ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 208
P.O. BOX 107026
ANCHORAGE, ALASKA 99510-7026
(907) 269-4895
Fax (907) 269-4898

PUBLIC EMPLOYEES LOCAL 71, AFL-CIO,

Petitioner,

vs.

CITY OF HAINES,

Respondent.

Case No. 94-291-RC

DECISION AND ORDER NO. 184

This case was heard on August 30, and September 2, 1994, before a panel of the Alaska Labor Relations Agency, Chair Alfred L. Tamagni, Sr., and members James W. Elliott and Karen J. Mahurin, participating. Hearing examiner Jan Hart DeYoung presided. The record closed on September 23, 1994.

Appearances:

Kevin B. Dougherty, Attorney, for petitioner Public Employees Local 71; and Ronald W. Lorensen, Birch, Horton, Bittner & Cherot, for respondent City of Haines.

Digest:

The decision of the Department of Labor, Labor Relations Agency, in 1982 that the resolution of the City of Haines opting out of the Public Employment Relations Act was effective to bar consideration of a representation petition filed by Public Employees Local 71 in 1981 will bar that same labor organization's representation petition to represent the same unit in 1993.

DECISION

This is the second time the Agency has considered the effectiveness of Haines' rejection by resolution of the Public Employment Relations Act. In Public Employees Local 71 v. City of Haines, Decision & Order No. 163 (July 19, 1993), the Agency found that the resolution was untimely and therefore ineffective to reject PERA.

After this Agency issued this decision, it released International Union of Operating Engineers, Local 302, v. City of Kotzebue, Decision & Order No. 167 (Dec. 6, 1993), in which the Agency adopted a more flexible standard to evaluate the timeliness of a political subdivision's rejection of PERA. In that case the Agency found that a city's resolution, although adopted several years after PERA's enactment, was timely because the city was a remote and evolving community and had acted promptly after city officials' reasonable discovery of the option to reject PERA.

Haines had appealed the Agency's decision that it was subject to PERA. The superior court, the Honorable Michael A. Thompson presiding, remanded the case to the Agency for investigation and hearing on whether it would be appropriate to apply to Haines the more lenient standard applied in the Kotzebue case. City of Haines v. State of Alaska, case no.

1JU-93-1301 (Super. Ct. Mar. 9, 1993).

Upon remand, the parties presented evidence of conditions in Haines around the time that PERA was enacted. The parties also presented the history of collective bargaining in Haines and under PERA. Included was a letter establishing that the Department of Labor had reviewed the effectiveness of Haines' resolution rejecting PERA before in 1982 and had found the resolution effective to reject PERA. To promote the policies of finality in litigation and the importance of stable and predictable labor relations, the Agency now upholds this earlier determination and finds the resolution effective to reject PERA.

Findings of Fact

1. Haines is located at the head of the Lynn Canal in northern southeast Alaska, about 75 airline miles northwest of Juneau. Exh. F, at 3; Exh. HH.

2. History. The arrival of the Tlingit people in Haines "is lost in antiquity," but missionaries arrived in 1881 and the United States post office was established there in 1882. Exh. F, at 18. Haines was an important terminal point for prospectors and supplies for the Klondike gold strike in the 1890's, and in 1898 gold was discovered near Haines, accelerating population growth. Id., at 19. In the early 1900's the economy also included agricultural activity. Local government services developed in response to this economic activity. The original Port Chilkoot sewage and water systems were constructed in 1906. Exh. F, at 32. The City of Haines incorporated as a first class city on January 24, 1910. Exh. 2; Exh. C, at 1. For Alaska, the area of the City of Haines has a long tradition of local government.

3. Conditions in Haines when PERA was adopted. The population of Haines and Port Chilkoot in 1970 was 1,125. Selected 1970 Census Data for Alaska Communities (Mar. 1974), Exh. A, at 5; but see Exh. E, at 2 (683 population); Alaska Population Overview 1981, at 16, Exh. B, at 2. The economic base of the area at that time included the timber, fishing, and tourism industries, and public employment.

4. Government was probably the largest employer in the area. The state, federal government, borough, and City all had payroll in the area. Fifty-nine positions were employed in the public schools. Fourteen were employed by the federal government. Exh. F, at 82. The state employed 34 employees. Id., at 83. In 1971, nine out of about 113 government employees were city employees. Haines, Overall Economic Development Plan (1971), Exh. C, at 6-7 & 14. Public safety services in the area included police chief and two patrolmen in the City and a trooper and a fish and game enforcement officer in the state troopers office. The area also had a state magistrate's court, a state probation office, and a federal customs office. Exh. F., at 36-37.

5. Between 1971 and 1976 the City's expenses for wages ranged from about $ 46,000 in fiscal year 1971 to $92,000 in fiscal year 1976. Exh. II; Exhs. CC-GG.

6. In 1971 the cities of Port Chilkoot and Haines merged. Exh 2. The City had a mayor-council form of government. Id. Local 71 business agent and legislative lobbyist Ed Flannagan explained that the mayor retains many more powers in this form of government than in a city manager form of government.

7. The records of the Alaska Municipal League show that the population ranged from 1,093 in 1972 to 1,366 in 1975. Exh. 2; Exh. E, at 2. In the early seventies, the City's resources were under pressure from population growth due to the construction of the trans-Alaska pipeline. Exh. E, at 2 & 7.

8. The construction priorities of the Haines area in the early seventies included a water and sewage disposal project and a high school. Overall Economic Development Plan, at 2 (1971), Exh. C. In 1975 those priorities were expanding the small boat harbor, water line and storm drainage improvements, street improvements, and a sewer infiltration study. Exh. E, at 18.

9. In 1976 municipal facilities were deemed adequate with the exception of police and fire services, which a study characterized as crowded and inefficient. Exh. F, at 130.

10. The Haines Borough operates the public school facilities. Postsecondary education was available in the Haines area

through the University of Alaska, Sheldon Jackson College, and the Alaska Community College. Exh. F, at 38.

11. Access to Haines was by air, including one scheduled airline, by ferry, and by highway. Exhs. D; Exh. E, at 7-8; Exh. F, at 20; & Exh. HH. One writer described the air service as poor, stating that Haines was "supposed to be served by daily plane service but very often the only planes . . . are charter services." S. Sagalkin, letter to Alaska House Commerce Committee (Jan. 21, 1972), Exh. D.

12. Communications included a telephone system, which was upgraded in the early seventies. Exh. E, at 16; Exh. F, at 50. Haines also received television transmission on two delayed channels. Exh. F, at 47-49. Residents had access to the Juneau Empire newspaper and a weekly local newspaper was published. A 1977 study characterized Haines communications as follows:

> Haines "essential communications network", which includes local and long distance telephone service, postal service and emergency radio communications, is in good shape; and the agencies and private sector operations responsible for its maintenance and improvement have shown that they can provide adequate facilities and service to meet the needs of the community. The Haines Network Television, a cable service offering network tv programming and Juneau commercial radio rebroadcasting, does an excellent job of keeping Hainesites aware of regional, statewide, national and worldwide news and current events.

Exh. G, at 33.

13. Haines in the seventies had many active civic and service organizations, such as the American Legion, a local chapter of the Elks Club, the Alaska Native Brotherhood and Alaska Native Sisterhood, and churches, among others. Exh. F, at 42. Several cultural centers were also available in the community, including the Chilkat Center for the Arts for the performance arts, and Alaska Indian Arts, Inc., for the design and production of Tlingit arts and crafts. Exh. F, at 41. Outdoor recreational opportunities included boating, camping, and hiking facilities. Exh. F, at 44.

14. A full range of businesses operated in the area, including utilities, telephone services, scheduled and chartered airlines, three grocery stores, five restaurants, two furniture stores, and a bakery, among others. Exh. C, at 4-5.

15. Knowledge of PERA. Key city officials should have been aware of the adoption of the Public Employment Relations Act (PERA) and the City's option to reject PERA's application to it in 1972. Minutes for an Anchorage Municipal League meeting on October 27, 1972, show that representatives from the City of Haines (the mayor and two City council members) were present. In the executive director's report, attached to the minutes, is a summary of legislation adopted in 1972, including the option to reject PERA:

> The "Public Employees Labor Relations Act". In my opinion this is the most adverse bill insofar as local governments are concerned to pass the legislature since the infamous PSC bill of 1970. The only thing we were able to salvage was the authority for political subdivisions to exempt themselves from the provisions of the Act by resolution or ordinance.

Exh. 1, at 10.

16. The first city administrator, David Nanney, was appointed on or around January 20, 1975, to April of 1976. He acted at the direction of the mayor. He stated that, because of the strong mayor form of government, he did not have the authority of, for example, a city manager. The mayor and City council members ran the City. Exh. F, at 30. Before Nanney's hire, personnel matters and hiring were performed by the mayor and council members.

17. The Alaska Municipal League established its public employee labor relations committee in 1975. Its objectives were to train labor specialists in each city and to distribute materials on labor issues. The League sent a letter announcing the formation of this committee and describing its goals to the City of Haines. R. Huffman, letter to W. Sele, Mayor (Mar. 27, 1975), Exh. H.

18. The first bulletin released by the League's public employee labor relations committee addressed the option to reject the Public Employment Relations Act in section 4, chapter 113, SLA 1972:

> The Right To Opt Out. The Public Employment Labor Relations Act, as originally promulgated at Chapter 113, 1972 SLA, included Section 4, a provision which allowed cities and boroughs of the state, whether or not home rule, to reject application of the public employment labor relation statute to their municipalities. In that regard, Section 4 provided: "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 provision applied." Soon after the enactment of the statute, many municipalities within Alaska did, in fact, opt out of coverage buy the act. . . . In those cases where municipalities have continued to regulate their own labor relations program, such regulation has been accomplished largely by municipal ordinances or resolutions or by unwritten policy directed by the respective administrative and legislative sections of the municipality. Several questions arise out of the provisions of the "opt out" section of the session laws. Specifically:
>
> 1. Why was Section 4 not published in the Alaska Statutes when such statutes were promulgated and what is the effect of the failure to publish that section?
>
> 2. By what procedure must a municipality opt out?
>
> 3. Do any time limits prevail as to when a municipality may opt out or may it come and go under the act as many times as it sees fit?
>
> 4. What are the relative advantages and disadvantages of the application of the act to municipal government in the state?
>
> 5. If a municipality desires to opt out, should the municipality enact its out legislative framework for collective bargaining?

The bulletin further states,

> While it appears that no minimum time frames were placed in the statute for exercise of the option, municipalities should not wait until after the desire for employee organization is presented to management from its employees before exercising this option.

Alaska Municipal League Public Employment Labor Bulletin No. 75-1 (June 16, 1975) (received in the City of Haines on June 23, 1975), Exh. I.

19. The Anchorage Municipal League conducted a labor relations training course in the fall and winter of 1975, which it announced in July of 1975. R. Huffman, letter to W. Sele (July 16, 1975), Exh. J (received in Haines on July 21, 1975).

20. The International Brotherhood of Electrical Workers conducted an organizing drive among Haines city employees after a request by Francis M. Haas. Haas, a long time resident of Haines, was employed by the City on January 13, 1976, and remained employed there until January 13, 1983, water and waste water plant.

21. The IBEW filed a petition with the Department of Labor, Labor Relations Agency (DOLLRA) on April 14, 1996, to represent a unit of City employees, including all public works employees, the harbor master, animal control officers, fire fighters, police department personnel and office employees. Exh. 101.

22. DOLLRA mailed copies of the petition to the City on May 18, 1976. Exh. 103. The petition and issues about the appropriate composition of the bargaining unit were addressed an a meeting of the City council on May 26, 1976, Exh. K. The City council considered the issue of objecting to the IBEW's petition on June 3, 1976, and determined to file an objection with the Department of Labor. Exh. L.

23. The City's objection was based on four grounds: (1) the employees did not share a community of interest; (2) the unit combined supervisory and nonsupervisory personnel; (3) the unit included persons with significant responsibility for formulating and carrying out management labor policy; and (4) the unit "is not reflective of the desires of all the employees of the City of Haines." Objection (undated), Exh. M.

24. The City determined to allow City administrator Dan Bockhorst to take the Alaska Municipal League's correspondence course on labor relations on July 8, 1976. Exh. N; Exh. Q.

25. The DOLLRA conducted a hearing on the objection that one of the positions was supervisory and inappropriate for inclusion in the unit. Determination of Hearing (July 19, 1976), Exh. 108.

26. DOLLRA on August 26, 1976, conducted an election on the question whether the employees of the City of Haines wished IBEW to represent them in collective bargaining. Exh. 109.

27. Eleven voters participated in the election, only seven of whom were apparently eligible. The tally was 5 votes for representation by the IBEW and 2 votes for no representation. Exh. R.

28. The City objected to the conduct of the election. The specific objection was that the ballots of the City clerk and City treasurer were improperly counted. The City argued that the positions had been excluded from the unit in DOLLRA's Determination of Hearing and that the positions should be excluded from the unit because the City clerk and City treasurer act in a confidential capacity to a person who determines and carries out management policy in labor relations. D. Bockhorst, letter to J. O'Connor (Aug. 27, 1976), Exh. Q.

29. The IBEW's position after the election was that it had prevailed even if only uncontested ballots were counted. It pointed out the lateness of the City's objection to the positions it had challenged and asserted that any errors had been the responsibility of either DOLLRA or the City, whomever had typed the eligibility list. Exh. 104.

30. Although the eligibility issue does not appear to have affected the outcome of the election, DOLLRA declared the election invalid and ordered a new election "at the earliest convenient instance of the prime parties." The reasons were that four ineligible votes were cast; that the observers and election supervisor failed to sign the election forms certifying the conduct of the election and the tally sheet; and that there was a question whether the parties agreed to the eligibility list. Determination of Objections (Sept. 7, 1976), Exh. R.

31. The perception of Francis Haas was that the IBEW was not certified because it had failed to follow through on the election paperwork.

32. The City's administrator expressed regret that the election had been declared invalid and stated the City's interest in proceeding with a proper election expeditiously. D. Bockhorst, letter to L. Leland (Sept. 13, 1976), Exh. T.

33. Apparently the IBEW had asked for DOLLRA to reconsider its order invalidating the objection and the City was anticipating a reversal of the earlier decision. City Council Minutes (Nov. 1, 1976), Exh. V. The City administrator expressed an opinion at a City council meeting that the IBEW would not receive a majority of the votes if the election were to be held that day. Id. DOLLRA, however, upheld its original determination. Exh. 106; Exh. X. The City administrator confirmed in writing the City's position that a new election should be held. D. Bockhorst, Letter to F. Boyd, IBEW (Dec. 8, 1976), Exh. Y.

34. DOLLRA advised the IBEW that its authorization cards were outdated and new cards would be required. Exh. 107. IBEW apparently did solicit interest cards from City employees after the election had been declared invalid. City Council Minutes (Dec. 20, 1976), Exh. Z.

35. A second election was never held.

36. Some months later, on May 2, 1977, the City adopted the ordinance purporting to reject PERA. City Council Minutes (May 2, 1977), Exh. BB, at 2 & 5. Resolution 5277-A states:

RESOLUTION REJECTING THE APPLICATION OF ARTICLE 2 OF

AS. 23.40 KNOWN AS THE PUBLIC EMPLOYMENT RELATIONS ACT

WHEREAS, section 4 of the Public Employment Relations Act reads as follows:

> "Sec. 4. 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."

NOW THEREFORE, BE IT RESOLVED, by the council of the City of Haines that the Public Employment Relations Act, Chapter 113, SLA 1972, is hereby rejected and declared to be non-applicable to the City of Haines.

Stip. No. 2, Public Employees Local 71 v. City of Haines, Decision & Order No. 163.

37. Haines had no knowledge of any attempts of its employees to organize for collective bargaining purposes when it the time it adopted Resolution 5277-A. Stip. No. 3, Public Employees Local 71 v. City of Haines, Decision & Order No. 163.

38. Francis M. Haas again became interested in union representation in 1981 and sought representation from Public Employees, Local 71. F. Haas, letter to A. Baffone (Sept. 1, 1981), A. Baffone, letter to F. Haas (Dec. 17, 1981)(and interest cards), Exh. 4.

39. On December 10, 1981, Local 71 submitted a petition for certification as bargaining representative for city employees to the DOLLRA. Exh. MM.

40. After a review of Haines resolution no. 5277-A rejecting PERA and finding that the City had "opted out of PERA in a timely manner" DOLLRA representative Don Wilson advised that the department did not have jurisdiction to consider the petition. Exh. PP.

41. Local 71 did not pursue representation in Haines after the letter from Wilson until about 11 years later, in 1993.

42. On February 17, 1993, Public Employees Local 71 filed its second petition to represent in collective bargaining a unit of Haines' employees.

43. Included in the proposed unit were all nonsupervisory nonclerical employees: laborer, equipment operator, assistant water/sewer operator, harbor master, assistant harbor master, police dispatcher, police patrolman, police sergeant, and fire fighters. Excluded were all supervisory and clerical employees, consisting of city clerk, police chief, tourism director, city administrator, fire chief, water and sewer operator, public works foreman, treasurer, assistant treasurer, and tourism assistant.

44. On March 8, 1993, the Alaska Labor Relations Agency advised Frank Wallace, Mayor of Haines, that, because Resolution 5277-A was adopted more than one year after the effective date of PERA, it was untimely and ineffective to reject it under section 4, ch. 113, SLA 1972.

45. On March 17, 1993, Haines posted a timely notice of the petition in eight employee work sites in Haines, as required by the Agency.

46. Haines filed a timely objection to the Notice of Petition with the Agency on March 26, 1993, providing as grounds that its exercise of its section 4 exemption was timely and effective.

47. The Agency issued its decision and order no. 163 in this case on July 19, 1993, holding that adopting a resolution rejecting PERA approximately four and one half years after the effective date was ineffective to reject PERA. The City appealed the decision and on March 9, 1993, the superior court ordered the matter remanded to the agency to consider

the facts and circumstances surrounding the City's rejection of PERA under the principles applied in International Union of Operating Engineers v. City of Kotzebue, Decision & Order No. 167 (Dec. 6, 1993).

48. The matter was heard on June 30 and July 1, 1994. Due to a defect in the recording of the hearing, the matter was reheard on August 30, 1994, and the parties presented testimony and other evidence. The testimony of David Nanney was taken telephonically on September 2, 1994.

49. The record closed on September 23, 1994, the date of receipt of the parties' written closing statements.

Discussion

The City's position continues to be that passage of time does not affect the authority of a city to exempt itself from the Public Employment Relations Act. The subject of this remand is an examination of the facts surrounding the rejection of PERA in 1976 and the circumstances in the city at the time the legislature adopted PERA.

At the hearing, however, new evidence was presented of facts unknown to the Agency when it issued its first decision in this case. Local 71 in 1981 sought to represent a unit of Haines employees and the labor relations agency then administering PERA gave effect to Haines' resolution rejecting PERA. Local 71 did not appeal this determination or challenge it in any way until a new organizing campaign was undertaken in 1993.

Conclusions of Law

1. The City of Haines is a public employer under AS 23.40.260(7), and this Agency has jurisdiction under AS 23.40.100 to consider this petition for representation.

2. As a first class city, the City of Haines is a political subdivision under section 4, ch. 113, SLA 1972.

3. 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.

4. The Public Employment Relations Act, AS 23.40.070 -- 23.40.260 (PERA), was signed into law on June 7, 1972, and became effective on September 5, 1972.

5. The Act was introduced as an amendment to house bill 683, passed the Senate. Id. at 1005-1007. The House concurred in the amendment. 1972 House Journal 1321 (May 22, 1972), Exh. KK.[1]

6. Haines adopted its resolution 5277-A approximately four and one half years after the effective date of PERA. This Agency earlier found that the adoption was not "prompt" and the delay invalidated the attempt to reject PERA, Public Employees Local 71 v. City of Haines, Decision & Order No. 163 (July 19, 1993), but in this hearing it is reconsidering this issue.

Res judicata.

7. The doctrine of res judicata applies to administrative decisions. As stated in Johnson v. Alaska Department of Fish & Game, 836 P.2d 896, 906 (Alaska 1991):

> There are four basic requirements for the application of issue preclusion: the party against whom preclusion would work must have been a party, or in privity with a party, to the first action, Rapoport v. Tesoro Alaska Petroleum Co., 794 P.2d 949, 951 (Alaska 1990); the issue to be precluded from relitigation must be identical to the issue decided in the first action, Id.; the first action must have resolved the issue by final judgment on the merits, Id.; and the determination of the issue must have been essential to the final judgment, Restatement (Second) of Judgments § 27 (1982). In Alaska, as in most jurisdictions, issue

preclusion may apply to administrative adjudications.

quoted in City of Haines Closing Argument, p. 5. See also Campion v. State, 876 P.2d 1096 (Alaska 1994); Holmberg v. State, 796 P.2d 823, 825 (Alaska 1990).

8. This case satisfies these requirements. As the petitioner, Local 71 was a party to the earlier petition before the Department of Labor. The effect of Haines' resolution to reject PERA was the deciding issue in that petition, and because the decision was not appealed, the issue can be said to have been finally decided. Thus, the doctrine of res judicata requires that this Agency give effect to Haines' resolution 5277-A against Local 71.[2]

9. City of Haines Resolution 5277-A is effective to opt out of PERA for purposes of Local 71's petition to represent a unit of Haines' employees, and Local 71's petition must be dismissed.

10. The election of April 7, 1993, and the certificate recognizing Public Employees Local 71 are therefore invalid.

Kotzebue decision.

11. As directed by the superior court, we also consider the question of the timeliness of the rejection of PERA under our holding in International Union of Operating Engineers v. City of Kotzebue, Decision & Order No. 167 (Dec. 6, 1993). In that case we noted that the Agency applies a two part test to determine the effectiveness of an ordinance or resolution rejecting PERA. Id., at 12. The first part of the test is whether the political subdivision acted in derogation of employee rights under PERA. The second part is the timeliness of the decision.

12. The parties presented evidence of two earlier efforts to organize and represent the employees of the City by the IBEW in 1975 and by Local 71 in 1981. These organizing efforts raise the question whether Haines' resolution rejecting PERA was adopted in derogation of employee rights under PERA. The City adopted its resolution rejecting PERA in 1976, before one year had elapsed since the IBEW election. The DOLLRA had invalidated that election for various reasons and IBEW did not appeal the invalidation or pursue a second election. In Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993), the Borough had adopted a resolution rejecting application of PERA shortly after DOLLRA conducted a representation election in which the employees rejected representation by a labor organization. The Court found that, because the Borough had acted after knowledge of employee organizing efforts, it had acted in derogation of employee rights under PERA. The absence of organizing activities in the 12 days preceding the Borough's action did not eliminate the problem because the absence was consistent with the election bar in AS 23.40.100(c). Under AS 23.40.100(c) the employees could not petition for another representation election for another year. AS 23.40.100(c) establishes a one-year waiting period after a valid representation election before another representation election can be held.

13. In this case AS 23.40.100(c) would not have barred another election after the IBEW representation election in 1975 because the DOLLRA had found that election to be invalid.

14. Additional organizational activity would not have been fruitless in 1976. The City and DOLLRA had anticipated another election on the question of IBEW representation before the IBEW apparently determined not to pursue one. Because the election was not barred and there was no organizational activity at the time the City acted, the City did not act in derogation of employee rights under PERA when it adopted Resolution 5277-A.

15. The second part of the test is the timeliness of the City's resolution. The superior court remanded this case for additional fact finding and reconsideration of our earlier decision that the City's action was untimely. We have examined whether conditions in the City of Haines were similar to the conditions in Kotzebue in 1972. Kotzebue was not an established municipality in 1972 but rather a remote and evolving community. It employed only three employees and was justifiably unconcerned with labor relations issues until 1975. In contrast, the City of Haines was incorporated in 1910. The area was provided basic municipal services even before that time. The City employed nine employees in the year before PERA was adopted, and the mayor and City council members had actual knowledge of the adoption of PERA and the City's authority to exempt itself in 1972. The City of Haines, while at the precipice of changes brought by the construction of the Alaska pipeline, was an established and mature city at the time PERA was adopted.

16. We conclude that the exception applied in the Kotzebue decision is not appropriate under the facts of this case.

ORDER

Because we give effect to the decision by the Department of Labor, Labor Relations Agency that Resolution 5277-A rejecting the Public Employment Relations Act is valid, we hereby order that the election conducted in this matter is invalid, that the election certificate dated October 6, 1993, is invalid, and that the representation petition filed by Public Employees Local 71 in this case must be DISMISSED.

THE ALASKA LABOR RELATIONS AGENCY

Alfred L. Tamagni, Sr., Chair

James W. Elliott, Board Member

Karen J. Mahurin, Board Member

Board Member Mahurin dissenting:

I concur in that part of this decision holding that International Union of Operating Engineers, Local 302 v. City of Kotzebue, Decision and Order No. 167 (Dec. 6, 1993), should not apply to this case. While the City of Haines was beginning to expand government services to meet the pressures of growing population and economic activity, such services had existed in the City since the late 1800's. The area had well-established communication and transportation systems and a mature economic base. The circumstances in the City in 1972 do not excuse its failure to act promptly to reject the application of the Public Employment Relations Act under section 4, ch. 113, SLA 1972.

On the other hand, I must respectfully dissent from the remainder of the opinion. The employees in the City of Haines have on two occasions voted for self-determination and elected a bargaining representative. The International Brotherhood of Electrical Workers prevailed in a 1975 representation election, but were not certified as the bargaining representative because of an apparent technicality. The matter, however, was not pursued and the IBEW was never certified. A second organizational effort took place in 1981 and involved Public Employees Local 71. The Department of Labor told Public Employees Local 71 that it could not proceed with its petition to represent these workers because the City of Haines had adopted a resolution in 1977 rejecting PERA and that the department lacked jurisdiction to conduct an election. Local 71 did not pursue the matter further and an election was never held. The third organizing effort resulted in this petition, and while the issue of the opt out was pending, the second election in which the employees voted for representation in bargaining.

My fellow board members, however, find that the department's decision that it lacked jurisdiction in 1981 is a final and binding decision because it was not appealed. But this decision is only a letter from one state employee. There is no evidence that a hearing preceded the letter. There is nothing in the record showing that Public Employees Local 71 had any opportunity to present its views or be heard on the issue of the validity of the resolution before the letter was issued. This letter is a very weak basis on which to conclude that the employees of the City of Haines have no right to bargain collectively.

But more importantly, I believe that the letter was wrong. The City did not act to reject PERA until after substantial organizing activity had occurred. The time that had elapsed was only a matter of months. The resolution was adopted in May of 1977, not long after the IBEW's election in late 1976. By acting after employees had exercised rights under PERA, the City acted too late. I would affirm the first ruling in this case in Public Employees Local 71 v. City of Haines, Decision & Order No. 163 (July 19, 1993), and find that the resolution was untimely and ineffective to reject PERA. See also, Kodiak Island Borough v. State of Alaska, 853 P.2d 1111 (Alaska 1993).

Karen J. Mahurin, Board Member

APPEAL PROCEDURES

An Agency decision and order may be appealed through proceedings in superior court brought by a party in interest against the Agency and all other parties to the proceedings before the Agency, as provided in the Alaska Rules of Appellate Procedure and the Administrative Procedures Act.

The decision and order becomes effective when filed in the office of the Agency, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of Public Employees Local 71, AFL-CIO v. City of Haines, case no. 94-291-RC, dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 14th day of February, 1995.

Margie Yadlosky

Administrative Assistant

This is to certify that on the 14th day of February, 1995, a true and correct copy of the foregoing was mailed, postage prepaid, to

Kevin Dougherty/Pub Emp Local 71

Ronald W. Lorensen/Haines

Signature

1Evidence of bills introduced in the legislature over the years to repeal section 4, chapter 113, was offered to prove the legislature's intent on the continuing effectiveness of the section. Exh. LL. The general rule, however, is that the failure to adopt or modify a law has very little, if any, relevance on the legislature's intent. Grupe Development Co. v. Superior Court, 4 Cal. 4th 911, 923, 844 P.2d 545, 552 (Cal. 1993); Portland v. Duntley, 185 Or. 365, 381, 203 P.2d 640, 647 (Or. 1949). The reason is that the failure of a bill to pass the legislature can occur for a number of reasons. While a bill's failure to pass by a vote of the legislature may indicate intent, its stalling in committee or by a single committee chair does not. We cannot infer anything about the legislature's intent from the sole information that the bills were introduced and failed to pass.

2See also Millard v. International Brotherhood Of Electrical Workers, Local Union 1547 & Kodiak Island Borough, Decision & Order No. 183, at 14 (Dec. 21, 1994) (finding that maintaining the bargaining unit as earlier determined by Department of Labor, Labor Relations Agency, would promote stability and consistency).