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Effect of HB 236 on  
Court System Employees  
in Bargaining Unit

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In your letter dated April 4, 1995, you asked about the application of the pay reductions set out in HB 236<sup>1</sup> to the group of court system employees who have recently formed a collective bargaining unit under the Public Employment Relations Act (PERA).<sup>2</sup> These employees selected the IBEW as their representative for collective bargaining, and are currently engaged in contract negotiations with the court system, but, have not yet reached agreement on their first contract. Specifically, you wanted to know if the salaries of this group of employees would be reduced by 5% in the interim period before the employees attain their first contract.<sup>3</sup>

The short answer to this question is that the employees' salaries would not be reduced in the interim period.

We reach this conclusion because under established labor law concepts, an employer may not unilaterally impose a contract term regarding mandatory subjects of collective bargaining without bargaining to impasse.<sup>4</sup> This sort of

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<sup>1</sup>As you note in your opinion request, HB 236 is a pending bill. Our answer in this memorandum assumes that this bill will be enacted into law. A copy of HB 236 is attached to this memorandum for ease of reference.

<sup>2</sup> PERA is set out in AS 23.40.070 -- 23.40.260.

<sup>3</sup>You had also inquired about the effect of the geographic differential bills (SB 152 and HB 304) on the court system employees in the bargaining unit. However, we need not address this question because these bills do not appear to be moving out of committee.

<sup>4</sup>Under AS 23.40.070, wages (salary) is a mandatory subject of collective bargaining.

unilateral imposition of a contract term is considered an unfair labor practice. Alaska Public Employees Ass'n v. State Dept. of Admin., Div. of Labor Relations, 776 P.2d 1030 (Alaska 1989); P. Hardin The Developing Labor Law 142 (Supp.1993). Reduction of the salaries of the court system employees in the bargaining unit simply in response to HB 236, and without bargaining to impasse, would constitute unilateral imposition of a contract term on a subject of mandatory bargaining. If proposed HB 236 required immediate unilateral reduction of the salaries of the court system employees in the bargaining unit, it would conflict with the terms of PERA, which make a unilateral change in wages - absent a bargaining impasse - an unfair labor practice.

However, proposed HB 236 avoids this conflict by providing that state employees, who are members of collective bargaining units, are not to be subject to automatic wage reductions. In section 10 of HB 236, the bill outlines the plan for implementing the wage reduction through the collective bargaining process. Essentially, HB 236 imposes a "ceiling" on these state employees' wages to be applied by the state in the collective bargaining process. In contrast, under sections 9 and 13 of HB 236, the wages of state employees who are not members of collective bargaining units, would be automatically reduced by five percent on July 1, 1995.

In section 10(c), HB 236 contemplates the situation - like the court system employees' - of a new bargaining unit without a contract. Section 10(c) states that new contract terms must meet the 95% ceiling on wages, and the 95% ceiling is based on the average compensation received in the calendar year preceding the contract. If the state could reduce these court system employees' wages now, and contract negotiations continued for longer than one year, the wage ceiling would drop to 95% of 95% of current wages (90.25%) because the new contract would have to provide average compensation that is 95% of the preceding year's average, which would have already been reduced by 5%. Similarly, if contract negotiations continued for more than two years, the wage ceiling would drop to 85.74%. This progressively greater reduction in the wage ceiling is inconsistent with the overall scheme of HB 236, which contemplates a 5% reduction for all employees. All of section 10 is prospective, and recognizes that the state will not reduce existing wages for bargaining unit employees unilaterally unless the state and the bargaining unit reach impasse in negotiations.<sup>5</sup>

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<sup>5</sup> We recognize that section 11 of HB 236 addresses judicial branch employees generally. However, given the

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We trust this memorandum answers your question. Please contact me if I can be of further assistance to you on this matter.

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attachment

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potentially conflicting requirements of PERA, it makes more sense to adopt an interpretation that reconciles HB 236 with PERA by applying section 10, rather than section 11, to organized judicial branch employees.