
Alaska Labor Relations Agency 2016 Annual Report

*State of Alaska
Governor Bill Walker*

*Department of Labor
and Workforce Development
Commissioner Heidi Drygas*



*Alaska Labor Relations Agency
3301 Eagle Street, Suite 206
Anchorage, Alaska 99503
labor.relations@alaska.gov*

*Jean Ward, Chair
Mark Torgerson, Administrator*

Submitted June 6, 2017

2016 ANNUAL REPORT

Submitted June 6, 2017
(In accordance with AS 23.05.370)

INTRODUCTION

The Alaska Labor Relations Agency, or ALRA, administers the Public Employment Relations Act (PERA) for public employers and employees, including the State, municipalities, public schools, and the University. The Agency also administers the railroad labor relations laws for the Alaska Railroad Corporation. 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 also enforces collective bargaining agreements, determines employee strike eligibility, and rules on claims for religious exemption from the obligation to pay fees to a bargaining representative.

PERSONNEL

BOARD MEMBERS

A board of six members governs the Agency. The board members serve staggered three-year terms and must have backgrounds in labor relations. Two members each must be drawn from management, labor, and the general public. AS 23.05.360(b). Members volunteer their time as they are unpaid, but they receive per diem. Not more than three members may be from one political party. The following Alaskans serve on the Board:

Jean M. Ward, Chair	Appointed March 1, 2016	Public
Lee Holen, Vice Chair	Appointed March 1, 2017	Public
Elizabeth Pierce, Board Member	Appointed March 1, 2017	Management
Tyler Andrews, Board Member	Reappointed March 1, 2015	Management
Lon Needles, Board Member	Appointed March 1, 2015	Labor
Matthew McSorley, Board Member	Appointed August 13, 2015	Labor

STAFF

*Nicole Thibodeau, Administrator/Hearing Examiner
Tiffany Thomas, Hearing Officer/Investigator
Margie Yadlosky, Human Resource Consultant I

*Mark Torgerson, Administrator/Hearing Examiner, retired Effective May 31, 2017

OFFICE

3301 Eagle Street, Suite 206
Anchorage, Alaska 99503

Phone: 907.269.4895
Fax: 907.269.4898

Website: <http://labor.alaska.gov/laborr/home.htm>

STATUTES

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

REGULATIONS

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

2016 HIGHLIGHTS.

Board Appointments. During 2016, Governor Bill Walker appointed Lynne Curry as Board Chair replacing Gary P. Bader, who retired on March 1, 2016, after serving as board chair for almost twelve years. Governor Walker appointed Jean Ward to a public seat on March 1, 2016. In early 2017, two board members retired, Lynne Curry and Willard Askren. Governor Walker appointed current board member Jean Ward as Chair to replace Lynne Curry. New appointments to ALRA are Lee Holen, appointed to a public seat, and Elizabeth Pierce, appointed to a management seat. The Alaska Labor Relations Agency now enjoys a full board.

Interest Card Forgery Case. Since 2010, the Agency has worked with and assisted investigators and prosecutors at the State's Office of Special Prosecutions and Appeals in a criminal investigation related to forgery in a representation petition filed at the Agency. The investigation culminated in criminal charges filed in Alaska Superior Court on February 1, 2012, against a former union employee and a former state assistant attorney general. The former union employee was indicted on several felony forgery charges, and the former assistant attorney general was indicted on a charge of official misconduct, a Class A Misdemeanor.

On February 25, 2013, the former union employee pled guilty to forgery of legal documents. She was sentenced to 24 months in jail, with all time suspended, and was

ordered to pay the Department more than \$24,000 in restitution. The charge against the former assistant attorney general was heard in criminal court in October 2015, with three agency employees testifying. A jury found the former assistant attorney general guilty of this charge. The defendant appealed the verdict in November 2015, and the appeal is pending in the Alaska Supreme Court (appellate case number A12443) at this time.

Caseload Trends. Case filings in 2016 (24) increased significantly from the prior four year average of 15. This reflects a short-term trend of an increased caseload. (See “CASE LOAD COMPARISON BY YEAR” chart, page 8).

As shown by the “OVERVIEW” table on page 7, the number and type of cases filed each year is unpredictable. The Agency has no direct control over case filings. Factors that affect filings include organizing efforts, expiration of collective bargaining agreements, economic factors, and changes to statutes and regulations.

Appeals to Alaska Courts. There are currently three appeals pending between the Alaska Supreme Court and the Alaska Superior Court. The first appeal of an agency Decision and Order concerns a funding dispute of an approved collective bargaining agreement between the City of Fairbanks and the Public Safety Employees Association. This case was appealed to the Alaska Supreme Court on October 17, 2016, after the Superior Court affirmed in part and denied in part the determination of the ALRA Board panel. This appeal is still pending in Alaska Supreme Court.

The second appeal pending in the Supreme Court is a 2014 appeal of an agency Decision and Order concerning unit disputes at the University of Alaska. On February 11, 2016, Superior Court Judge Guidi affirmed the Agency Board’s decision in all respects. On March 11, 2016, this case was appealed to Alaska Supreme Court. This appeal is in the briefing stage. Until this 2014 appeal, there had not been an appeal of an agency decision since 2007.

The third appeal is in the Alaska Superior Court and concerns a December 5, 2016, ALRA Board dismissal due to lack of jurisdiction over an event that occurred before the City of Kodiak had opted back into the Public Employment Relations Act and under ALRA’s jurisdiction. The General Teamsters Local 959, filed this appeal on January 6, 2017. The appeal is currently pending, and oral argument has been scheduled.

Unit Clarification Petitions. In 2016, one unit clarification (UC) petition was filed. (See “CASES FILED” on page 7 for a year-by-year comparison). UC case filings have decreased in recent years.

Historically, UC petitions typically involved a dispute over the extent of an employee’s supervisory or confidential duties, and these petitions outnumbered all other filings combined. The primary factor in bargaining unit placement is the employee’s actual duties. Most UC disputes have involved 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). The unit clarification petition filed in 2016 involved a supervisory position represented by APEA that the State believed should be in the ASEA bargaining unit. In this case, the petition was dismissed due to insufficiency.

Unfair Labor Practice Complaints. Unfair labor practice (ULP) charges filed in 2016 (13) reflect an increase from 2015 (10) and 2014 (9). (See "CASES FILED" on page 7 for a year-by-year comparison). Completing unfair labor practice cases generally consumes a substantial percentage of the Agency's workload duties because the process requires agency investigations, prehearing conferences, and board hearings. Like all case types, ULP case filings are unpredictable in their nature and complexity because of each case's unique facts. (See "CASES FILED" page 7, analysis at page 14, and chart on page 15). In 2016, 31% of ULP filings were education-related, 38% were State-related cases, and 31% were political subdivision-related cases. There were no Alaska railroad cases filed during the year. (See "Unfair Labor Practice Charges Filed" page 15).

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. In 2016, 68% of unfair labor practice charges concerned bad faith bargaining, 8% dealt with domination or interference with formation, existence or administration of a labor organization, 8% concerned duty of fair representation, 8% concerned Weingarten rights¹, and 8% concerned the interference with employee's protected rights. Seven ULP investigations were completed in an average of 145 days compared to 147-day average to finish four in 2015 and a 133-day average to finish five investigations in 2014. As indicated above, case nature, complexity and workload size can affect the time to conclude investigations.

Elections. Four representation petitions were filed in 2016, the same number filed in 2015. The difference in 2016's filings are that all concerned certification of new bargaining units while 2015's concerned two for certification of a unit, one to decertify a unit, and one to decertify the current bargaining representative and certify a new representative. The number of representation petitions has generally decreased since 2010 when parties filed 11 such petitions. The decertification petition filed in 2015 was the first such petition filed in eight years. (See "CASES FILED" page 7).

Strike Class Petitions. There were no strike class petitions filed in 2016. (See "CASES FILED" page 7).

Emphasis on Informal Resolution. The Agency continues to encourage informal resolution through mediation and other means. To this end, the Agency's hearing officer works with parties to resolve unfair labor practice disputes. When successful, this informal resolution saves parties and the Agency the time and expense required to litigate these disputes through the hearing process. The Agency continues to resolve disputes

¹ Employee Weingarten rights give employees the legal right to union representation at an investigatory interview that could lead to discipline.

informally. In 2016, the hearing officer successfully resolved seven unfair labor practice cases.

Website. The Agency provides information on its Internet web site, accessible through the State of Alaska's home page (<http://www.alaska.gov>) or directly at <http://labor.alaska.gov/laborr/home.htm>. The site contains 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. The Agency also seeks feedback on the public's experience with the searchable database.

Training. The ALRA Board is supported on a day-by-day basis both legally and administratively by ALRA staff who have certificated legal experience and many years of on-the-job experience. 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 arise 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. However, due to a lack of funding, no board member has attended training or continuing education for several years. This lack of training funding could likely result in some board members losing knowledge of current case law, rules, and regulations pertinent to their decisions.

However, the Agency again provided training for a law student intern during the summer of 2016. This intern program, started in 2008, is a combined effort by Seattle University Law School, the Alaska Pacific University, and primarily Alaskan governmental entities to provide legal experience and training to law students. Last year's summer intern was Aaron Dobruck from Seattle University Law School via the University of Idaho and southern California.

Interning at the Agency requires law students to apply through the Seattle University School of Law as part of its "Study Law in Alaska" program. This program gives law students an opportunity to work in the labor law field and to experience a summer in Alaska. Students are selected by the ALRA Administrator. Due to limited funding, interns are no longer reimbursed for their plane fare or other expenses. Interns do not receive any compensation from the State for their training and their contributions to the Agency.

Among other things, the intern program encourages law students to consider relocating to Alaska and working in labor law or other legal fields. The Agency has received positive reviews from participating students and from Seattle University Law School's program director. This program allowed the intern to explore public labor 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 a new lawyer. Thus far, five interns who have completed the program have either moved to Alaska or plan to

move here. Two former interns have moved to Alaska, passed the Alaska Bar exam, and are now practicing law in Alaska.

Alaska now enjoys its first law school connection in-state. Starting with the 2015 fall semester, Seattle University School of Law opened a satellite campus at Alaska Pacific University (APU) in Anchorage. This program, offering students the opportunity to spend their third year of law school in Alaska, provides a variety of Alaska-related courses taught by Alaska's bench and bar and by faculty from Seattle University's School of Law. One former agency intern is attending his third year of law school at APU.

Outreach. Although there were no Agency presentations during 2016, Agency staff provided information about the Public Employment Relations Act (PERA) and discussed the difference between it and the National Labor Relations Act (NLRA) with new representatives from public employee labor organizations and public employers. ALRA staff provided a history of the evolution of public labor relations in Alaska and at the Agency and shared insights gained through their years of experience at the Agency. They emphasized the importance of parties' developing and maintaining good relationships, particularly after they experience long, difficult negotiations.

OVERVIEW

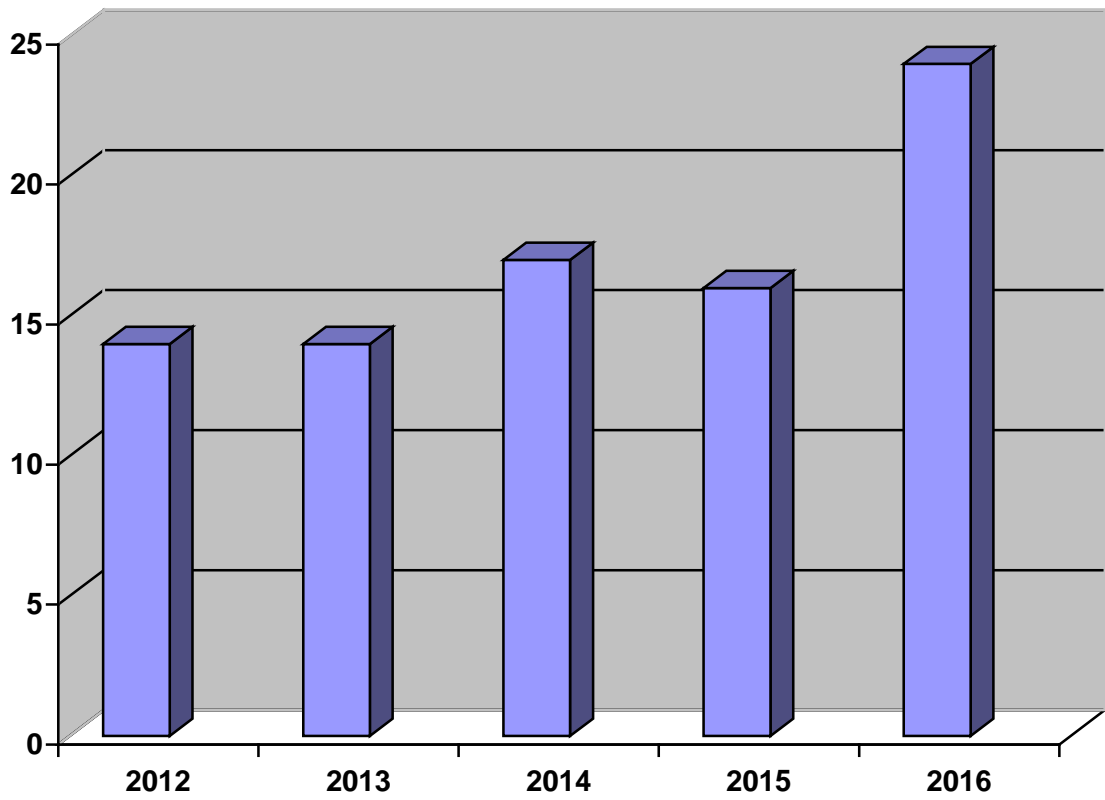
CASES FILED	2012	2013	2014	2015	2016
Amended Certification (AC)	0	0	0	0	2
Recognition by Mutual Consent (RM)	0	0	1	0	0
Representation (RC)	0	0	1	2	4
Decertification (RD)	0	0	1	1	0
Decert. to certify a new rep.(RC/RD)	0	0	0	1	0
Strike class petition (SP)	0	0	1	0	0
Unit Clarification (UC)	2	1	1	1	1
Unfair Labor Practice Charge (ULP)	8	12	9	10	13
Religious Exemption Claims(RE)	1	0	2	0	0
Contract Enforcement (CBA)	3	1	1	0	4
Other (OTH)	0	0	0	1	0
TOTAL	14	14	17	16	24

AGENCY ACTIVITY	2012	2013	2014	2015	2016
Unfair Labor Practice Investigations	8	5	9	4	7
Unit Clarification Investigations	1	1	1	0	0
Decisions and Orders Issued	1	4	2	3	4
Other Board Orders Issued	2	2	5	3	5
Hearing Officer Orders Issued	4	1	4	2	3
Elections Conducted (includes AC)	1	0	2	1	4
TOTAL	17	13	23	13	23

FINAL DISPOSITION	2012	2013	2014	2015	2016
Notices of dismissal issued	4	2	5	4	5
Cases settled or withdrawn	10	4	7	6	6
Cases that went to hearing	3	0	4	2	3
Impasse matters settled or withdrawn	0	0	1	0	0
Cases deferred to arbitration	0	0	1	0	0
TOTAL	17	6	18	12	14

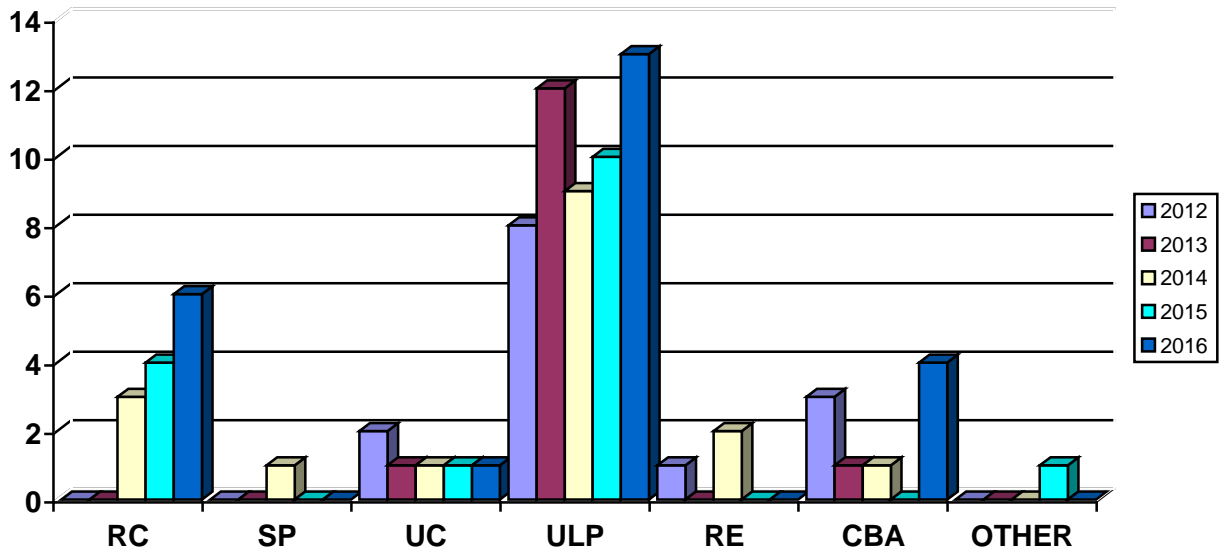
CASE STATUS SUMMARIES

CASE LOAD COMPARISON BY YEAR



CHARTS

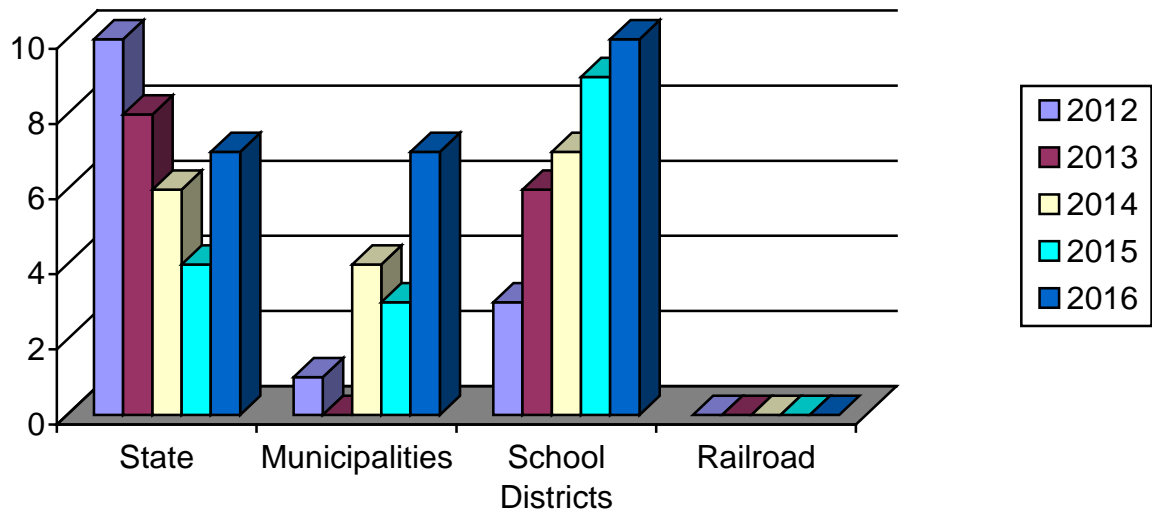
PROGRAM COMPARISON BY YEAR (FILED)



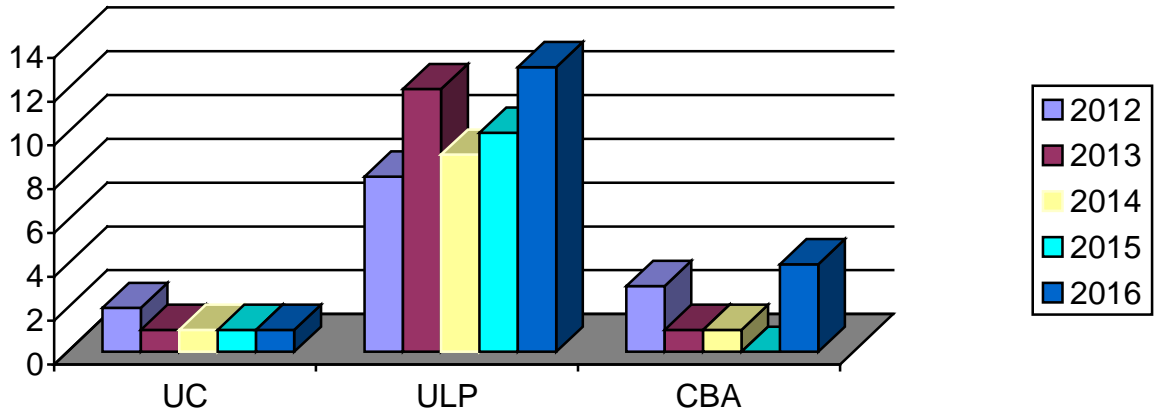
RC Representation petitions
 SP Strike notices and petitions
 UC Unit clarification petitions

ULP Unfair labor practice charge
 RE Religious exemption claim
 CBA Contract Enforcement

EMPLOYER COMPARISON BY YEAR (FILED)

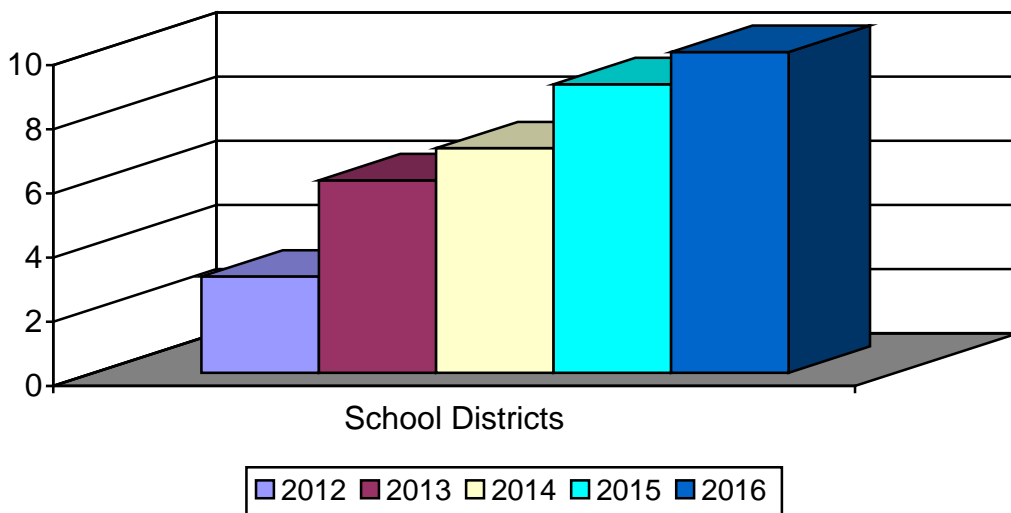


PROGRAM FIVE YEAR TRENDS



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

**SCHOOL DISTRICT ACTIVITY FROM 2012 TO 2016
 FOR ALL CASES FILED**



REPRESENTATION PETITIONS (AS 23.40.100; 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.

Prior to conducting an election, the Agency resolves any objections raised by a party. For example, the employer in a case may object to the composition of a bargaining unit. If a party files an objection, a hearing is conducted before the agency board which issues a decision and order that clarifies who gets to vote in the election.

During 2016, the Agency fielded numerous questions on organizing and decertifying efforts. There were six representation petitions filed during the year. Two representation petitions filed in late 2016 are both related to the City of Kodiak's 2016 vote to opt back into the jurisdiction of the Public Employment Relations Act (PERA). After 44 years in "opted out" status, city residents voted to opt back into PERA. Objections to the bargaining unit composition have been raised by the City of Kodiak in each of the proposed bargaining units, and these two cases are set for hearing in early 2017. The third representation petition filed in 2016 is under investigation for sufficiency. This case has raised a question of jurisdiction. The question is whether the employer is a public employer under ALRA's jurisdiction or a private employer under the jurisdiction of the National Labor Relations Board. A sufficiency review is currently in progress.

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 was one petition for recognition by mutual consent filed in 2016. This case was dismissed due to insufficiency in April 2016, and Nome Education Support Professional Association, NEA-Ak/NEA appealed the dismissal order to the ALRA board on April 18, 2016. The ALRA board heard the case and issued its Order Affirming the Dismissal of Petition for Recognition by Mutual Consent on June 2, 2016.

Unit amendment petitions are filed to change the unit's name, affiliation, site, or location. There were two unit amendment petitions filed in 2016. Both petitions resulted in an Amendment of Certifications, one to show a name change and affiliation of a local union and the other was to show disaffiliation of a local union.

REPRESENTATION PETITIONS FILED		6
Employer		
	State	0
	Municipalities	3
	Public Schools	3
	Railroad	0
Type		
	To certify a new unit	4
	To decertify the unit	0
	To change representatives	0
	To amend certificate	2
Hearings conducted		1
Petitions that proceeded to election		2
Mutual Consent Petitions certified		0

STRIKE CLASS PETITIONS (AS 23.40.200; AS 42.40.850)

Under the Public Employment Relations Act (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 fire fighters, 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 in 2016.

STRIKE PETITIONS FILED		0
Employer		
	State	0
	Municipalities	0
	Public Schools	0
	Railroad	0
Hearings Conducted		0

UNIT CLARIFICATION AND UNIT AMENDMENT PETITIONS (8 AAC 97.050)

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

In 2016, one new unit clarification petition was filed and two were resolved, leaving one open UC case by year’s end. Historically, most unit clarification disputes have arisen as objections to transfers of state employees from one state bargaining unit to another. This occurs when the State changes a position’s job duties, and the State proposes to move the position to the supervisory or confidential unit from the general government unit. If agency investigation shows there is reasonable cause to believe that a question of unit clarification exists, the case is scheduled for hearing. Otherwise, the case is dismissed.

There have been no unit clarification petitions heard by the ALRA board since 2013. In that case, the Board issued a decision and order involving a significant unit clarification dispute between the University of Alaska and two of its faculty bargaining units: the University of Alaska Federation of Teachers, (formerly the Alaska Community Colleges Federation of Teachers) and United Academics. This long-simmering dispute concerned the appropriate bargaining unit placement of a multitude of positions, and the appropriate boundary between the two bargaining units. After a three-week hearing, the ALRA Board issued a decision granting the University's request for clarification and modifying the two bargaining unit descriptions of the faculty units. (See a more detailed decision summary at page 20-22). The University of Alaska Federation of Teachers appealed the board's decision to the Alaska Superior Court. (Two related unfair labor practice complaints are in abeyance pending the ultimate outcome of this unit clarification dispute.) The Alaska Superior Court affirmed Agency Decision and Order No. 301 on February 11, 2016. UAFT appealed the Superior Court Decision and Order to the Alaska Supreme Court on March 11, 2016. This case is pending in the Supreme Court (case number S16243).

UNIT CLARIFICATION PETITIONS FILED 1

Employer

State	1
Public Schools	0
Municipalities	0
Railroad	0

Hearings conducted 0

UNFAIR LABOR PRACTICE CHARGES (AS 23.40.110; AS 42.40.760)

Employers, labor organizations, or individual employees may file unfair labor practice (ULP) complaints (charges). 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 bargaining, dues disputes, and interference with the employer's selection of its own representative for collective bargaining or adjustment at grievances.

Unfair labor practice filings in 2016 increased 30% from those filed in 2015. (See "CASES FILED" page 7 for longer-term trends). Total filings for the year (13) approximated the five-year average of 10 per year. (See "PROGRAM COMPARISON" page 9). Of the 13 charges filed, 68% concerned bad faith bargaining, 8% were duty of fair representation charges, 8% concerned domination or interference with formation, existence or administration of a union, 8% concerned interference with protected rights, and 8% concerned a violation of Weingarten rights. In a change from the past five reporting years, there was one case related to discrimination in regard to hire or tenure of employment, or a term or condition of employment to encourage or discourage union membership.

The Agency ranks ULP's by level of priority for determining which cases are investigated first. For example, disputes that affect a large number of employees usually receive high priority. There have not been any high priority ULP cases filed for the past five years compared to one each filed in 2010 and 2011, and five in 2009.

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 ULP investigations. The Agency's ability to timely complete investigations is also affected when case filings rise significantly, or other workload components such as extensive public records requests take priority.

During 2016, the Agency completed seven ULP investigations in an average of 145 days, a 10% decrease in completion rate over 2015's average. (See "TIMELINESS" page 18). Of the seven investigations, all were normal priority, but they varied in length and complexity. Parties often request a case be put on hold as they attempt to reach settlement. A case may also be put in abeyance because jurisdiction may lie in the appellate courts. The agency's hearing officer also conducts formal and informal mediation which can result in settlement of unfair labor practices. There were three informal mediations and one formal mediation conducted in 2016.

If the investigating hearing officer finds there is probable cause that a ULP violation occurred, and informal resolution is unsuccessful, the case is scheduled for hearing. (Note that some cases scheduled for hearing will resolve prior to hearing.)

Hearings may be oral or be based upon the written record. In two cases, the parties agreed to consolidate their cases for hearing purposes, and the board heard both cases in one day. By comparison, there was one hearing in 2015, one lengthy four-day hearing in 2014, no ULP hearings in 2013, and three ULP hearings in 2012.

UNFAIR LABOR PRACTICE CHARGES FILED 13

Employer	
State	5
Municipalities	4
Public Schools	4
Railroad	0
Type	
Arbitration related	0
Bad faith bargaining	9
Retaliation	0
Interference with protected rights	1
Domination or interference (a)(2)	1
Union duty of fair representation	1
Employer action without bargaining	0
Information request	0
Scope of bargaining	0
Weingarten	1
Discrimination	0
Impasse	0
Other	0
Unilateral	0
Investigations	7
Hearings conducted	1
Other resolution	
Dismissals (no probable cause)	2
Deferrals to arbitration	0
Settled or withdrawn	5
Dismissed, inaction	0
Dismissed, final order	1
Dismissed, Insufficient	0
Remand	0
Other	0

COMPARISON BY ULP COMPLAINANT

Complainant	2012	2013	2014	2015	2016
Alaska Public Employees Ass'n	0	3	0	0	0
Alaska State Employees Ass'n	1	1	2	0	0
School Unions	2	0	4	3	5
Ferry Unions/Marine	0	5	0	2	1
Other Unions	2	1	2	1	6
Individuals	1	2	0	3	1
Employers	2	0	1	1	0
Total ULPs filed	8	12	9	10	13

	2012	2013	2014	2015	2016
UNION	5	10	8	6	12
EMPLOYER	2	0	1	1	0
INDIVIDUAL	1	2	0	3	1
Total ULPs filed	8	12	9	10	13

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 bona fide religious convictions. There have been no such claims for exemption filed since 2014, when two were filed.

CLAIMS FOR RELIGIOUS EXEMPTION FILED 0

Employer	
State	0
Municipalities	0
Public Schools	0
Railroad	0
Hearings conducted	0

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. All agreements must contain a grievance/arbitration procedure, which the parties must exhaust before filing a petition to enforce the agreement (CBA).

There were four CBA petitions filed in 2016 compared to zero filed in 2015. The highest annual total of CBA case filings was in 2003, when parties filed 9 petitions.

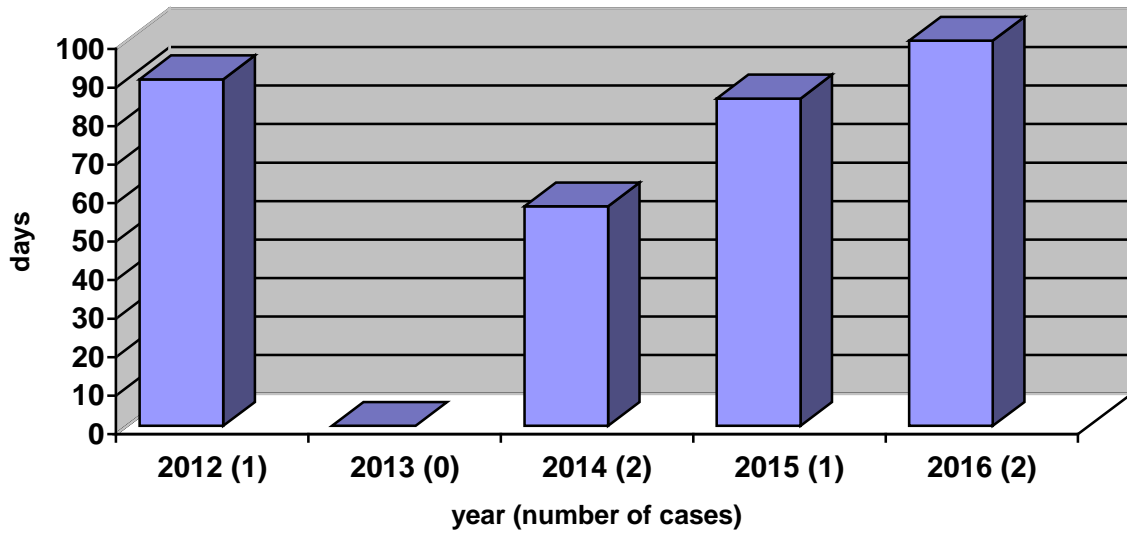
CBA PETITIONS FILED 4

Employer	
State	1
Municipalities	0
Public Schools	3
Railroad	0
Hearings conducted	1

TIMELINESS

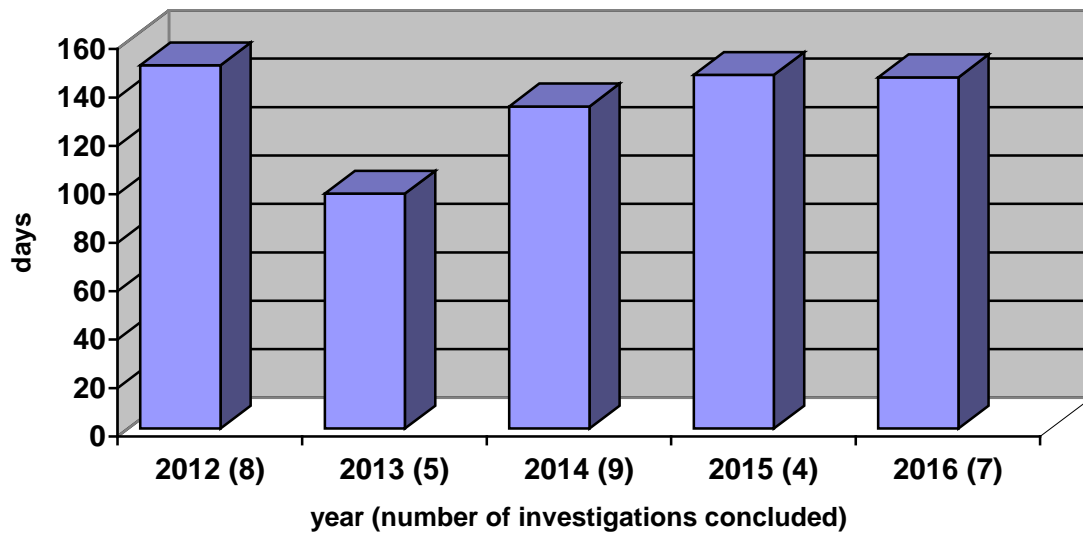
ELECTIONS

NUMBER OF DAYS TO CERTIFICATION OF ELECTION.



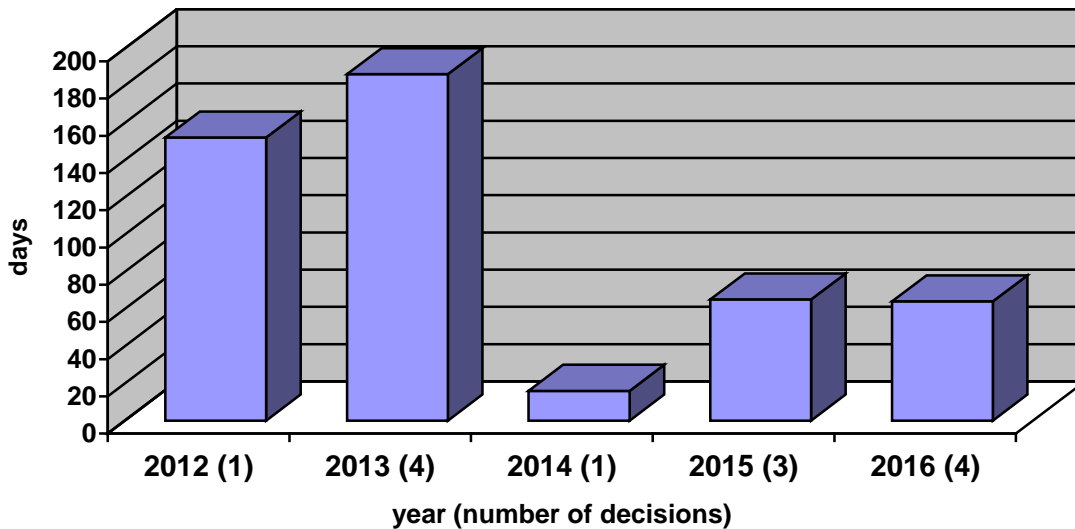
UNFAIR LABOR PRACTICE INVESTIGATIONS

NUMBER OF DAYS TO CONCLUSION OF INVESTIGATION.



DECISION AND ORDERS

NUMBER OF DAYS FROM CLOSING OF RECORD TO DECISION



In 2015, the Board met its goal of issuing 90% of decision and orders within 90 days from record closure. The board decision and orders were issued in an average of 65 days after record closure.

SUMMARY OF DECISION AND ORDERS ISSUED

1. ***Olga Alvord vs. Anchorage Education Association, NEA-Alaska/NEA, Case No. 15-1667-ULP, Decision and Order No. 306 (February 17, 2016).*** Complainant Alvord, an Anchorage school teacher, filed an unfair labor practice charge (duty of fair representation) against the Association alleging nearly 30 different complaints. The Board panel reviewed the record and affirmed the hearing officer’s findings. The Board modified the hearing officer findings to emphasize “that under the law on the duty of fair representation, the Association is allowed wide leeway in determining whether to process complaints.”

2. ***Alaska State Employees Association, AFSCME Local 52, AFL-CIO vs. City of Bethel, Case No 15-1666-RC, Decision and Order No. 307 (February 29, 2016).*** The Alaska State Employees Association (ASEA) filed a petition to represent eight employees who work at the City of Bethel. The City objected to the composition of the unit, contending that the positions in the unit are either “appointed officials” under PERA, are not City employees, or have a greater community of interest with other city

employees in a bargaining unit currently represented by another union. The Board found ASEA failed to prove by a preponderance of evidence that the eight positions in the proposed unit meet the definition of public employee under AS 23.40.250(6) and 8 AAC 97.990(6). The Board found the positions of Chief of Police, Fire Chief, Information Technology Director, Public Works Director, Port Director, and Planning Director do not meet the definition of “public employee” under AS 23.40.250(6) and 8 AAC 97.990(6) because they are “appointed officials” under AS 23.40.250(b) and 8 AAC 97.990(b), and are exempt from PERA.

3. *Matanuska-Susitna Education Association, NEA-Alaska/NEA vs. Matanuska-Susitna Borough School District, Case No. 15-1673-ULP, Decision and Order No. 308 (December 12, 2016).* MSEA filed an unfair labor practice complaint alleging the District committed a ULP violation by changing the school teachers’ dress code without bargaining the change. The Board conducted a hearing, deliberated, and held that the Association failed to prove the change to the dress code was a material, substantial, and significant change to bargaining unit employees’ terms and conditions of employment.

4. *Classified Employees Association, NEA-Alaska/NEA vs. Matanuska-Susitna Borough School District, Case No. 15-1675-ULP, Decision and Order No. 309 (December 12, 2016).* CEA filed a ULP alleging the District committed an unfair labor practice violation by changing the dress code of the school districts classified employees without bargaining the change. The Board held the Association failed to prove the change to the dress code was a material, substantial, and significant change to bargaining unit employees’ terms and conditions of employment, and it dismissed the complaint after conducting a hearing and holding deliberations.

APPEALS

There were no appeals filed of Agency decisions between 2007 and 2014, but parties filed three appeals since then. There was one appeal of an agency decision filed in the Alaska Superior Court during 2016. The 2014 appeal, affirmed by the Superior Court in early 2016, was appealed to the Alaska Supreme Court in 2016. There was one additional appeal to the Alaska Supreme Court in 2016; this totals three cases currently pending before the courts. For comparison, the last time there were three pending appeals of ALRA cases in the Alaska Courts was 2002. A summary of the current appealed cases follow.

1. *University of Alaska vs. University of Alaska Federation of Teachers, Local 2404, APEA/AFT AFL-CIO and United Academics-AAUP, AFL-CIO, Case No. 08-1537-UC, Decision and Order No. 301 (December 18, 2013).* Appealed to Alaska Superior Court on January 17, 2014; Appealed to Alaska Supreme Court on March 11, 2016. The University of Alaska filed a petition to clarify the unit boundaries and composition of the full-time faculty bargaining units represented by the University of

Alaska Federation of Teachers (UAFT) and United Academics (UNAC). UAFT was the former community college union that represented faculty who taught lower division courses or in programs that lead to associate's degrees and certificates (such as in welding and surveying). UAFT was formed in 1973. Through the ensuing decades, some UAFT faculty occasionally taught upper division courses.

In 1996, UNAC was created and certified. UNAC's unit description provides that it represents all full-time faculty *not* represented by UAFT. Eventually, a rift developed between UNAC and UAFT primarily because UNAC believed it should have all faculty teaching upper division courses in its unit. UAFT disagreed, contending that its collective bargaining agreement with the University allows its faculty to teach upper division courses, if its faculty member and the University agree in writing.

The parties' dispute arose in the early 2000's and continued off and on until 2008, when the University filed a petition for clarification of unit boundaries and unit composition. After numerous attempts through the years at mediation and settlement, the parties went to hearing. The hearing lasted three weeks. The parties filed exhibits and pleadings totaling 7,500 pages, and 44 witnesses testified.

At hearing, the University contended that due to the evolution and expansion in some course programs (such as those formerly offering only lower division courses or certificates but now offering upper division courses that lead to bachelor's and graduate degrees), faculty teaching in these programs should be placed in UNAC. UNAC agreed with the University's contention.

UAFT disagreed with the University and UNAC. UAFT contended that UNAC should get all faculty who have a research component in their caseload and UAFT should get all faculty teaching bipartite (two-part) caseloads. This would result in a dramatic shift in the units' compositions.

The ALRA Board ultimately concluded that changed circumstances since certification of the units, including course evolution, change in university structure and technology (such as distance learning), and the merger of the community college system into the University system, resulted in substantial changes that justified clarifying the unit boundaries and descriptions of the two bargaining units. The Board found the current units inappropriate and modified the unit descriptions by applying the factors in AS 23.40.090.

The Board determined that the units should be modified so UNAC includes 'academic' faculty who teach courses that lead to bachelor's and graduate degrees, and those who engage in research. UAFT's unit under the modified unit description includes all faculty who teach in vocational technical programs that lead to certificates or associate's degrees as part of their workload.

UAFT subsequently appealed the Board's decision to the Alaska Superior Court. (3AN-14-04472 CI). On February 11, 2016, Superior Court Judge Andrew Guidi affirmed the Board's decision. UAFT filed an appeal to the Alaska Supreme Court on March 11, 2016. The parties are currently filing briefs with the Supreme Court.

2. *Public Safety Employees Association, AFSCME Local 853, AFL-CIO vs City of Fairbanks, Case No. 14-1658-ULP, Decision and Order No. 305 (November 24, 2015). Appealed to Alaska Superior Court on December 9, 2015; Appealed to Alaska Supreme Court on October 19, 2016.*

In this unfair labor practice dispute, the Public Safety Employees Association (PSEA) alleged that the City of Fairbanks committed an unfair labor practice when the Fairbanks City Council ratified the parties' tentative collective bargaining agreement, then reversed its decision and rejected the agreement more than two months later. PSEA argued that the parties had a binding and enforceable agreement after the City initially ratified the agreement. The City denied any wrongdoing and contended that its ultimate rejection of the agreement was valid. A majority of the board panel concluded there was an unfair labor practice violation.

During the negotiating process, the City's negotiating team would take monetary agreements it reached to the City Council for approval. Only after approval would the City then tentatively agree (TA) to the item. PSEA called this "pre-approving" the monetary terms.

After the parties agreed on all monetary and non-monetary terms, the City's Mayor presented the collective bargaining agreement to the City Council for approval at a public meeting. The Mayor advocated approval of the agreement. After taking public testimony and discussing the matter at a publicly scheduled meeting, the City Council voted to ratify the agreement.

Two days later, a council member requested reconsideration of the vote to ratify the agreement. The mayor denied the request because he said that under the rules, the request was made more than 24 hours after the meeting. Two weeks later, the city councilman requested suspension of the rules for the purpose of reconsidering the ratification vote. The council members voted in favor of suspension of the rules.

The reconsideration was then taken up at a council meeting two months later. After again taking testimony and discussing the matter, the City Council voted to reject the tentative agreement. PSEA then filed an unfair labor practice complaint.

The Board majority found that the City committed an unfair labor practice violation. The Board concluded first that because of the City Council's active involvement in negotiations, its actions should be considered in determining whether a violation occurred. The Board concluded that the City Council invoked unusual procedures and then, "by striking a deal, ratifying that deal, and then stringing out and

delaying the reconsideration process to ultimately attempt to deny PSEA its due, the City violated the duty to bargain in good faith. . . .” The majority ordered the City to execute the original contract it ratified at its council meeting on August 25, 2014.

The dissent concluded the City Council was a legislative body and not a "public employer," and that without specific statutory authority, legislative bodies are outside the purview of this board's authority. Second, the dissent asserted that even if the board did have jurisdiction, PSEA failed to prove its case. The dissent would dismiss the unfair labor practice complaint on these bases and order the parties back to the bargaining table.

The City appealed the Board’s decision. Alaska Superior Court Judge McConahy affirmed most aspects of the decision, and the City appealed the judge’s decision to the Alaska Supreme Court on October 19, 2016.

3. Kodiak City Employees’ Association, General Teamsters Local 959, IBT (Kimberly Dolph) vs City of Kodiak, Case No. 16-1689-ULP, Board Order Affirming Dismissal of Appeal (December 5, 2016). Appealed to Alaska Superior Court on January 6, 2017.

Kodiak City Employees' Association, General Teamsters Local 959, IBT (KCEA) alleges that the City of Kodiak fired an employee for helping to organize KCEA and for helping to organize and initiate a ballot initiative to allow the City of Kodiak to opt back in to PERA.

Hearing Officer Thomas found that the City of Kodiak lawfully opted out of PERA, and ALRA had no jurisdiction to hear the complaint. Notice of Dismissal with appeal rights was issued on September 7, 2016. On September 19, 2016 KCEA, General Teamsters Local 959, IBT (Kimberly Dolph) filed a request that the Board review the dismissal. The City of Kodiak filed an opposition to the request for review. KCEA filed a Reply. An Order Affirming Dismissal of Appeal was issued by the ALRA board on December 5, 2016. This final order was appealed to Superior Court by the General Teamsters on January 6, 2017 in 3AN-17-04079CI. Oral arguments have been scheduled.

OTHER AGENCY BUSINESS

The Agency did not conduct any business meetings during 2016.

LEGISLATION

The Agency did not propose legislation for consideration by the Governor in 2016, and no legislation was enacted that affected the Agency.

REGULATIONS

Agency regulations appear in 8 AAC 97.010 -- 8 AAC 97.990. Copies are available upon request. The Board did not propose or adopt any new regulations during 2016.

BUDGET

The Agency budget has been very lean and has become more so with the recent legislative emphasis on reduction of unrestricted general funds (UGF). The principal component in the budget is the wages and benefits for the three full-time staff members. As a result of budget reductions, the Agency was required to eliminate the part-time Office Assistant III position, which had already been reduced from full-time to part-time in FY2016. To stay abreast of its caseload under current staffing and budget limitations, the Agency streamlines procedures when possible while assuring due process. To minimize costs, the Agency schedules in-person hearings in Anchorage when possible, schedules multiple hearings on successive days, and relies on telephone conferences for persons participating outside the Anchorage area. The Agency also hears disputes for decision on the written record where appropriate. However, board members strongly believe that in-person hearings are the best way to conduct hearings. They prefer in-person hearings so they have the opportunity to listen to and question witnesses face-to-face, to judge witness credibility in person, and to give the parties the opportunity to see who is deciding their case. The board believes it is important to participate in continuing education and keep board members and agency staff skills current.

The Agency has saved budget costs by conducting elections by mail ballot, thereby avoiding travel costs and loss of productive employee time during travel.

FISCAL YEAR 2017

TOTAL	531.1
Personnel	449.8
Travel	9.6
Services	57.1
Commodities	14.6

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 labor.relations@alaska.gov, 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 at 3301 Eagle Street at the Department of Labor building in 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.

Facsimile filings.

The Agency will accept filing by fax, but the person filing by fax must still 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 available for download from the Agency's web site at <http://www.labor.alaska.gov/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. The library is open for public use.

Mediation.

Agency staff members are available to answer questions about the mediation process and Agency mediation services. Parties interested in mediation may request mediation, which is conducted by the Agency's hearing officer.

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 July of 2007 and contains updated state labor relations laws and regulations.

Report to Governor and the Legislature. The Agency is required to report to the governor annually. AS 23.05.370(a)(3). Copies of the annual report are available upon request.

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

Unfair Labor Practices pamphlet. This pamphlet is a basic description of unfair labor practices and related Agency proceedings. 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 must file or respond to petitions and unfair labor practice charges.

Speakers.

Agency staff members are available to speak to groups about the Agency, its programs, and topics on labor relations.

Electronic copies of agency proceedings.

Copies of CD's of Agency case proceedings are available upon request. Please call Agency staff to arrange copying. Generally, there is no charge if the appropriate type and number of CD's are provided.