
Alaska Labor Relations Agency

2022 Annual Report

*State of Alaska
Governor Michael J. Dunleavy*

*Department of Labor
and Workforce Development
Catherine Muñoz, Acting Commissioner*



*Tammy Schultz, Chair
Nicole Thibodeau, Administrator*

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Introduction

The Alaska Labor Relations Agency (ALRA) administers the Public Employment Relations Act (PERA), AS 23.05.060 - 390, for public employers and employees, including the State, municipalities and other political subdivisions, public schools, and the University. The Agency also administers the railroad labor relations laws for the Alaska Railroad Corporation, AS 23.40.070 - 260. ALRA investigates and processes 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. The Agency enforces collective bargaining agreements, determines employee strike eligibility, and makes impasse determinations.

1. Board and Staff Members

Six board members are appointed by the Governor and confirmed by the legislature to serve on the ALRA Board. Members serve staggered three-year terms. Under AS 23.05.360(a) board members must satisfy two requirements to be appointed. “The agency must include two members with a background in management, two members with a background in labor, and two members from the general public. All members must have relevant experience in labor relations matters.” No more than three board members may be of the same political party.

In March 2023, the Governor reappointed Dennis DeWitt to his public seat, and Dennis shortly thereafter resigned. Tammy Schultz was appointed to the seat previously held by Dennis DeWitt. Paula Harrison resigned from the Board, and the Governor appointed Emily Hall-Jackson to that seat. Jennifer McConnel was appointed to the management seat previously held by Patty Burley. Jennifer Yuhas was appointed to the Labor seat that had been vacant since Dennis Moen resigned in March 2022.

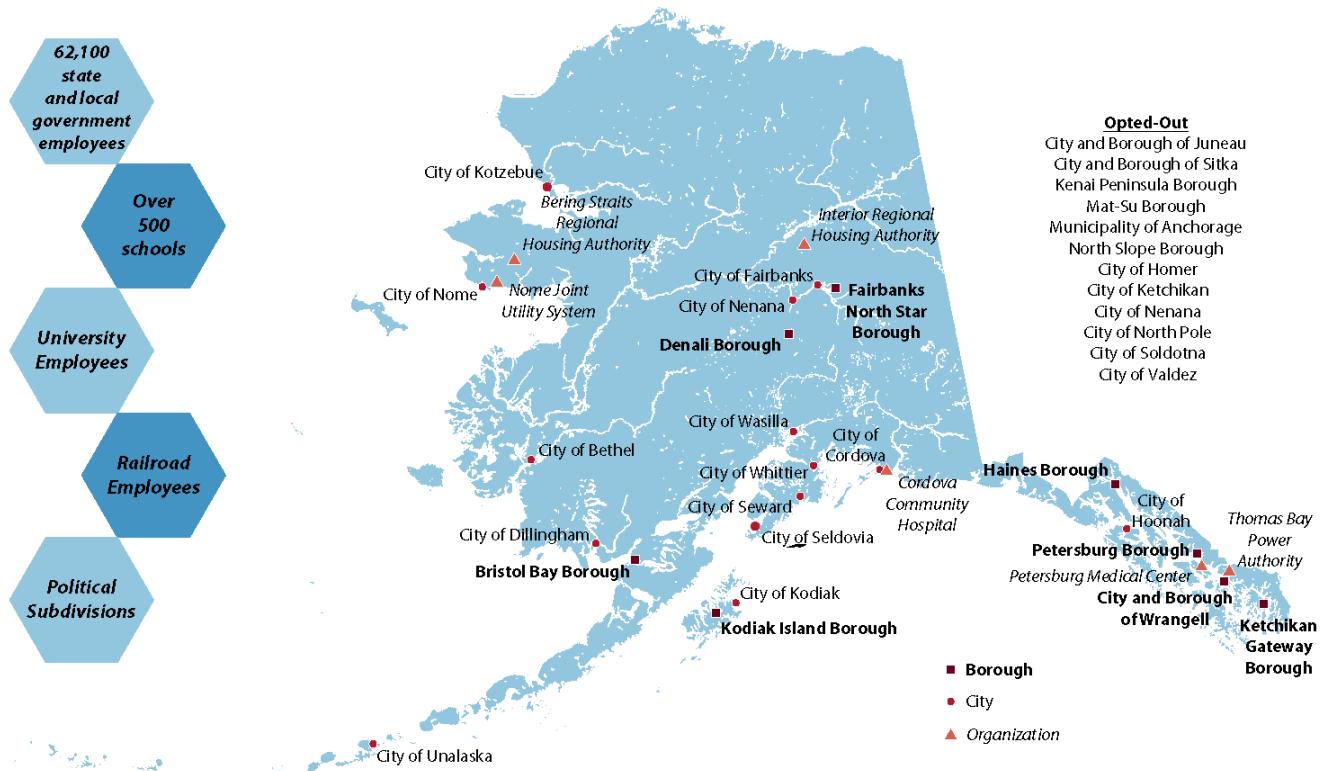
Board Members

| | | |
|--------------------------------|---------------------------|------------|
| Tammy Schultz, Chair | Appointed May 12, 2023 | Public |
| Emily Jackson-Hall, Vice Chair | Appointed May 12, 2023 | Public |
| Jennifer McConnel, Member | Appointed March 1, 2023 | Management |
| Tyler Andrews, Member | Reappointed March 1, 2021 | Management |
| Justin Mack, Member | Appointed March 1, 2021 | Labor |
| Jennifer Yuhas | Appointed May 12, 2023 | Labor |

Three full-time staff members manage the day-to-day agency operations under the direction of the Agency Administrator/Hearing Examiner.

Staff

| | |
|------------------|---|
| Nicole Thibodeau | Administrator/Hearing Examiner |
| Katherine Moody | Hearing Officer/Investigator |
| Talia Champion | Labor Relations Board Assistant/Human Resource Consultant I |



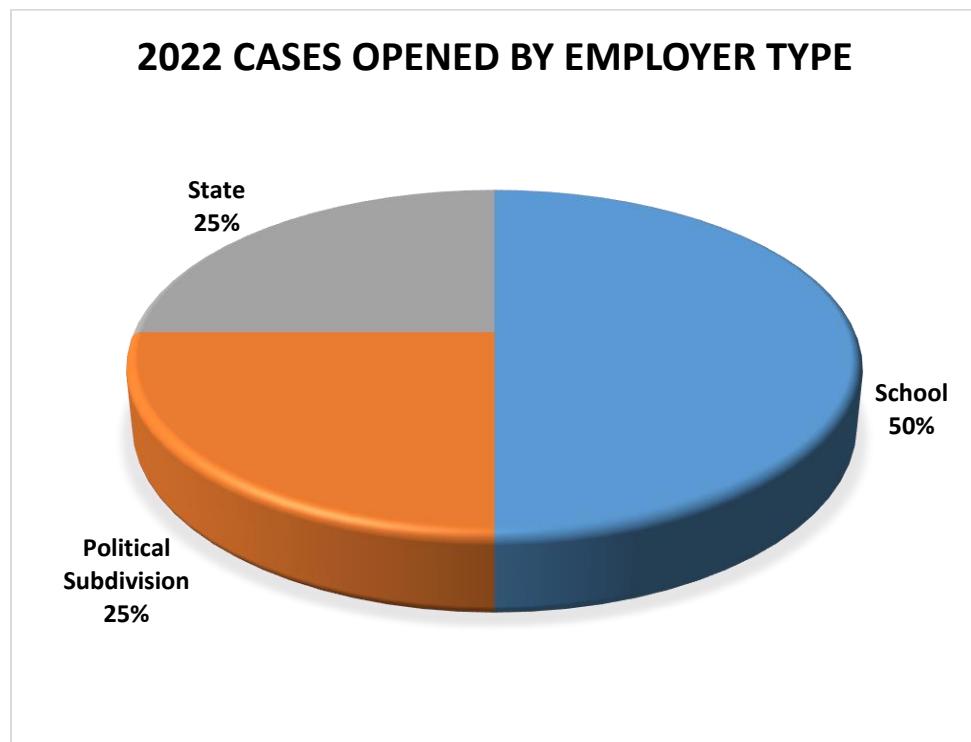
2. Jurisdiction

Under the Public Employment Relations Act (PERA) the Agency has jurisdiction over labor disputes of all state, railroad, public school, and political subdivisions¹ that have not opted out of PERA. Above is a graphic illustrating ALRA's jurisdiction with known political subdivisions covered by PERA identified on the map.² Those known to have opted out of PERA are listed to the right of the map.

¹ Because there is no mechanism by which political subdivisions inform the Agency of their PERA status, ALRA does not have a complete listing and it is subject to change. These are the political subdivisions that are currently known to have opted in or out of PERA.

² Count of total state and local government employees is derived from State of Alaska, Dept of Labor and Workforce Development Research and Analysis monthly employment statistics for Alaska, 2021 state and local government employee annual average estimates <https://live.laborstats.alaska.gov/labforce/000000/01/ces.html>.

As a result, the Agency handles cases from all over the state. A breakdown of cases by employer type below shows how many of each type were filed in 2022.



Agency Activity

Post pandemic, ALRA continues to conduct elections and other proceedings or meetings via Zoom, and MS Teams. When appropriate ALRA will hold proceedings in person. Because of the Agency's statewide jurisdiction and its scarce resources, most agency work is conducted over email, mail, and telephone. The addition of virtual meetings brought on by the pandemic has been a benefit to the Agency and its customers. Moving forward the hearing room at Eagle Street will be upgraded to accommodate hybrid board meetings and hearings. In collaboration with the Workers' Compensation Division, equipment was purchased and is anticipated to be installed and functioning in the hearing room. This project had been projected to be completed last fiscal year, but supply chain problems caused delays. The new anticipated completion date is by the end of calendar year 2023.

By working with the Workers' Compensation Division to combine certain subscriptions, ALRA has realized significant savings in the immediate term and into the future. Minimizing expenses where it can is an ongoing goal the Agency is always actively working towards.

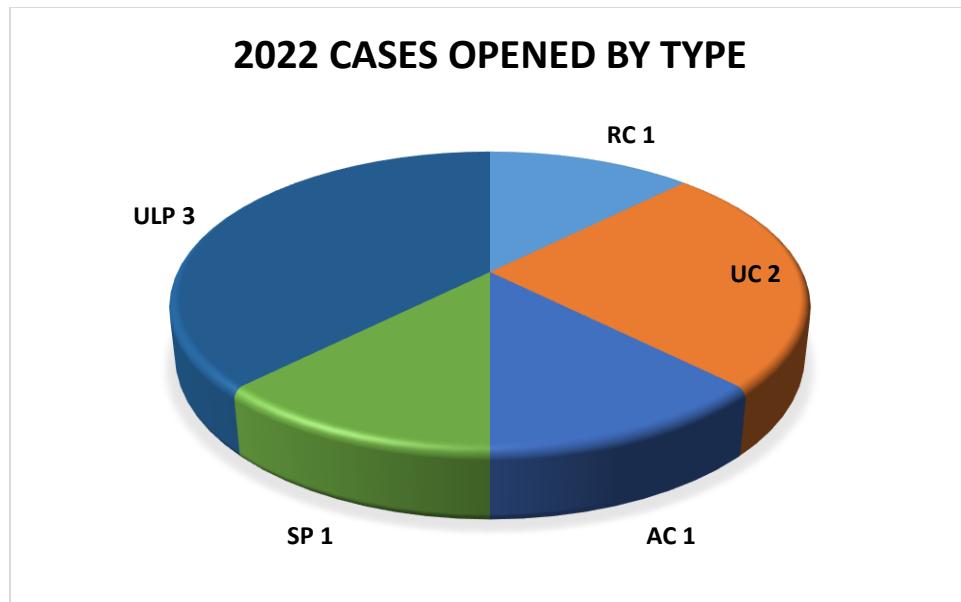
1. Adjudications

ALRA resolves disputes through an adjudicative process that begins with a party filing a petition or complaint with the Agency. When a petition or complaint is filed with the Agency,

staff first determine whether ALRA has jurisdiction over the matter. Then staff determine whether the petition or complaint meets the minimum filing requirements of the statutes and regulations. Depending on the type of petition or complaint filed, an investigation into the questions raised will begin. Staff may issue a decision, and all attempts are made to informally resolve the dispute between the parties. If needed, a hearing will be held before a board panel and a decision and order will be issued.

A. Types of cases

Agency staff are responsible for resolving petitions for representation (RC and RCRD), strike class determination (SC), impasse determinations (SP), unit clarification (UC), unit amendment (AC), religious exemption (RE), enforcement of collective bargaining agreements (CBA), and unfair labor practice complaints (ULP).



a. Unfair Labor Practice Complaints AS 23.40.110; AS 42.40.760

Employers, labor organizations, or individual employees may file unfair labor practice (ULP) complaints (charges). Resolving unfair labor practice cases generally consumes a substantial percentage of the Agency's time because the process requires an investigation, a prehearing conference, and a board hearing. Like all case types, ULP case filings are unpredictable in their nature and complexity because of the unique facts of each case. Types of 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 bargaining³, and interference with the employer's selection of its own representative for collective bargaining or adjustment at

³ Bad faith bargaining charges arise in the context of collective bargaining: one party believes the other party has failed to bargain in good faith under the law.

grievances. Often, petitions include multiple charges against a party. Additionally, employees may file duty of fair representation claims against unions if they believe the union has failed to adequately represent them.

The Agency ranks ULP's by level of priority to determine which cases are investigated first. For example, disputes that affect a large number of employees usually receive high priority. Priority level may change during the life of the case depending on specific facts and circumstances. While priority ranking affects which cases are investigated first, the nature and complexity of a ULP case and the extent of the parties' cooperation affect the time it takes to complete a ULP investigation. The Agency's ability to timely complete investigations is also affected when case filings rise significantly or other workload components such as elections or conducting hearings take priority.

During the investigation, if the hearing officer finds there is probable cause that a ULP violation occurred, and informal resolution⁴ is unsuccessful, the case is scheduled for hearing. Hearings may be live or based upon the written record. A case may resolve up to or even before conclusion of the hearing.

A total of three unfair labor practice charges were filed in 2022. Of those three charges filed in 2022, three included bad faith bargaining, and one concerned the interference with employees' protected rights. One included a charge to dominate with organization or activity, and one included a charge to discriminate against protected union employee activity. An employee may file a charge against a union claiming that the union failed to meet its duty to represent the employee. There were no duty of fair representation claims filed in 2022.

During 2022, the Agency closed four ULP cases and issued formal findings in four ULP investigations, in an average of 272 days. Of the four investigations that concluded with findings, all were normal priority, but they varied in length and complexity. Parties often request a case be put in abeyance as they attempt to reach settlement as was the case for open ULPs in 2022. In two ULP cases the complaints were withdrawn by the moving party. Probable cause to believe that an unfair labor practice occurred was found in one of the ULPs and it was forwarded to the Board for hearing; the parties settled before hearing. One complaint was dismissed after formal findings were issued. The Complainant appealed the hearing officer's findings to the Board and the Board affirmed the hearing officer's decision and dismissed the charge.

b. Elections/Representation

Under AS 23.40.100 and AS 42.40.750 labor organizations, employers, or employees may file a petition to initiate a secret ballot election for certification or decertification of a labor or employee organization for collective bargaining. Alternatively, parties may notify the Agency that the employer consents to the labor organization's exclusive representation of a particular unit of employees. When this occurs, no election is required if investigation verifies the majority status of the labor organization and no current collective bargaining agreement exists. Representation cases are designated as high priority for agency workload purposes.

Prior to conducting an election, the Agency resolves any objections raised by a party. For example, the employer may object to the composition of a bargaining unit. If a party files an objection, a hearing may be conducted before the Board which then issues a decision and order that clarifies who gets to vote in the election. During 2022, one representation petition was filed.

⁴ An effort to resolve the case informally through settlement is always made first and is required by AS 23.40.120.

Petitions for recognition by mutual consent are a type of representation petition filed where the employer consents to the labor organization's exclusive representation of a particular unit of employees. There were no petitions for recognition by mutual consent filed in 2022.

c. Strike Class Petitions (AS 23.40.200; AS 42.40.850)

Under PERA, the Agency hears disputes about strike classifications and impasse matters. Strike classification is important to employees and employers because it essentially determines whether employees have the legal right to strike. PERA divides public employees into three separate classes for purposes of authorization to strike. Class I's, such as police and firefighters, are prohibited from striking. Class II's, such as snow removal workers, may strike for limited periods of time until a court determines that public safety and health are affected. Class III's, which include a wide range of public employees, have a broad right to strike. There were no strike class petitions filed or closed in 2022. One impasse determination was filed in 2022.

d. Unit Clarification and Unit Amendment Petitions (8 AAC 97.050)

Unit clarification (UC) and unit amendment (AC) petitions are filed to resolve disputes over unit composition. An employer's reorganization of its employees' duties or adding or eliminating positions can raise a question of the appropriate bargaining unit for the positions. Representation cannot be at issue in a unit clarification petition, and unit issues that arise in the process of handling a representation petition are not counted here. Staff will conduct an investigation to determine whether these, or any other issues are present, and then issue findings. In 2022 two unit clarification petitions were filed, and one was closed. The one closed petition was withdrawn by the petitioner.

Unit amendment petitions are filed to change the unit's name, affiliation, site, or location. There was one unit amendment petition filed in 2022 and one closed in 2022.

e. Claims for Religious Exemption (AS 23.40.225; AS 42.40.880; 8 AAC 97.310)

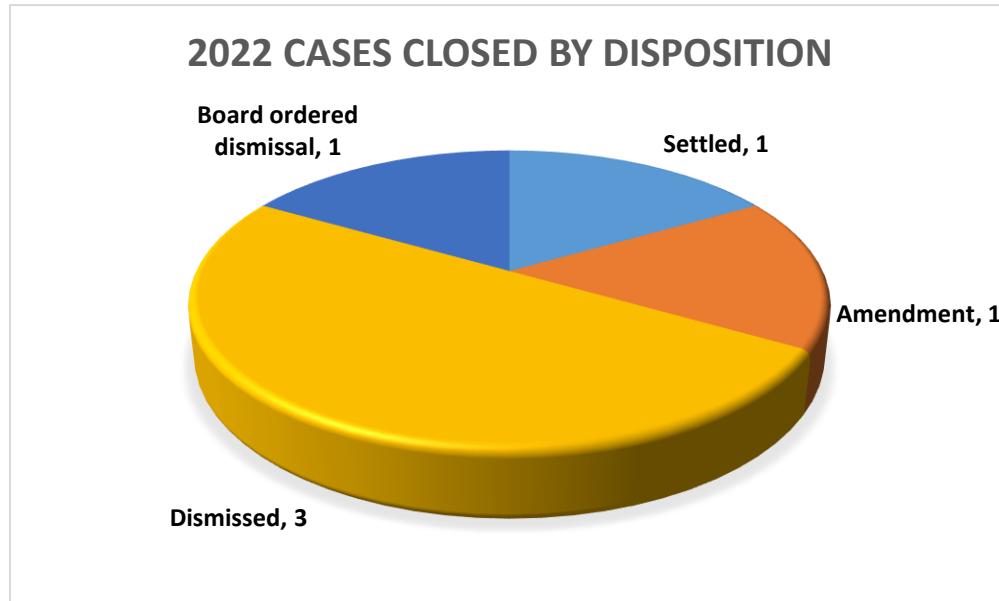
AS 23.40.225 and AS 42.40.880 allow a public employee to seek an exemption from union membership or agency fee payment on the basis of bona fide religious convictions. There were no claims for exemption filed in 2022. In the wake of *Janus v. AFSCME*, 138 S.Ct. 2448, (2018), it is anticipated that claims for religious exemption will no longer be filed.

f. Petitions to Enforce the Collective Bargaining Agreement (AS 23.40.210; AS 42.40.860(b); 8 AAC 97.510)

The Agency has statutory authority to enforce the terms of a collective bargaining agreement. Under the statute, all agreements must contain a grievance/arbitration procedure, which the parties must exhaust before filing a petition to enforce the agreement (CBA). There were no petitions to enforce the agreement filed in 2022.

2. Summary of Agency activity

In 2022, the Agency closed a total of six cases. Eight petitions and complaints were filed. In addition, 30 orders were issued in 2022. In 2022, the Board held one business meeting.



3. Informal Resolution

With an emphasis on informal resolution, agency staff conduct formal and informal mediation which can result in settlement. Specifically, AS 23.40.120 and 8 AAC 97.230 apply to ULP cases and require the hearing officer to attempt to resolve the dispute through the use of conference, conciliation, and persuasion.

In 2022, the hearing officer engaged in informal mediation in one cases. One case settled in 2022.

4. Summary of Decisions and appealed cases.

Few cases go all the way to a hearing before a board panel and include a decision and order. In 2022, there were two cases that went all the way to the Board for hearing. One case settled prior to hearing. The other case was an appeal of a hearing officer order and the Board affirmed the hearing officer's decision and dismissed the complaint. There were no cases on appeal before the Alaska State Courts.

5. Training

The ALRA Board is supported by ALRA staff who manage the day-to-day business of the Agency. Staff provide the Board legal advice and information and also provide information to the public and parties. It is important that the Board and staff members participate in continuing education to allow a professional and objective response to the myriad of complex and ever-evolving labor relations issues that come before the Agency. Training provides information and tools that increase the Board and staff's ability to produce a quality work product for the public.

In 2022, the hearing officer attended a Civil Mediation training at the National Judicial College (NJC). All staff participated in several online trainings that are normally only offered in person including presentations on labor relations issues offered by the American Bar Association (ABA), Federal Mediation & Conciliation Service (FMCS) as well as courses offered by the National Center for State Courts (NCSC).

6. Summer Externship

Interning at the Agency requires law students to apply through the Seattle University School of Law as part of its externship program. This program, started in 2008, as a combined effort by Seattle University School of Law, the Alaska Pacific University, and government entities to provide legal experience and training to law students.

The program encourages law students to consider relocating to Alaska and working in labor relations law or other legal fields. The Agency has received positive reviews from participating students and from Seattle University School of Law's program director. This program allows the extern to explore public sector labor relations laws, conduct labor relations research, write legal memoranda, read and digest opinions, briefs, and motions, write summaries of published agency decisions, and confer with agency staff on performing other technical duties they may encounter as new lawyers. In 2022, ALRA did not host a Seattle University law student intern.

7. Outreach

Agency staff provide information about the Public Employment Relations Act (PERA) to new representatives from public employee labor organizations and public employers and

distinguish it from the National Labor Relations Act (NLRA). As part of their discussions with new representatives, ALRA staff provide a history of the evolution of public labor relations in Alaska and at the Agency, provide instruction on how to file documents with the agency, and share insight gained through their experience at the Agency. They emphasize the importance of parties developing and maintaining good relationships, particularly after they experience long, difficult negotiations.

In 2022, the Agency fielded several labor relations questions including at least 251 public inquiries. Of those, 115 were regarding PERA and were unrelated to any open matter; and 136 of those were general inquiries unrelated to any open matter.

Resources

The Agency provides information on its website, accessible through the State of Alaska's home page at www.alaska.gov or directly at labor.alaska.gov/laborr. The site contains petitions, complaints, and instructions for filing. It also has a link for contacting the Administrator by e-mail, information about Agency programs and resources, and access to a searchable database of all Agency decisions. The Agency continues to add new materials to the website and welcomes public suggestions.

ALRA maintains a resource library accessible to the public, containing printed copies of public sector labor relations publications, printed copies of Agency decision and orders, and printed copies of election certificates. Patrons are encouraged to call the office first to ensure the library is not already in use.