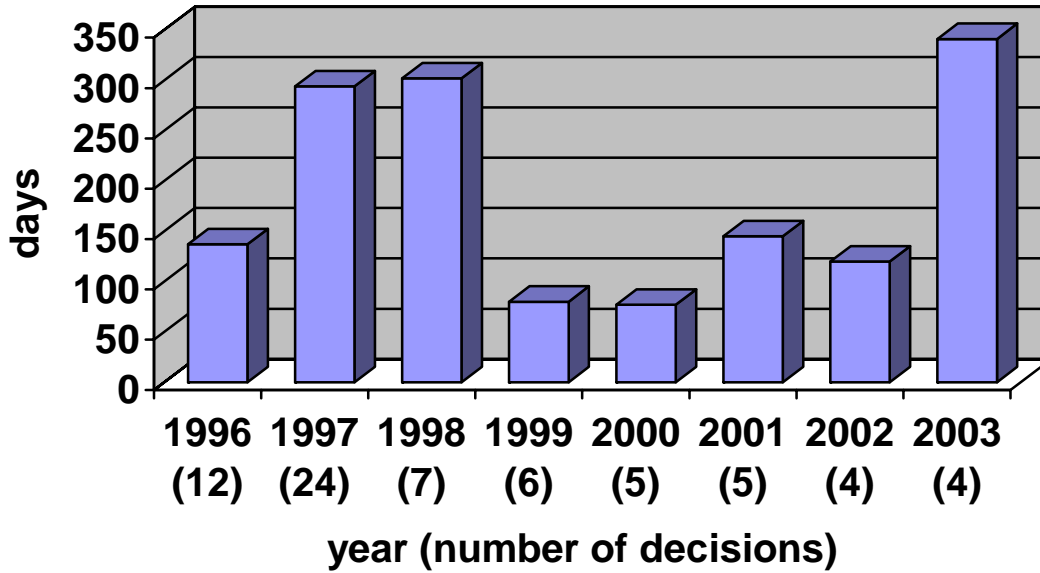
NUMBER OF DAYS TO CONCLUSION OF INVESTIGATION.





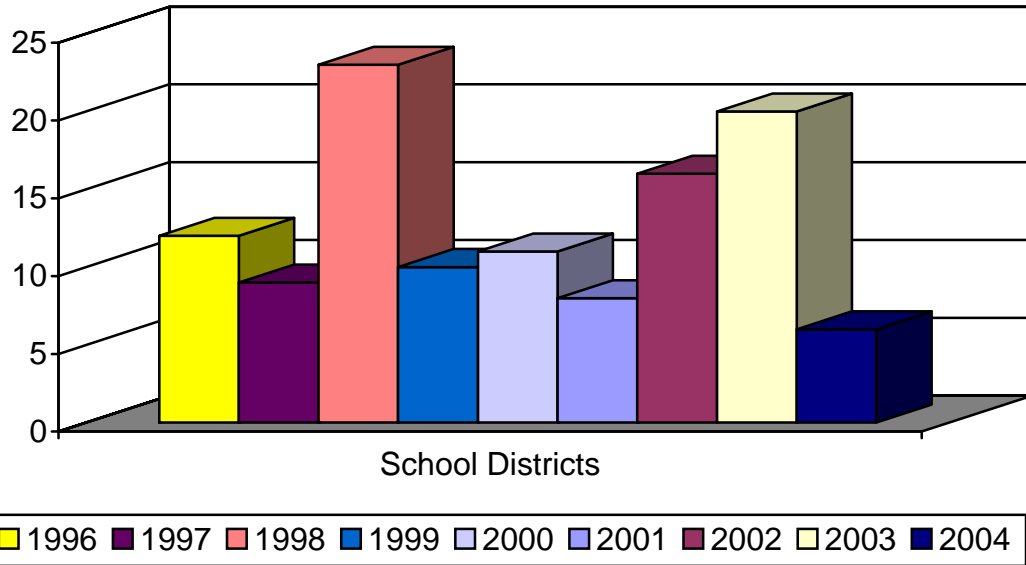
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DECISION AND ORDERS



NUMBER OF DAYS FROM CLOSING OF RECORD TO DECISION

**SCHOOL DISTRICT ACTIVITY FROM 1996 TO 2002, AND 1<sup>ST</sup> QUARTER OF 2003  
FOR ALL CASES FILED**



Breakdown of cases filed in 2001 (9)		
Case Type		EDUCATION
CBA		0
RC		3
RC/RD		1
RD		1
SP		0
UC		0
ULP		4

Breakdown of cases filed in 2003 (11)		
Case Type		EDUCATION
CBA		2
RC		0
RC/RD		0
RD		0
SP		1
UC		2
ULP		11

Breakdown of cases filed in 2002 (18)		
Case Type		EDUCATION
CBA		1
RC		5
RC/RD		0
RD		0
SP		1
UC		2
ULP		9

Breakdown of cases filed in 2004 (6)		
Case Type		EDUCATION
CBA		0
RC		0
RC/RD		0
RD		0
SP		0
UC		0
ULP		6

## DECISIONS AND ORDERS ISSUED

1. ALASKA VOCATIONAL TECHNICAL EDUCATION CENTER TEACHERS, NEA-ALASKA vs. STATE OF ALASKA and ALASKA STATE EMPLOYEES ASSOCIATION, AFSCME LOCAL 52, AFL-CIO, Decision and Order No. 262 (February 19, 2003). In this case, the Board concluded that a training specialist position at the Alaska Vocational Technical Education Center (AVTEC) in Seward shares a greater community of interest with members of the AVTEC teachers' unit than with members of the ASEA general government unit. The Board also found there was no contract bar to the transfer of the position from the AVTEC teachers' unit to the general government unit on July 1, 2000. The State appealed the Agency's decision to the Alaska Superior Court (case number 1JU-03-00240 CI) on March 25, 2003. The court affirmed the Agency's decision on January 26, 2004, stating in part that, "[t]he ALRA's findings were comprehensive and credible" and that, "[t]he court finds that its decision is reasonable and supported by the evidence."
2. INTERNATIONAL ORGANIZATION OF MASTERS, MATES, & PILOTS PACIFIC MARITIME REGION ILA, AFL-CIO AND DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO vs. STATE OF ALASKA, Decision and Order No. 263 (April 21, 2003). During a break in formal contract negotiations, State employee Robert Doll (who was not a bargaining team member) discussed unmanned layoffs with the marine unions. A dispute later arose between the parties over an alleged oral agreement that was not included in subsequent collective bargaining contracts. The unions filed unfair labor practice charges. The Board held that the parol evidence rule barred consideration of the oral discussion between Doll and the unions. Alternatively, the Board concluded that the unions failed to prove that their oral discussion with Doll produced a binding, enforceable agreement with the State.
3. ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT, AFL-CIO vs. STATE OF ALASKA, Decision and Order No. 264 (April 21, 2003). APEA and the State disagreed whether a grievance dispute should be submitted to arbitration. APEA had filed a grievance on behalf of Steve Baseden, who had been terminated by the State. The State argued termination was valid because Baseden was a probationary employee. Baseden also filed suit in Alaska Superior Court, and the court held that Baseden was a permanent employee. The State subsequently agreed to settle the grievance by returning Baseden to work, subject to conditions. APEA contended the State's offer of settlement did not resolve all issues related to the grievance. The Board ordered the parties to arbitration. The Board found that resolution of the dispute required contract interpretation, which was the province of an arbitrator. The Board also found that the State also failed to timely respond at Step 2 of the grievance process. The State appealed the Agency's decision to the Superior Court in case number 1-JU-03-00379-CI on May 19,

2003. On March 23, 2004, the court affirmed the Agency's decision, stating that "[t]he issue on appeal is whether a grievance was "granted" and "settled" at step three of the grievance procedure set out in the CBA. The court concluded that the Agency did not err in sending the dispute to arbitration.

4. STATE OF ALASKA vs. INTERNATIONAL ORGANIZATION OF MASTERS, MATES, & PILOTS PACIFIC MARITIME REGION ILA, AFL-CIO AND DISTRICT NO. 1 MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO, Decision and Order No. 265 (May 6, 2003). The State alleged that the two marine unions, MEBA and MM&P committed an unfair labor practice by negotiating with state employee Robert Doll, who was not a member of the State's negotiating team. The Board held that the unions' December 2, 1999, meeting with Doll regarding unmanned layups did not interfere with or coerce the State in its designation of representative for collective bargaining negotiations. The Board concluded that Doll had no authority to negotiate for or obligate the State to any agreement.

## APPEALS

The Alaska Superior Court issued one decision in 2003 that relates to the Public Employment Relations Act.

*Alaska State Employees Ass'n/AFSCME Local 52 vs. State of Alaska*, Decision & Order No. 261 (12/31/2002). ASEA filed a petition to arbitrate a grievance after the State moved some ASEA bargaining unit members to exempt service in accordance with legislation signed into law. The Board held that under the parties' collective bargaining agreement, a threshold issue of arbitrability must be decided by an arbitrator. The State appealed the decision to the Alaska Superior Court in case number 1-JU-03-00075-CI on January 30, 2003. The Superior Court affirmed the Agency's ultimate conclusion, on December 9, 2003, stating "ALRA's decision is REVERSED as to its central legal conclusion that "arbitrability is for the arbitrator" on placement of positions in a bargaining unit; but, is AFFIRMED in its result in so far as it sent the Article 12.04 question to arbitration." The court held: "Any interpretation of the [collective bargaining agreement] granting the arbitrator the power to determine arbitrability on placement of positions in bargaining units is void due to the policy preference as expressed by AS 23.40.210." However, the court agreed with the Agency Board that the dispute should proceed to arbitration over alleged violation of a notice provision in the parties contract.

## OTHER AGENCY BUSINESS

**Board Business Meetings.** The Agency conducted two business meetings during 2003. Several years ago, the Agency reduced scheduled business meetings from four to two due to travel and other funding reductions. The Board has discussed conducting some business meetings by phone but believes in person meetings are important for Board members, Agency staff, and the public. In-person meetings give the public the opportunity for face-to-face communications with Board members.

**Outreach.** On December 11, 2003, Mark Torgerson spoke at the Alaska Association of School Boards' Conference. The talk addressed the Public Employment Relations Act (PERA). The Agency has also conducted outreach to public employees and public employee labor organizations during this reporting period.

## LEGISLATION -

In addition to SB 95 (discussed at page 3 under highlights), the Governor signed into law House Bill 83 and House Bill 282. House Bill 83 amends portions of the Uniform Arbitration Act. The effect on the Public Employment Relations Act is minor and is procedural rather than substantive. House Bill 282 authorizes the president of the University of Alaska to approve a contract between the University and an employee that

authorizes the employee to conduct research of intellectual property, and to develop and operate a business related to that research. House Bill 282 also adds AS 23.40.075(5) to provide that these contractual agreements are not subject to collective bargaining. In other words, parties may not negotiate terms contrary to these research and development agreements between the University and one of its employees.

## REGULATIONS

The Agency Board did not propose or adopt any new regulations during 2003.

Agency regulations appear in 8 AAC 97.010 -- 8 AAC 97.990. Copies are available upon request.

## BUDGET

The Agency budget remains very lean. Fortunately, Governor Murkowski's proposal to increase the Agency's budget to fully fund the Administrative Clerk III position was passed by the legislature during the 2004 session. However, the Agency has already experienced a reduction in travel costs due to a recent requirement to pay additional and unforeseen Internet technology costs. The Agency's budget has been flat lined for several years, but the FY 2005 budget does fully fund staff costs for this fiscal year.

The Agency continues to work on efficiencies. The principal component in the budget is the wages and benefits for the four full-time staff members. To stay abreast of its caseload, the Agency has effectively streamlined procedures when possible, and within the constraints of due process. The Agency continues to increase reliance on automation. To minimize costs, it schedules hearings in Anchorage when possible, schedules multiple hearings on successive days, and relies on telephone conferences for participation by persons outside the Anchorage area when necessary. Moreover, the Agency hears disputes for decision on the written record where appropriate. Still, Board members find that in-person hearings are a more effective way to conduct Agency hearings.

The Agency also conducts elections by mail ballot, avoiding travel and loss of productive employee time during travel. Further budget reductions may impact the Agency's ability to provide postage for voters to mail ballots back to the Agency. This could impact voter participation in elections.

## **FISCAL YEAR 2004**

TOTAL	326.4
Personnel	281.5
Travel	13.0
Contractual	23.6
Supplies	8.3
Equipment	0.0

#### SUMMARY OF SERVICES AVAILABLE

Requests for services can be made either personally at the Agency's office in Anchorage, by telephone at (907) 269-4895, by fax at (907) 269-4898, or by e-mail to mark\_torgerson@labor.state.ak.us, unless otherwise indicated.

#### Board decisions.

Board decisions from 1973 to present are now available for download from the Agency's web site. Also available is a cross-reference list of Agency cases appealed to the Alaska Superior and Supreme Courts. Board decisions are also available by request from the Agency electronically or in hard copy by mail. Parties may pick up copies at the Agency office.

#### Business meetings.

The Board conducts business meetings in Suite 208 of the Department of Labor and Workforce Development building, 3301 Eagle St., Anchorage. A meeting agenda is available upon request to the Agency two weeks before the meeting. The Agency can accommodate requests to participate at the meeting by telephone. Such requests should be made seven days before the scheduled date for the meeting.

#### Fax filings.

The Agency will accept filing by fax, but the person filing by fax must then mail or personally serve the required number of copies of the document upon the Agency.

#### Filings.

The Agency maintains a record of all filings. The record is available for review in the office of the Agency, or by telephone at (907) 269-4895.

#### Forms.

The Agency has forms available to assist persons filing unfair labor practice charges, representation petitions, petitions for recognition by mutual consent, claims for religious exemption, petitions for unit clarification, and petitions to enforce the collective bargaining agreement. Parties are not required to use Agency forms, but the forms are provided for the convenience of the public. Persons can pick up these forms at the Agency's office or by telephoning (907) 269-4895. In addition, the forms are now available for download from the Agency's web site at <http://www.labor.state.ak.us/laborr/forms.htm>.

#### Information.

Staff members are available between the hours of 8:00 a.m. and 4:30 p.m. to answer questions about Agency process and procedure.

#### Library.

The Agency maintains a non-circulating library of labor relations texts, including BNA Labor Relations Reference Manuals. The library is open for public use.

#### Mediation.

Hearing Officer Jean Ward is available by appointment to answer general questions about mediation and Agency mediation services.

#### Publications.

**Pamphlet.** The Agency publishes a pamphlet containing the laws and regulations the Agency administers. Persons may request a copy of Pamphlet 900. The most recent pamphlet was published in May of 2002 and contains the changes to the regulations on Collective Bargaining among Public Employees 8 AAC 97.010 -- 8 AAC 97.990 effective on May 18, 2002.

**Report to Governor and the Legislature.** The Agency is required to report to the governor annually. AS 23.05.370(a)(4). Copies of the annual report are available upon request.

**Representation Services pamphlet.** This pamphlet is a basic description of the Agency's representation proceedings and is available at no charge.

**Unfair Labor Practices pamphlet.** This pamphlet is a basic description of unfair labor practices and the Agency's proceedings if an unfair labor practice is charged. The pamphlet is available at no charge.

**Practice Handbook.** This handbook provides information on practice before the Agency and is intended for use by persons who file or must respond to petitions and unfair labor practice charges.



Speakers.

Agency staff members are available to speak to groups about the Agency and its programs.

Tapes of agency proceedings.

Copies of tapes of Agency case proceedings are available upon a request. Please call Agency staff to arrange copying. Generally, there is no charge if the appropriate number of leaderless 90-minute tape cassettes is provided.