

ALASKA LABOR RELATIONS AGENCY
3301 EAGLE STREET, SUITE 206
ANCHORAGE, ALASKA 99503
(907) 269-4895 Fax (907) 269-4898

PALMER POLICE DEPARTMENT)
EMPLOYEES ASSOCIATION,)
)
Petitioner,)
v.)
)
CITY OF PALMER,)
)
Respondent.)
_____)
Case No. 23-1782-RC

DECISION AND ORDER NO. 317

We heard this petition by the Palmer Police Department Employees Association to represent a bargaining unit of police officers at the City of Palmer on the written record. Simultaneous briefs and responses were submitted by the parties. Deliberations were held on August 2, 2023, and the record closed that day. Hearing Examiner, Nicole Thibodeau, presided.

Digest: The City of Palmer’s exercise of its opt-out right of the Public Employment Relations Act under AS 23.40.255(a) is valid. And, the Board finds no compelling reason to overturn its prior decision in *Int’l Bhd. of Electrical Workers v. City of Homer*, Decision and Order No. 138 (ALRA Dec. 19, 1991). Consequently, the petition is dismissed.

Appearances: Jeremy Conkling and Anil Karia of Public Safety Labor Group, attorneys for Palmer Police Department Employees Association.
Sarah Heath, attorney for City of Palmer.

Board Panel: Emily J. Hall, Vice Chair; Jennifer Yuhas and Tyler Andrews,
Board Members.

DECISION

I. INTRODUCTION

The Palmer Police Department Employees Association (the Association) filed a petition for representation on January 5, 2023, to represent a unit of police officers.¹ The proposed unit was supported by the requisite showing of interest² and the City of Palmer (Palmer) posted the notice of petition as required under 8 AAC 970.070. During the posting period, on March 9, 2023, Palmer timely filed an objection to the appropriateness of the unit under 8 AAC 97.070(a)(3) arguing that it had opted out of the Public Employment Relations Act (PERA) under AS 23.40.255.³ At the prehearing conference on April 6, 2023, the parties agreed to a hearing on the written record before the Board. All briefing was filed with the Agency by June 15, 2023. The questions for this panel to resolve are 1) whether Palmer validly opted out of PERA, 2) whether the Board's decision in *Homer* should be overturned, and 3) whether Palmer's opt-out is unconstitutional because it denies equal protection under the law.

II. DISCUSSION

Palmer validly opted out of PERA.

On September 5, 1972, the Public Employment Relations Act went into effect.⁴ Under PERA public employees have the right to organize and to bargain collectively with their employers.⁵ In addition, section 4 of PERA permits the legislative body of any political subdivision of the state to opt out of the provisions of the Act, thereby preventing its application to the public employees of that subdivision.⁶ On August 8,

¹ Pet. for Representation (Jan. 5, 2023).

² See 8 AAC 97.025 and 97.060.

³ S. Heath Letter of objection (March 9, 2023).

⁴ See *City and Borough of Sitka v. Int'l Brotherhood of Electrical Workers*, 653 P.2d 332, 333 FN 1 (Alaska 1982).

⁵ *Id.*

⁶ *Sitka*, 653 P.2d at 333; see also 23.40.255(a).

1972, Palmer passed Resolution No. 255 rejecting the provisions of Chapter 113, SLA 1972, the PERA provisions, opting out of the Public Employment Relations Act.⁷ To be valid, the opt-out must not have been in derogation of employee rights under PERA and must have occurred timely.⁸ Generally this means one-year from the enactment of PERA or the formation of the political subdivision.⁹

Here, Palmer passed the opt-out resolution before the enactment of PERA; thus it was timely. No evidence was presented to contradict the validity of Palmer's action rejecting the application of PERA. Rather, the Association argues that it is the act of opting out of PERA without implementing an alternative scheme to recognize collective bargaining that invalidates the opt-out.¹⁰ Because the City's actions comport with current state law, its opt-out is valid.¹¹

A. The *Homer* Decision is affirmed; Palmer is not required to replace PERA with a substitute framework.

In *Homer*, the Board discussed past Agency and Alaska Supreme Court opt-out decisions and held that a municipality is not required to adopt a particular substitute when it rejects the Public Employment Relations Act.¹² Under *Homer*, as long as an opt-out is timely, and not made for the purpose of frustrating ongoing efforts to exercise rights granted under PERA, then it is valid.¹³ The Association argues that *Homer* should be overturned because the decision does not adhere to the legislative intent of PERA and cites to the intent provision of the Act, in part, here,

⁷ See Resp. Opening Br. Ex. A.

⁸ *Public Safety Emps. Assn. v. City of Whittier*, Decision and Order No. 314, at 6 (ALRA May 7, 2018) (citing *Local 302, v. City of Kotzebue*, Decision and Order No. 167 (Nov. 22, 1993)).

⁹ *Id.*

¹⁰ Pet'r Opening Brief at 2-4.

¹¹ See *Anchorage Mun. Emps. Assn. v. Mun. of Anchorage*, 618 P.2d 575 (1980) (opt-out valid where it occurred during 90-day interim period between Act's enactment and effective date and municipality was free to develop its own local scheme of collective bargaining); *Sitka*, 653 P.2d at 334-35 (opt-out valid, city violated its charter by failing to recognize employee association when its charter required it to do so); *Homer*, D&O 138. Compare with *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975) (opt-out invalid where rejection of the Act occurred more than six months after its effective date and members of the legislative body were aware of employee organizing activity); *Kodiak Island Borough v. State*, 853 P.2d 1111 (Alaska 1993) (opt-out held invalid where borough had attempted opt-out after becoming aware of substantial employee organizational activity).

¹² *Homer*, D&O 138 at 9-17.

¹³ *Homer*, D&O 138 at 7-8.

... The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

(1) recognizing the right of public employees to organize for the purpose of collective bargaining;

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit-system principles among employees.¹⁴

Yet, the opt-out provision is clear and applies to the entire Act including the legislative intent portion in AS 23.40.070,

AS 23.40.070 – 23.40.260 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 the provisions of AS 23.40.070 – 23.40.260 apply.**¹⁵

In part (b) of the same opt-out provision, it is notable that the legislature specifically denied schools the opt-out right,

Notwithstanding (a) of this section, a municipal school district or regional educational attendance area may not reject application of AS 23.40.070-23.40.260 to employment relations with public school employees.¹⁶

When interpreting statutes courts are directed to “whenever possible, interpret each part or section of a statute with every other part or section, so as to create a harmonious whole.”¹⁷ And, courts will not stop with the plain meaning of the statute even if it seems unambiguous.¹⁸ Rather, the court will apply “a sliding scale approach,

¹⁴ See Petr’s Opening Brief at 3 (citing AS 23.40.070).

¹⁵ AS 23.40.255(a) (emphasis added).

¹⁶ AS 23.40.255(b).

¹⁷ *Est. of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 386 (Alaska 2013) (citations omitted).

¹⁸ *Id.*

where '[t]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be.'¹⁹ Here, the evidence of contrary legislative intent is not persuasive.

We have previously stated, “[s]tability and consistency better serve labor relations and as a general rule, this Agency will attempt to follow previous decisions issued under PERA ...”²⁰ Administrative agencies are normally expected to issue rulings that are consistent to allow the public to reasonably anticipate decision-making based upon precedent.²¹ We see no compelling reason to overturn the Agency’s prior rationale in *Homer*. Though, nothing in our decision here prevents the Palmer police officers from forming an independent organization.

B. Palmer must abide by its own rules when engaging with its employees.

The Palmer Police Department Employees Association filed a petition for representation with the Agency demonstrating their interest in forming an employee organization.²² While the Agency is prohibited from conducting an election and asserting its statutory authority over the organization because Palmer opted out of PERA, the employees are free to exercise their right to associate and select a representative on their own.²³ Palmer is required to follow its own charter in dealing with its employees²⁴ and to recognize the employee representative to the extent required by its charter.²⁵

¹⁹ *Id.*

²⁰ *Univ. of Alaska Classified Emps. Assn., v. Univ. of Alaska*, Decision and Order No. 185 (ALRA Apr. 4, 1995).

²¹ *Atchison, T. & S. F. Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 807 (1973).

²² Pet. (Jan.5, 2023).

²³ *Sitka*, 653 P.2d at 338 (citations omitted).

²⁴ See e.g. Palmer Mun. Code 4.40.020 outlines the grievance procedures and states that employees, “may have assistance of any representative as he/she considers desirable, at the employees expense.”

²⁵ *Sitka*, 653 P.2d at 338 (“The Sitka Charter provides the only basis for relief in this case...The judgment should only require compliance with the mandate of the Sitka Charter.”)

C. Finding an equal protection violation would be outside of the Agency's authority; this claim is dismissed.

Pure questions of constitutional law are beyond the Agency's jurisdiction.²⁶ To the extent that the Association argued that upholding the statutory opt-out provision of the Public Employment Relations Act creates an equal protection violation, this claim is dismissed.

III. CONCLUSION

Palmer validly opted out of the Public Employment Relations Act. The parties have presented no compelling reason for the Board to overturn *Homer*; it is affirmed. Consequently, the Agency has no statutory authority to conduct and certify a representation election for the Palmer Police Department Employees Association. The equal protection claim is beyond the Agency's jurisdiction and is dismissed. Palmer must adhere to its charter in engaging with its employees.

ORDER

1. The petition is dismissed.

Dated: September 19, 2023

ALASKA LABOR RELATIONS AGENCY



Emily J. Hall, Vice Chair



Jennifer Yuhas, Board Member



Tyler Andrews, Board Member

²⁶ *Alaska State Emps. Assn. v. State*, Decision and Order No. 261 (citing *Dougan v. Aurora Electric Inc.*, 50 P.3d 789, 795 FN 27 (Alaska 2002); *State v. Univ. of Alaska*, 664 P.2d 575 (Alaska 1983)); see also *Ben Lomond, Inc. v. Mun. of Anchorage*, 761 P.2d 119, 122 (Alaska 1988).

APPEAL PROCEDURES

This order is the final decision of this Agency. Judicial review may be obtained by filing an appeal under Appellate Rule 602(a)(2). Any appeal must be taken within 30 days from the date of mailing or distribution of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of *Palmer Police Dept. Emps. Assn. v. City of Palmer*, Decision and Order No. 317 dated and filed in the office of the Alaska Labor Relations Agency in Anchorage, Alaska, this 19th day of September, 2023.



Nicole Thibodeau
Hearing Examiner

This is to certify that on the 19th day of September, 2023, a true and correct copy of the foregoing was mailed, postage prepaid to:

Jeremy Conkling, PPDEA

Sarah Heath, City of Palmer



Signature