

Submitted by: CHAIR OSSIANDER  
Reviewed by: Assembly Counsel  
For reading: September 29, 2009

CLERK'S OFFICE  
**AMENDED AND APPROVED**  
Date: 9-29-09 ANCHORAGE, ALASKA  
AR NO. 2009-241

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY IN RESPONSE TO  
THE LEVESQUE REPORT AND THE RECENT RELEASE OF PUBLIC RECORDS.**

WHEREAS, the Municipality of Anchorage is facing significant reductions in its operating budget due to several factors, including the downturn in the national economy, decline in tourism, falling real property values, increased labor costs associated with recently executed bargaining unit agreements and other factors; and

WHEREAS, recently the Assembly received the analysis by independent outside counsel pursuant to AR 2009-77(S), calling into question the process whereby municipal labor agreements were presented by the Begich administration and approved by the Assembly (See attached report from attorney Joseph Levesque dated September 23, 2009); and

~~WHEREAS, recently the Assembly has received copies of a financial report by the former Chief Financial Officer of the Municipality which was sent by e-mail to then Mayor Begich on December 9, 2008 detailing her concerns as to Municipal revenues and department expenditures after the adoption of the 2009 General Government Operating Budget (November 25, 2008) but prior to Assembly action on labor agreements December 16 and 17, 2008 (See AIM 98-2009); and~~

WHEREAS, the largest expense category in municipal government is employee compensation (wages and benefits), and given that this is single greatest budget factor over which the Municipality can exercise control, responsible resolution of the budget situation in the ongoing economic environment will require either bargaining unit agreements that reduce the current projected levels of employee compensation, or significant reductions in the number of city employees; and

WHEREAS, the public is not served when the cost of protecting the public order and doing the public's business is so costly that essential public services cannot be maintained;

WHEREAS, in order to resolve the municipal budget under the six-year plan required by charter and code, the best approach is for the administration, the assembly, and employees of the Municipality to work together to reach solutions that, to the greatest extent possible, allow the Municipality to provide public services while, at the same time, fully recognizing tax cap limitations and homeowner expectations concerning real property tax increases; and

1 WHEREAS, by passage of this Resolution, the Assembly is telling the public, the  
2 Administration, and all Municipal employees that the Assembly will work cooperatively in  
3 developing the 2010 budget so as to balance the competing demands to provide  
4 essential local government services and at the same time, exercise maximum control in  
5 the increase on taxes to homeowners;  
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7 NOW THEREFORE, THE ANCHORAGE ASSEMBLY RESOLVES as follows:  
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- 9 1) The Administration, through the Department of Law, is requested to review  
10 and analyze the Levesque report dated September 23, 2009, to include an  
11 examination of the facts and the law associated with both the report and  
12 the questions asked in AR 2009-77(S) and all other information,  
13 reports, analysis relevant to the issue, including legal opinions from  
14 any available source, including the Jermain Dunnagan & Owens, P.C.  
15 report, and make a written report to the Assembly no later than November  
16 15, 2009.  
17
- 18 2) The Administration and bargaining units are encouraged to engage in  
19 open and constructive dialogue concerning labor agreements, to achieve  
20 the goal of a reduced city budget that reflects the need to hold the line on  
21 real property tax increases, stay within the tax cap, and at the same time,  
22 continue to provide essential city services.  
23
- 24 3) To the extent that it is lawful and appropriate, the Assembly pledges its full  
25 cooperation to the Administration, municipal employees and labor unions  
26 to advance the public's goals.  
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29 PASSED AND APPROVED by the Anchorage Assembly this 29<sup>th</sup> day of  
30 September, 2009.  
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33  
34 Debbie Ossander  
35 Chair  
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37 ATTEST:

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39 Barbara S. Gustafson  
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41 Municipal Clerk  
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September 23, 2009

**CONFIDENTIAL**  
**ATTORNEY CLIENT PRIVILEGED**

**HAND DELIVERED**

Debbie Ossiander, Assembly Chair  
Municipality of Anchorage  
632 West 6<sup>th</sup> Avenue, Suite 250  
Anchorage, Alaska 99501

Re: Legal Opinion re Labor Contracts  
Our File No. 395-3

Dear Ms. Ossiander:

M.O.A.  
2009 SEP 23 AM 9:20  
CLEAN'S OFFICE

Our law firm has been retained by the Anchorage Assembly to analyze legal questions related to contracts passed by the Anchorage Assembly in December 2008. Although Walker & Levesque, LLC is a general practice law firm, our primary emphasis involves municipal law and the representation of municipalities throughout Alaska. In this regard, our firm's general concentration is not in employment law or union labor law.

Resolution AR No. 2009-77(S) passed and approved by the Anchorage Assembly on March 24, 2009 authorized the Assembly Chair to retain legal counsel to review and analyze (1) conditions precedent to valid Assembly action in the ratification of labor agreements; (2) corrective action alternatives; and (3) legal consequences and remedial alternatives as applicable.

After a review of the facts provided and applicable law, we assessed the following question presented to find that these contracts are invalid.<sup>1</sup>

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<sup>1</sup> The scope of our review is limited by Resolution AR No. 2009-77(S). Moreover, our review and analysis was also limited by those documents and that information we were provided. However, it should be noted that certain evidence might exist showing that municipal officials may have failed to perform their duties pursuant to the Municipal Charter and Code. In this regard, some further investigation into potential malfeasance or misfeasance may be warranted.

### **QUESTION PRESENTED**

Are the Resolutions ratifying the IBEW and APDEA contracts valid as a matter of law?

**ANSWER:** No, the Resolutions are invalid because the mandatory provisions under Anchorage Municipal Code Section 6.30.050 were not followed.

### **FACTS**

On December 2, 2008, the Anchorage Assembly passed AR 2008-280 and on December 16, 2008, the Assembly passed AR 2008-307, ratifying five year collective bargaining agreements between the Municipality of Anchorage ("MOA") and the International Brotherhood of Electrical Workers, Local Union 1547 ("IBEW") and Anchorage Police Department Employees Association ("APDEA") respectively.<sup>2</sup> According to the information provided, at the time the Resolutions were passed, the Anchorage Chief Fiscal Officer did not first certify that the money required for the contract was available and had been appropriated to the relevant fund. The municipality's current contracts with IBEW ("IBEW contract") and with APDEA ("APDEA contract") are in effect as of January 1, 2009.<sup>3</sup>

The biennial General Government Operation Budget, adopted in November 2007, set forth the projected annual budget requirements for FY 2009. It was updated by AO 2008-102(S) and approved by the Assembly on November 25, 2008. The Assembly ratified the IBEW and APDEA contracts the following month based on the approved budget.

Not long after the Resolutions were passed, on February 13, 2009, the Administration projected a budget deficit in excess of \$17 million for 2008 and \$11 million for 2009, leading to a subtotal of approximately \$29 Million in potential budget shortfall. Assembly Members Coffey, Starr and Johnson filed notices of intent to move for rescission of the IBEW and APDEA contracts, pursuant to AMC 2.30.080H.<sup>4</sup> The motions to rescind both contracts failed on March 3, 2009.<sup>5</sup>

On March 24, 2009, the Assembly authorized procurement of independent legal review and analysis of the conditions precedent to valid Assembly action in the ratification of labor agreements; corrective action alternatives, as applicable; and an

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<sup>2</sup> AR 2008-280; AR 2008-307.

<sup>3</sup> IBEW contract and APDEA contract.

<sup>4</sup> See Notices of Intent by Vice Chair Coffey and Assembly Member Starr and Johnson, for reading on February 24, 2009.

<sup>5</sup> AR 2009-63; AR 2009-66.

analysis of legal consequences and remedial alternatives, as applicable.<sup>6</sup> The present analysis is provided in response to the Municipality's request.

## **LEGAL ANALYSIS**

### **I. Introduction**

When our firm was originally retained to review these contracts, we were asked whether or not either of the contracts could be rescinded by the Anchorage Assembly. It is our opinion based on the law, that the IBEW contract may be reformed or rescinded based on the failure of this federally funded contract to provide fair and open completion. We do not believe that the same legal justification can be identified to support reformation or rescission of the APDEA contract at this time. However, based on our conclusion that both contracts are invalid, as a matter of law, neither needs to be reformed or rescinded.

### **II. The IBEW Contract may be rescinded or reformed.**

The contracts at issue fall under the purview of the Anchorage Municipal Code ("AMC"), which provides specific guidance regarding rescission of something previously adopted by the Anchorage Assembly. Section 2.30.080 (H) states:

H. A motion to rescind something previously adopted may be moved by any member, but must be seconded. Action adopting an ordinance may not be rescinded after the effective date of the ordinance. Other actions that cannot be rescinded are as defined in Robert's Rules of Order, Newly Revised.<sup>7</sup> A motion to rescind requires the approval of two-thirds of the entire assembly unless previous notice of the motion has been given at the regular meeting immediately preceding that meeting during which the motion is to be considered, in which event only a majority of the assembly is required for approval. Upon failure of a motion to rescind for which previous notice has once been given, no further motions or notices of intent to rescind the same action are in order. There is no time limit on making the motion, but neither the motion nor the notice of intent operates to suspend action as in a motion to reconsider.<sup>8</sup>

The general rule is that "valid contracts of municipal corporations, like those of private corporations and individuals, cannot be revoked or rescinded, without the consent of both parties."<sup>9</sup> "Rescission is an equitable remedy that abrogates, annuls, or unmakes a contract entered into through mistake, fraud, or duress."<sup>10</sup> Rescission

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<sup>6</sup> AR 2009-77(S).

<sup>7</sup> The current edition of Robert's Rules does not specifically restrict contract rescission.

<sup>8</sup> AMC 2.30.080(H).

<sup>9</sup> McQuillans, *Law of Municipal Corporations* § 29.126.

<sup>10</sup> *McKeown v. Kinney Shoe Corp.*, 820 P.2d 1068, 1071 (Alaska 1991).

involves restoring the parties to their "pre-contract position[s], at least as far as [it is] possible to do so."<sup>11</sup>

Reformation is another equitable remedy by which a court alters the terms of a written instrument to make the writing conform to the meaning that the parties agreed upon.<sup>12</sup> The circumstances under which reformation may be appropriate are:

- (1) mutual mistake of fact in which the [contract], as written, does not conform to the prior agreement of the parties;
- (2) fraud by one party which causes the other party to be under a mistaken belief as to the contents of the [contract];
- (3) duress by one party which deprives the other party of any true freedom of choice;
- (4) unilateral mistake by one party and fraudulent or inequitable conduct by the other party, especially where the latter party knew of the other's mistake and kept silent; or
- (5) mistake of law....<sup>13</sup>

Several Assembly members have identified issues that they find warrant rescission of the IBEW and APDEA contracts. These include:

1. The contracts were not in their final form when presented to the Assembly as required by AMC 3.70.130.<sup>14</sup>
2. The contracts both had summaries of economic effects that did not include everything required under AMC 2.30.050 including identification of private sector and public sector economic effects which can reasonably be expected as a consequence of the action before the Assembly.<sup>15</sup>
3. Unilateral or mutual mistake of fact as to the contents of the contracts.<sup>16</sup>
4. The IBEW contract contains an unallowable restriction to full and open competition.<sup>17</sup>

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<sup>11</sup> 1 DAN B. DOBBS, LAW OF REMEDIES § 4.8, at 676 (2d ed.1993).

<sup>12</sup> *Wasser & Winters Co. v. Ritchie Bros. Auctioneers (America), Inc.*, 185 P.3d 73, 77 (Alaska 2008) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 155 cmt. (1981)).

<sup>13</sup> *Adams v. Adams*, 89 P.3d 743, 752 (Alaska 2004) (quoting *Voss v. Brooks*, 907 P.2d 465, 468 (Alaska 1995)).

<sup>14</sup> AR 2009-77(S).

<sup>15</sup> *Id.*

<sup>16</sup> AR 2009-63.

We will address each concern separately as to whether it allows the Assembly to justifiably rescind or reform the IBEW and APDEA contracts.

**A. The contracts were not in their final form when presented to the Assembly.**

AMC 3.70.130 requires all terms and conditions of a labor agreement be reduced to writing in a single agreement and presented to the Assembly for ratification in the same manner as a municipal ordinance.<sup>18</sup> A final contract was not attached to AR 2008-280, the Resolution that ratified the IBEW contract, at the time of Assembly action on December 2, 2008. While a draft contract was presented, the record does not indicate the Assembly members requested a clean copy or delayed voting due to this concern.

In *John Call Engineering, Inc. v. Manti City Corp.*,<sup>19</sup> the Court found that the City Council's failure to read a written contract did not excuse the City's performance under the contract with an engineering company for a sewer construction project. The Court pointed out that the City Council had ample opportunity to examine the contract in as much detail as desired and that the contents and impact of instrument would have been clear upon even cursory and casual reading of the contract.<sup>20</sup>

Likewise in the present matter, the Assembly could have requested adjourning the matter to a subsequent meeting to allow for further examination; however, the Assembly went forward with ratifying the contract despite not having a final contract document to review. Moreover, discussion regarding the contracts did occur which arguably could be viewed, as it was in *Manti City Corp.*, as requiring performance under the contract. The law does not allow for automatic rescission based on this factor alone.

**B. The contracts were passed with a deficient Summary of Economic Effects.**

It is alleged that the Summaries of Economic Effects ("SEE") presented to the Assembly with these contracts were deficient in the identification of private sector and public sector economic effects.<sup>21</sup> Specifically, the SEEs that accompanied both contracts had one word under the heading "impact on the private sector". That word was "none". The SEEs did not include changes in the costs or opportunities to individuals or businesses or the availability of goods and services, and employment.

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<sup>17</sup> *Id.*

<sup>18</sup> AMC 3.70.130

<sup>19</sup> 743 P.2d 1205 (Utah 1987).

<sup>20</sup> *Id.*

<sup>21</sup> AR 2009-77(S).

For example subsections of Article 2 of the IBEW contract purports to restrict all municipal contracting involving electrical work to IBEW signatories, which carries significant economic effect to the private sector.

A review of the minutes of the Assembly meetings indicates that the lack of information on the SEEs was discussed. For example, at the December 16, 2008 meeting, Assembly member Ossiander expressed concern about trying to figure out the costs and pointed out that no performance pay incentive costs were listed on the SEE for the APDEA contract.<sup>22</sup>

The Anchorage Municipal Code indicates what should be included in a properly drafted SEE and provides in pertinent part:

2. *Contents.* A summary of economic effects shall address:
  - a. Local government effects for the current and succeeding four years, including:
    - i. All costs of implementation, capital, operation and maintenance of the proposed ordinance, if adopted;
    - ii. Changes in revenue;
    - iii. The impact on existing programs;
    - iv. The source of funds to be utilized;
    - v. The number of new positions which may be required, identified as full-time, part-time or temporary;
    - vi. The fiscal effects, if any, of not passing this ordinance; and
    - vii. Any additional fiscal information that may be useful to the assembly in its deliberations.
  - b. A description of private sector economic effects which may reasonably be expected as a consequence of the proposed ordinance. This summary of private sector effects may include but need not be limited to changes in:
    - i. Costs or opportunities to individuals or businesses;
    - ii. Availability of goods and services;

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<sup>22</sup> Assembly Minutes December 16, 2008.



- iii. Employment;
  - iv. Property value;
  - v. Population; and
  - vi. Other economic factors that may be useful to the assembly in its deliberations.
- c. Formal information consisting of:
- i. The ordinance number;
  - ii. The name of the prime sponsor;
  - iii. The date the summary was prepared; and
  - iv. The name and telephone number of the person who prepared the summary.

3. *Waivers.* The assembly may waive the application of the provisions of this section. **Failure to comply with this section shall not invalidate any action taken.**<sup>23</sup>

The AMC specifically states that failure to follow the section governing the contents of SEEs "shall not invalidate any action taken."<sup>24</sup> Therefore, despite the failure to include all required information in the SEE, the Assembly Resolutions may not be rescinded on this factor alone, according to the AMC.

**C. The contract negotiations involved unilateral and/or mutual mistake.**

In early 2009, the Administration identified misunderstandings in the IBEW contract.<sup>25</sup> Specifically, the administration's intention was for the signatory requirement to apply only to the Property and Facilities Division, not the entire Maintenance and Operations Department.<sup>26</sup> It was not anticipated that the requirement would apply to the entire M&O Department, as it was being interpreted by IBEW.<sup>27</sup> It is unclear from the materials provided thus far whether this misunderstanding constitutes a unilateral or mutual mistake.

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<sup>23</sup> AMC 2.30.050 (emphasis added).

<sup>24</sup> AMC 2.30.050(B)(3).

<sup>25</sup> Letter from Municipality of Anchorage Acting Mayor, Matt Claman, to IBEW Business Manager, Larry Bell, dated February 24, 2009.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Another clause in the IBEW contract affecting open and fair competition was changed from the previous version of the contract and does not comply with federal law. Whether this was a mistake by both parties is unclear from the materials provided.

In certain instances contracts may be rescinded on the grounds of mutual mistake or unilateral mistake of fact.<sup>28</sup> Mistake occurs where one or both parties to the contract believe a fact to be true when it is not true. If one party makes a mistake, the error is called a unilateral mistake. Generally, this type of mistake does not invalidate the contract, because the law does not excuse negligence or inadvertence. For example, if you sell somebody a table that you think is an ordinary table made in 1950 for a few dollars, and it turns out to be a valuable antique made in the year 1800, the law will not ordinarily invalidate that contract. However, if the other party to the contract induced the mistake, then the injured party may rescind the contract.

If both parties to a contract make a mistake, the error is called a bilateral mistake. This type of mistake generally voids the contract because there was no meeting of the minds or consent.<sup>29</sup> "A party bears the risk of a mistake when ... he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient."<sup>30</sup> This is sometimes referred to as "conscious ignorance."<sup>31</sup>

As previously noted the Assembly was not reviewing final contracts and had concerns at the time the Resolutions were passed about the financial information provided by the administration.<sup>32</sup> The Assembly members went forward with a vote on these contracts despite the concerns and the contracts have now been in effect since January 1, 2009. The law does not seem to support allowing the Assembly to rescind when it passed the contracts with knowledge that some or all of the financial information might be inaccurate; however, where mutual mistake is shown, the contracts may be rescinded or reformed.

The section of the IBEW contract that does not comply with federal fair and open competition, however, does not appear to have been discussed during the Assembly meetings and may, therefore, constitute a mutual mistake by the parties. Whether the section was merely overlooked by the City or whether both parties made mistakes in drafting that section to not comply with federal requirements for funding is unclear. If both parties were mistaken, the IBEW contract may be reformed or rescinded.

**D. The IBEW contract is in violation of federal funding requirements for fair and open competition.**

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<sup>28</sup> McQuillan, *Law of Municipal Corporations* § 29.126.

<sup>29</sup> *Stormont v. Astoria Limited*, 889 P 2d 1059 (Alaska 1995).

<sup>30</sup> Restatement (Second) of Contracts §154(b).

<sup>31</sup> *Wasser & Winters Co. v. Ritchie Bros. Auctioneers (America), Inc.*, 185 P.3d 73, 77 (Alaska 2008).

<sup>32</sup> Assembly Minutes, December 2 and 16, 2009.

FAR supplements generally require the Government to conduct competitive procurements under "full and open competition" through the use of competitive procedures that are consistent with the need to fulfill the Government's requirements efficiently.<sup>33</sup> By emphasizing "full and open competition" in the relevant statutory provisions and the FAR, the Government can select the most innovative products and services at the lowest prices.

A statutory and regulatory structure governs contract performance obligations after the contract comes into existence. The regulatory aspects are also primarily governed by the FAR and FAR supplements located in Title 48 of the Code of Federal Regulations. Subsections of Article 2 of the IBEW contract purport to restrict all municipal contracting involving electrical work to IBEW signatories.<sup>34</sup> IBEW Contract Section 2.14.4 provides:

In each case in which the Municipality hires a contractor or subcontractor to perform work for the Municipality on Municipal property which is not owned or operated by ML&P, and the nature of the work is within the traditional jurisdiction of the IBEW, the Municipality will require as a condition of that contract or subcontract that the contractor or subcontractor have a current collective bargaining agreement or letter of assent with the IBEW Local Union 1547. For the purposes of this paragraph, the "Municipality" means services provided and **property owned, operated, maintained, or constructed by or for the Municipality of Anchorage, excluding ML&P.**

The prior IBEW contract had similar language in section 2.14.2 that applied only to property owned by ML&P. This new section extends the IBEW claim to all property owned, operated, maintained or constructed by or for the municipality.

Also, the new section 2.14.5 of the IBEW contract states: "In order to avoid unnecessary disputes and project delays, IBEW shall be permitted to review contracting and subcontracting proposals to verify compliance herewith before the contract or subcontract is awarded and for notice purposes, the IBEW shall be included on the bidders list of all RFB." The old contract, section 2.14.2 states IBEW would be permitted to review contracting and subcontracting proposals to verify compliance. The new contract specifically allows review **prior to** bid awards.

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<sup>33</sup> See 48 C.F.R. section 6.101.

<sup>34</sup> IBEW Contract Section 2.14.4 provides, "in each case in which the Municipality hires a contractor or subcontractor to perform work for the Municipality on Municipal property which is not owned or operated by ML&P, and the nature of the work is within the traditional jurisdiction of the IBEW, the Municipality will require as a condition of that contract or subcontract that the contractor or subcontractor have a current collective bargaining agreement or letter of assent with the IBEW Local Union 1547. For the purposes of this paragraph, the "Municipality" means services provided and property owned, operated, maintained, or constructed by or for the Municipality of Anchorage, excluding ML&P."

The changes in the work covered by the contract from ML&P work to all municipal contracting involving electrical work on municipal property not owned by ML&P, were unknown and not identified during the Assembly meeting.<sup>35</sup> A letter received from the US Department of Transportation informed the Municipality of Anchorage that this restriction would restrict full and open competition, as required under federal regulations, and thus jeopardize federal funding.<sup>36</sup>

49 USC Section 5325(a) provides:

Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

Additionally, 49 Code of Federal Regulations (CFR) Section 18.36 provides in part:

(b) Procurement standards. (1) Grantees and sub grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36.

President Obama Executive Order, February 6, 2009 regarding project labor agreements states in pertinent part

Sec. 4. Any project labor agreement reached pursuant to this order shall:  
(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.

The restriction to award contracts and, by extension, only to consider bids, by contractors who are either signatories to the collective bargaining agreement or who obtain assent from the union to perform that work, is an unallowable restriction to full and open competition. The Municipality is required to conform to federal full and open competition requirements as outlined above in order to receive necessary funding for contracts such as those at issue here.

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<sup>35</sup> Attachment 2 to AR No.2009-63 Transcript of Public Hearing on AR 2008-208, dated December 2, 2008.

<sup>36</sup> Letter from US Department of Transportation Regional Administrator R.F. Krochalis to D. Kenneth Ford, Assistant Municipal Attorney, dated February 24, 2009 ("to award contracts and, by extension, only to consider bids, by contractors who are either signatories to the collective bargaining agreement or who obtain assent from the union to perform that work, would be considered an unallowable restriction to full and open competition").

With the IBEW contract, as written, the Municipality is in jeopardy of losing necessary federal funding. The City at a minimum should request IBEW consider reforming the contract to comply with federal requirements in order to receive necessary funding. As previously discussed, lack of funding does not justify contract rescission; however, requesting reformation may be a suitable alternative.

**III. The contracts do not comply with AMC 6.30.050 and are invalid as a matter of law.**

While rescission and/or reformation may be appropriate alternatives for the IBEW contract, the facts presented indicate both contracts are invalid as a matter of law because the mandatory provisions under Anchorage Municipal Code Section 6.30.050 were not followed.

AMC 6.30.050 requires prior certification and confirmation of funding availability before any resolution is passed by the Assembly and provides in pertinent part:

No contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for expenditure of money be passed by the assembly or be authorized by any officer of the municipality, unless the chief fiscal officer shall first certify to the assembly or to the proper officer, as the case may be, that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose. Likewise, no officer of the municipality shall authorize commencement of work on any contract, agreement or obligation without first having been notified of funding approval. The sum so certified shall not thereafter be considered unencumbered until the municipality is discharged from the contract, agreement or obligation.

All moneys actually in the treasury to the credit of the fund from which they are to be drawn and all moneys applicable to the payment of the obligation or appropriation involved that are anticipated to come into the treasury before the maturity of such contract, agreement or obligation from taxes, assessments, miscellaneous revenue or from sales of property, federal or state grants, and moneys to be derived from lawfully authorized bonds, for the purpose of such certificate shall be considered in the treasury to the credit of the appropriate fund and subject to such certification.

The records provided indicate an absence of mandatory certification and confirmation of available funds by the Municipalities' Chief Fiscal Officer for both the IBEW and APDEA contracts at the time the Anchorage Assembly considered and passed the Resolutions that ratified these contracts. Because the mandatory

certification provision contained in AMC 6.30.050 was not followed, these contracts are invalid as a matter of law.

Other courts have considered whether a governmental body may waive mandatory requirements contained in controlling statutes and ordinances. For example, a New York court recently determined a City Government could not enter a lease without approval by the Office of Management and Budget and other required agencies.<sup>37</sup> The court stressed that the approvals were "not mere formalities or technicalities" and the City legally could not comply with the letter of intent at issue.<sup>38</sup>

Many jurisdictions have echoed the rule that mandatory statutory requirements must be followed by the city government.<sup>39</sup> This applies to both mandatory statutes and mandatory local ordinances. As one court noted, "it is well established that a local government cannot waive the requirements of the law...the authorities are uniform that the mandatory requirements of an ordinance specifically stated cannot be waived."<sup>40</sup>

The requirement that municipalities strictly comply with mandatory provisions is enforced by the courts to protect the public. As one court stated, "[i]n order to protect the public from corrupt or ill-considered actions of municipal officials, a municipality's power to contract is statutorily restricted....no liability can result unless the prescribed procedure is complied with and followed."<sup>41</sup>

The law protects citizens from the waste of city funds.<sup>42</sup> In explaining this principal the Lebanon court stated, "Municipal corporations represent the public, and are themselves to be protected against the unauthorized acts of their officers when it can be done without injury to third parties. Persons dealing with such officers are chargeable with notice of the powers which the corporation possesses, and are held responsible accordingly."<sup>43</sup> The court further noted that the provisions cannot be waived by a pattern of practice.<sup>44</sup>

Not only is this rule upheld in other jurisdictions but it has also been recognized in Alaska. In *Turpin v. North Slope Borough*, the Alaska Supreme Court held that a fiscal note is required if any additional appropriation is required, regardless of the

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<sup>37</sup> *Benedict Realty Co. v. City of New York*, 11 Misc.3d 1086(A), 819 N.Y.S.2d 846 (Table), 2006 WL 1094590, 6 (N.Y. Sup. 2006).

<sup>38</sup> *Id.*

<sup>39</sup> *Dowhower v. W.C.A.B. (CAPCO Contracting)*, 591 Pa. 476, 485, 919 A.2d 913, 918 (Pa. 2007) (where statutory provisions are mandatory... they cannot be waived, and substantial compliance is not sufficient"); *Mannellin v. Driver and Motor Vehicle Services Branch*, 176 Or.App. 9, 14, 31 P.3d 438, 442 (Or.App. 2001) ("mandatory requirements of an ordinance specifically stated cannot be waived"); 64 Am. Jur 2d Public Works & Contracts § 62 (1972) (mandatory statutory requirements cannot be waived).

<sup>40</sup> *City of Mosier v. Hood River Sand, Gravel and Ready-Mix, Inc.*, 206 Or.App. 292, 319, 136 P.3d 1160, 1175-76 (Or.App. 2006).

<sup>41</sup> *Henry Modell & Co. v. City of New York*, 159 A.D.2d 354, 355, 552 N.Y.S.2d 632, (N.Y. 1990).

<sup>42</sup> *City of Lebanon v. Baird*, 756 S.W.2d 236, 245 (Tenn. 1988).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

source, and the court invalidated a regulation adopted without a fiscal note based on evidence that several state agencies anticipated a need for additional funds.<sup>45</sup> The applicable statute in this case, Alaska Statute 44.62.195, stated:

If the adoption, amendment, or repeal of a regulation would require increased appropriation by the state, the department or agency affected **shall** prepare an estimate of the appropriation increase for the fiscal year....<sup>46</sup>

When finding a fiscal note was required, the court stated the word "shall" contained in the applicable statute had mandatory effect.<sup>47</sup> Thus, the failure to comply with the statute's mandatory requirements rendered the action invalid.<sup>48</sup>

In the present matter, AMC 6.30.050 has a mandatory requirement that the "chief fiscal officer shall first certify to the assembly or to the proper officer...that the money required for such contract... has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose." The ordinance in this matter also mandatorily requires that "no officer of the municipality shall authorize commencement of work on any contract...without first having been notified of funding approval."

The facts, as presented to our firm for this legal analysis, indicate the chief fiscal officer did not certify that funds were available for either the IBEW or APDEA contracts in accordance AMC 6.30.050. The Assembly thus lacked the authority to pass the Resolutions that ratified the contracts at issue, and the contracts are thus *ultra vires*, or outside the power of the municipal corporation to make, and therefore void.<sup>49</sup>

"A contract is not enforceable against a municipality unless it complies with local enactments."<sup>50</sup> The contracts in this matter do not comply. "A municipality does not have the power to contract contrary to its own ordinances"<sup>51</sup> and this matter is no exception. According to the law as applied to facts provided by Assembly representatives, these contracts are invalid for failure to comply with the mandatory requirements of AMC 6.30.050.

#### IV. Conclusion

Based on the facts as presented to us for this legal analysis and applicable law, the IBEW contract may be reformed or rescinded based on the failure of this federally

<sup>45</sup> *Turpin v. North Slope Borough*, 879 P.2d 1009, 1013 (Alaska 1994).

<sup>46</sup> AS 44.62.195 (emphasis added).

<sup>47</sup> *Id.* at fn 7.

<sup>48</sup> *Id.*

<sup>49</sup> McQuillin *The Law of Municipal Corporations* § 29.108, *Ultra vires or illegal acts* (2009).

<sup>50</sup> *Homeward Bound, Inc. v. Anchorage School District and Municipality of Anchorage*, 791 P.2d 610, 613 (Alaska 1990).

<sup>51</sup> *Wisconsin Electric Power Co. v. Outagamie County*, 762 N.W.2d 388, 392 (2008).

funded contract to provide fair and open competition. However, reformation or rescission may not be necessary under the facts as presented because we conclude that that both contracts are invalid since neither complies with the mandatory provisions contained in AMC 6.30.050.

We hope this letter has answered your question. We remain available to discuss the matter further.

Very truly yours,

WALKER & LEVESQUE, LLC

A handwritten signature in black ink that reads "Joseph N. Levesque". The signature is written in a cursive, flowing style.

Joseph N. Levesque





# Jermain Dunnagan & Owens, P.C.

LAW OFFICES

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MATTHEW SINGER

RAYMOND E. GOAD, JR.  
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CHERYL MANDALA  
DAVID A. NESBETT  
GREGORY F. DORRINGTON

SERVING ALASKANS SINCE 1976

9/29/09  
Presentation file

September 29, 2009

The Honorable Mayor Dan Sullivan  
Assembly Members  
632 W. 6th. Ave., Suite 840  
Anchorage, AK 99501

Re: IAFF Local 1264

Dear Mayor Sullivan and Assembly Members:

I am general counsel for IAFF Local 1264. Union President Tom Wescott is on duty at Station 1 today. The attached letter is the IAFF position on rescission of their collectively bargained agreement.

This letter is being emailed to each Assembly member at their posted email address as well as to the Municipal Clerk.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.

  
Charles A. Dunnagan

CAD/jrh

Enclosure

cc: IAFF Local 1264  
Municipal Attorney



# Anchorage Firefighters Local 1264



P.O. Box 242041 • Anchorage, AK 99524-2041  
(907) 349-1264 • (907) 349-5580 (fax)

September 29, 2009

The Honorable Mayor Dan Sullivan  
Assembly Members  
632 W. 6th. Ave., Suite 840  
Anchorage, AK 99501

**Re: Fire Fighters Contract**

Dear Mayor Sullivan and Assembly Members:

I am writing in response to the recent news stories questioning the legality of the Municipality's contract with the IAFF. Specifically, Assemblyman Starr recently emailed the media stating that he plans "to seek rescission actions for these AFD and APD contracts."<sup>1</sup>

We note that the Assembly only authorized its independent legal counsel to review the APDEA and IBEW contracts.<sup>2</sup> Accordingly, Assemblyman Starr may have misspoken when he mentioned the AFD contract. However, while we are still reviewing the legal arguments, I wanted to take this opportunity to share our initial response.

**SUMMARY**

Any analysis based on AMC 6.30.050 is incorrect. That provision does not apply to labor agreements. It is part of the procurement code. Labor agreements have their own code provision covering ratification requirements.

Even if that analysis is used, it fails to take into account that the IAFF contract was opened twice and approved twice by the Assembly. The

<sup>1</sup> "Assembly Member levels serious charges against Begich administration," KTUU, September 22, 2009. <http://www.ktuu.com/Global/story.asp?S=11180841>

<sup>2</sup> See AR 2009-77(S).

Page 2 of 5

circumstances that existed when the Assembly accepted concessions from the Fire Fighters in April of 2009 were quite different than those that existed in November of 2008. Any earlier defects were cured by the second approval.

Parties who contract with government have both state and federal constitutional protections. The notion that the current argument for voiding contract ratification somehow trumps the contract clauses of both the state and federal constitutions has never been litigated in Alaska.

The legal analysis under review is flawed. If it is followed, the litigation will take three to five years, cost hundreds of thousands of dollars, and ultimately fail to deliver any value to the City.

## DISCUSSION

### 1. The AMC 6.30.050 Analysis is Incorrect.

Mr. Levesque's main area of concern appears to be AMC 6.30.050, which states that "no contract . . . shall be entered into . . . unless the chief fiscal officer shall first certify to the assembly . . . that the money required for such contract . . . has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose."<sup>3</sup>

This provision does not apply to labor agreements. Labor agreements are multi-year agreements for which appropriations have yet to be made.<sup>4</sup> For obvious reasons, the CFO cannot certify the existence of future appropriations. In order for the CFO to certify that the money has already been appropriated, the Municipality would have to negotiate and ratify new labor agreements with all labor unions on an annual basis. This is not economical or practical, and it has not been the interpretation or practice of the parties.

There is another reason why labor agreements are not procurement agreements. Labor agreements establish a unit price. The City retains the right to decide how much labor, if any, to purchase pursuant to the agreement. Nothing in the Fire Fighters contract requires that the City continue to provide any level of service. Thus, any certification is in essence a fiction since it is based on a non-

<sup>3</sup> "Legal Opinion re: Labor Contracts," Joseph Levesque, September 23, 2009, at 11-13.

<sup>4</sup> See Anchorage Municipal Charter, Article XIII, Section 13.08(b) ("The Assembly by ordinance may authorize a contract, lease, or obligation requiring funds from future appropriations."). See also AMC 7.15.100 (allowing multi-year contracts for supplies, services, professional services, or construction).

mandatory level of procurement. By comparison, a contract to buy two tons of quarter-inch pipe for delivery next month is an altogether different contract.

It is a basic principle of statutory construction that "the specific governs the general."<sup>5</sup> While AMC 6.30.050 is a general provision on contracts and agreements, AMC 3.70.130 provides the specific process for ratifying labor agreements:

Upon completion of negotiations between the municipality and the bargaining representative, all of the terms and conditions shall be reduced to writing in a single agreement. The agreement shall then be presented to the appropriate employee unit for ratification and to the assembly for ratification in the same manner as a municipal ordinance. . .

The rules for introduction and action on a municipal ordinance, in turn, are provided in AMC 2.30.050. An ordinance must be introduced by an assembly member at a regular meeting and be accompanied by a Summary of Economic Effects.<sup>6</sup> However, as Mr. Levesque notes, the code specifically provides that "failure to comply with this section shall not invalidate any action taken."<sup>7</sup>

## 2. The IAFF Contract Has Multiple Approvals.

When the City raised fiscal concerns in early 2009, the IAFF agreed to contract revisions and wage concessions.<sup>8</sup> The Assembly approved the contract

---

<sup>5</sup> *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) ("it is a commonplace of statutory construction that the specific governs the general."); *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990), citing *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) ("It is an elementary tenet of statutory construction that '[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.'").

<sup>6</sup> AMC 2.30.050.

<sup>7</sup> AMC 2.30.050(B)(3). See also "Legal Opinion re: Labor Contracts," Joseph Levesque, September 23, 2009, at 7; AMC 3.70.040(B) ("in exercising management rights, the municipality shall ensure that, where matters of wages, hours and other terms and conditions of employment are involved, all written agreements are observed."); AMC 3.70.020(A) ("The municipality declares that it is its policy to promote harmonious and cooperative relations between the municipality and its employees and to protect the public by ensuring orderly and effective operations of government.").

<sup>8</sup> See AR 2009-85.

Page 4 of 5

revisions, recognizing that the IAFF was granting wage concessions due to a budgetary shortfall identified after ratification of the agreement.<sup>9</sup>

The Fire Fighters contract has been before the Assembly twice. No legal analysis can honestly suggest that when the contract was reopened and revoted in April of 2009 that the Assembly was not fully and fairly aware of the City's financial circumstances

3. Unanticipated Effects of Rescission.

In addition to the legal arguments, there are also practical reasons not to seek to void or rescind a labor agreement. As Mayor Begich noted, the Municipality's agreement with the IAFF includes:

Numerous changes to reduce administrative costs (e.g., elimination of the 1% incentive pay for EMT 1 and for ACLS, moves IAFF employees to 'new' MOA health plans; elimination of clothing allowance; elimination of overtime payment due to assignment errors, reduction of shift differentials) [and] changes providing for additional management rights (e.g., allows Chief to make non-disciplinary involuntary transfers; flexibility in staffing with Fire Captains and Senior Captains).<sup>10</sup>

If the Municipality attempts to void its contract with IAFF, any actions taken by the Municipality under these or other provisions since the CBA went into effect on January 1, 2009, will be subject to legal challenge. The same is true of any grievances, arbitrations, or memorandums of understanding issued under the voided contract. This is not a route that either party should pursue lightly.

4. Equitable and Constitutional Concerns.

As a matter of equity, the Municipality should not be allowed to enter into labor agreements and, months later, seek to void or rescind the contracts because one branch of government allegedly did not provide information to another branch of government or because the Assembly did not insist on financial information prior to ratifying the agreement. Imagine what the City would say if the IAFF attorney decided that our ratification of the April concessions was invalid under our bylaws. Could we send you a bill for underpaying our wages? Of course not.

<sup>9</sup> AR 2009-85. Anchorage Assembly Minutes, April 14, 2009.

[http://anchorageak.granicus.com/MinutesViewer.php?view\\_id=2&clip\\_id=911](http://anchorageak.granicus.com/MinutesViewer.php?view_id=2&clip_id=911)

<sup>10</sup> Assembly Memorandum 829-2008.

Page 5 of 5

Both parties must abide by the terms of the deal. Allowing the Municipality to back out of its labor agreements would gut the collective bargaining process.

The Contracts Clause of the Alaska and U.S. Constitutions prohibit the passage of any law impairing the obligation of contracts.<sup>11</sup> The prohibition applies to "every form in which the legislative power of a State is exerted, whether it be a constitution, a constitutional amendment, an enactment of the legislature, by a bylaw or ordinance of a municipal regulation, or order of some other instrumentality of the State exercising delegated, legislative authority."<sup>12</sup> And a higher level of scrutiny is applied to laws modifying a State's own contractual obligations.<sup>13</sup> By retroactively voiding labor contracts and agreements, the Assembly will violate the contracts clauses for the state and federal constitutions.

### CONCLUSION

I strongly urge the Assembly not to rescind or void its contract with the IAFF. Doing so will trigger years of litigation at a huge cost to all concerned and plunge the City into an extended period of uncertainty.

Sincerely,

/s/

Tom Wescott, President  
IAFF Local 1264

---

<sup>11</sup> Article I, Section 15 of the Alaska Constitution; Article 1, Section 10 of the U.S. Constitution.

<sup>12</sup> *Ross v. Oregon*, 227 U.S. 150, 163 (1913).

<sup>13</sup> *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977).

Jermain, Dunnagan &  
Owens, P.C.

3000 A Street, Suite 300, Anchorage, AK 99503

**FAX**Date: September 29, 2009Number of pages including cover sheet: 7Client No: 10000.800

To:

Municipal Clerk

Phone:

Fax phone: 343-4313

CC:

From:

Charles A. DunnaganPhone: (907) 563-8844Fax phone: (907) 563-7322

## REMARKS:

☐ Urgent☐ For your review☐ Reply ASAP☐ Please comment

The attached letter is for tonight's Assembly meeting. A copy has been emailed to each Assembly member. Please call me if you need us to provide hard copies for each member and we will have them hand-delivered. Thank you.

The information contained in this facsimile transmittal is confidential, may be subject to the attorney-client privilege and is intended only for the use of the recipient named above. If the reader of this information is not the intended recipient, or the employee or agent responsible for delivery of this information to the intended recipient, you are hereby notified that this is not a waiver of privilege and any dissemination, distribution or copying of this information is strictly prohibited. If you have received this information in error, please notify the sender immediately by telephone and return the original information to the sender, by U.S. mail, at the above address.

Submitted by: ASSEMBLY MEMBER SELKREGG  
ASSEMBLY VICE CHAIR COFFEY  
Reviewed by: Assembly Counsel  
For reading: March 24, 2009

CLERK'S OFFICE

**APPROVED**

Date: 3-24-09 ANCHORAGE, ALASKA  
AR NO. 2009-77(S)

**A RESOLUTION AUTHORIZING THE PROCUREMENT OF INDEPENDENT LEGAL  
SERVICE TO THE ASSEMBLY (ANCHORAGE MUNICIPAL CODE 7.20.060K).**

WHEREAS, in December 2008, the Assembly passed AR 2008-280 and AR 2008-307, each ratifying a collective bargaining agreement on the assumption of available municipal funding; and

WHEREAS, Anchorage Municipal Code (AMC) 6.30.050 requires that "no contract, agreement or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for expenditure of money be passed by the assembly . . . unless the chief fiscal officer shall first certify to the assembly . . . that the money required for such contract, obligation or expenditure has been appropriated to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose"; and

WHEREAS, AMC 3.70.130 requires all terms and conditions of a labor agreement to be reduced to writing in a single agreement and presented to the Assembly for ratification in the same manner as a municipal ordinance, and "no provision of a contract may violate a municipal ordinance or the Charter or state or federal law", except as authorized under AMC 3.70.170 for certain personnel rules; and

WHEREAS, AMC 2.30.050 requires the identification of private sector and public sector economic effects which can be reasonably expected as a consequence of the action before the Assembly; and

WHEREAS, prior to Assembly action on AR 2008-280 and AR 2008-307, the fiscal environment of the municipality was represented in various reports on the status of revenue and spending under the FY 2008 budget, with the fund balance forecast report distributed on November 17, 2008 describing the anticipated 2008 year-end fund balances as intact; and

WHEREAS, beginning in January 2009 and continuing to date, the Administration is confirming significant depletion of fund balances during FY 2008 and projected budget shortfalls for FY 2009; and

WHEREAS, the summary of economic effects ("SEE") for AR 2008-280 and AR 2008-307 are each deficient in the identification of private sector and public sector economic effects; and



1 WHEREAS, deficiencies in content and approval process have been identified,  
2 but may not be limited to, the deficiencies identified in Assembly Memorandum 141-  
3 2009 and Assembly Memorandum 145-2009; and  
4

5 WHEREAS, Assembly Counsel and the Municipal Attorney concur in the  
6 memorandum prepared by Assembly Counsel dated February 23, 2009; and  
7

8 WHEREAS, the underlying labor agreements may be subject to reformation,  
9 rescission, or other equitable remedy as deficiencies in content and approval process;  
10 and  
11

12 WHEREAS, as discussed in the Assembly Meeting on March 3, 2009, the  
13 Assembly has a limited understanding of the legal actions and ramification of potential  
14 corrective action alternatives and remedies the Assembly can take to address  
15 deficiencies in content and approval process;  
16

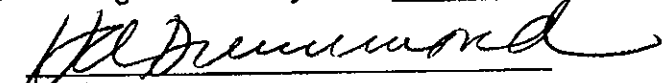
17 NOW THEREFORE BE IT RESOVED by the Anchorage Assembly:  
18

19 **Section 1.** As authorized by Charter §4.06 and AMC 7.20.060K, the Acting  
20 Assembly Chair, on behalf of the Assembly, shall procure impartial and  
21 independent expert legal review and analysis of the conditions precedent to valid  
22 Assembly action in the ratification of labor agreements; corrective action  
23 alternatives, as applicable; and an analysis of legal consequences and remedial  
24 alternatives, as applicable.  
25

26 **Section 2.** In the selection of this independent legal service for the Assembly,  
27 factors for consideration shall include: Expertise in municipal law; experience  
28 representing home rule or unified municipalities; impartiality; and the ability to  
29 prepare the analysis for presentation after May 11, 2009.  
30

31 **Section 3.** Because AMC 7.20.060K provides that any selection must be  
32 approved by the Assembly prior to commencement of work, the Assembly shall  
33 review the proposed selection at the Assembly Meeting scheduled for April 14,  
34 2009.  
35

36 PASSED AND APPROVED by the Anchorage Assembly this 24th day of  
37 March, 2009.

38   
39 Chair  
40

41 ATTEST:

42   
43 Municipal Clerk  
44

**MUNICIPALITY OF ANCHORAGE**  
**Summary of Economic Effects -- Enterprise Activities**

AM Number: 2008-280

Title: A RESOLUTION RATIFYING A FIVE YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE MUNICIPALITY OF ANCHORAGE AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1547.

Sponsor: MAYOR

Preparing Agency: Employee Relations

Others Impacted:

**CHANGES IN EXPENDITURES AND REVENUES:**

(In Thousands of Dollars)

	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>
<b>Operating Expenditures</b>					
1000 Personal Services	\$691	\$1,213	\$1,847	\$2,402	\$3,069
2000 Non-Labor					
3900 Contributions					
4000 Debt Service					
<b>TOTAL DIRECT COSTS:</b>	<b>\$691</b>	<b>\$1,213</b>	<b>\$1,847</b>	<b>\$2,402</b>	<b>\$3,069</b>
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
<b>FUNCTION COST:</b>	<b>\$691</b>	<b>\$1,213</b>	<b>\$1,847</b>	<b>\$2,402</b>	<b>\$3,069</b>

**REVENUES:**

**CAPITAL:**

**POSITIONS: FT/PT and Temp**

**PUBLIC SECTOR ECONOMIC EFFECTS:**

The numbers above reflect the patterned collective bargaining agreements: 3% in 2009; CPI-U in 2010, 2011, 2012 and 2013 with a minimum of 2.5% and not to exceed 3.9%; either side can request a wage reopener instead of the CPI-U beginning in 2010. For the CPI-U in 2010, 2011, 2012 and 2013 the numbers above reflect the minimum of 2.5%; if the CPI-U increase for those years was 3.9% then the increase would be \$1,440 in 2010, \$2,316 in 2011, \$3,127 in 2012 and \$4,068 in 2013.

**PRIVATE SECTOR ECONOMIC EFFECTS:**

None

Prepared by: David K. F. Otto, Employee Relations Director

Telephone: 343-4399

**14. NEW PUBLIC HEARINGS**

- 14.B. Resolution No. AR 2008-280, a resolution ratifying a five year collective bargaining agreement between the Municipality of Anchorage and the **International Brotherhood of Electrical Workers, Local Union 1547, Employee Relations Department**.
- a. Assembly Memorandum No. AM 782-2008.

*(Following Public Hearing and discussion from Mr. Coffey and Mr. Starr. Correlates with Minutes on Page 12, beginning with Line 54. Located at 04:11:08 to 04:13:18 on the video.)*

Mr. Coffey: *(lastly addressing shop stewards or working stewards and language that pertained to a contract change in 1998, and stating there were things in the contract that needed clarity. And, a response from Mr. Otto, saying the language had been in the contract for a long time)*

Ms. Johnston: I have not read this contract as thoroughly as Mr. Coffey has... but, I'm concerned with all the existing language... and we've just rolled it into this contract, including language that goes back to Eklutna and the double time and the triple time hourly rate... What did we address? I mean, what did we address? Do we have a copy... like we did with the other one we had... as far as the changes that were made?

Mr. Otto: Through the Chair, Ms. Johnston. I don't know, um, exactly what kind of copy you have. I don't have a marked-up... I don't even have a copy in front of me right at this very moment. But, we chose about a half a dozen items to negotiate... Mr. Bell and Shop Stewart Kelly Lauren and Jim Posey and myself. And, we dealt primarily with the high levels of benefits and wages, efficiencies, management rights... those kinds of things. And then there was another team, at the department level, that dealt with the editing of various pages and that aspect of it. And, it was all rolled into a contract ...ratified vote.

Ms. Johnston: And this is the final one? This isn't a draft? It's all been edited... for the couple of type-o's that Mr. Coffey's seen?

Mr. Otto: Yes. Correct. We're had a management labor team working on this to go through all the editing of it, to make sure it's correct and all the spelling is correct and all those things.

Ms. Johnston: I'm curious why we don't... If some of the language is obsolete, why we don't get rid of it?

Mr. Otto: Uh... We attempt to do that in every case. Um... however sometimes we are not successful... sometimes it's because they say there is still a person who is under that language... still has an effect there. And, therefore we keep it the same for that one-in-a-hundred chance type scenario. We try to clean those up ourselves, and IBEW with us has been very successful in a lot of that. Some of those do not get caught.

Ms. Johnston: Thanks.



U.S. Department  
of Transportation  
Federal Transit  
Administration

REGION X  
Alaska, Idaho, Oregon,  
Washington

915 Second Avenue  
Federal Bldg. Suite 3142  
Seattle, WA 98174-1002  
206-220-7854  
206-220-7958 (fax)

FEB 24 2009

D. Kenneth Ford  
Assistant Municipal Attorney  
Municipality of Anchorage  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

Re: FTA Grant Procurements

Dear Mr. Ford:

This responds to your letter of February 20, 2009, seeking a determination from the Federal Transit Administration (FTA) to allow the Municipality of Anchorage (MOA) to use certain restrictive language in the solicitation and award of a contract paid for, in part, with FTA funds. You indicate that MOA currently is under a collective bargaining agreement with a local labor organization wherein projects put out for bid by the MOA must be restricted to contractors who are either signatories to the agreement or who obtain a letter of assent from the union to perform the work. The work to be performed under the contract funded with FTA funds would fall under the scope of this agreement.

As you note, FTA-funded contracts are subject to the requirement of full and open competition. FTA's procurement guidance at Circular 4220.1F, Chapter VI, provides, in part, as follows:

#### PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION REQUIRED. Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration's (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA.

49 U.S.C. Section 5325(a) provides:

Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

Attachment 3

Page  
1 of 2

And, 49 Code of Federal Regulations (CFR) Section 18.36 provides, in part:

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

\* \* \*

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36.

The restriction to award contracts and, by extension, only to consider bids, by contractors who are either signatories to the collective bargaining agreement or who obtain assent from the union to perform that work, would be considered an unallowable restriction to full and open competition.

One might also inquire whether President Obama's recent Executive Order (EO) of February 6, 2009, regarding project labor agreements, might somehow effect this determination. However, I would point out the following statement in the EO:

Sec. 4. Any project labor agreement reached pursuant to this order shall:

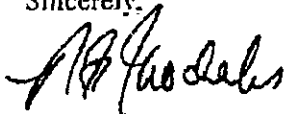
\* \* \*

(b) allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

Finally, I would note that FTA grant requirements do mandate that any FTA-funded construction contracts pay the prevailing wage rates pursuant to the Davis-Bacon Act, 40 U.S.C. Section 3141.

If you have any further questions, please do not hesitate to contact Ted Uyeno, FTA Regional Counsel, at 206-220-7958.

Sincerely,



R. F. Krochalis  
Regional Administrator

cc. Ned Conroy  
Patricia Hendrix

Attachment 3

Page  
2 of 2



# Municipality of Anchorage

PO Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.munil.org>

*Matt Claman,  
Acting Mayor*

## Office of the Mayor

February 24, 2009

Mr. Larry Bell  
Business Manager  
International Brother of Electrical Workers  
3333 Denali Street  
Anchorage, Alaska 99503

Dear Mr. Bell:

I write to you regarding the so-called "signatory clause" in the collective bargaining agreement approved by the Anchorage Assembly last December. I appreciate your earlier clarification that the requirement applies to contracted electrical work in five departments, not the entire Municipality of Anchorage.

However, a problem remains. The signatory requirement should apply only to the Property and Facilities Division, not the entire Maintenance and Operations Department. That was the intent of the clause. I feel confident in saying that no one wanted or anticipated that this requirement would be imposed on the entire M&O Department, as it is now constituted.

I hope you will agree that rolling back that requirement is in everyone's best interest. I look forward to discussing this with you in more detail.

Sincerely,

Matt Claman  
Acting Mayor



Attachment 4

*Community, Security, Prosperity*

Submitted by: Chair of the Assembly at the  
Request of the Mayor  
Prepared by: Employee Relations  
For Reading: November 18, 2008

CLERK'S OFFICE

APPROVED

Date: 12-2-08

IMMEDIATE RECONSIDERATION ANCHORAGE, ALASKA  
FAILED 12-2-08 AR NO. 2008-280

**A RESOLUTION RATIFYING A FIVE YEAR COLLECTIVE BARGAINING  
AGREEMENT BETWEEN THE MUNICIPALITY OF ANCHORAGE AND THE  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL  
UNION 1547.**

**WHEREAS**, the current collective bargaining agreement between the Municipality of Anchorage (hereinafter "MOA") and the International Brotherhood of Electrical Workers, Local Union 1547 (hereinafter "IBEW") expired October 1<sup>st</sup>, 2008; and

**WHEREAS**, IBEW and MOA entered into good faith negotiations that resulted in ratification of the collective bargaining agreement by the membership of IBEW effective October 1, 2008 through September 30, 2013; and

**WHEREAS**, Anchorage Municipal Code section 3.70.130 requires Assembly approval of any negotiated bargaining agreement and administrative letters; and

**WHEREAS**, it is in the best interest of the MOA and IBEW for this labor agreement to be subject to the public review and approval process in order to foster good labor-management relationships; and

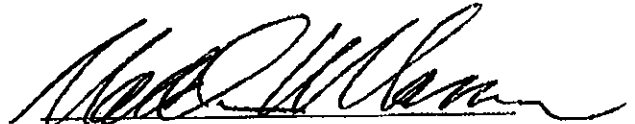
**WHEREAS**, the Administration recommends the approval of this negotiated contract as set forth in the Assembly Memorandum attached hereto; now, therefore,

**THE ANCHORAGE MUNICIPAL ASSEMBLY RESOLVES:**

**Section 1.** The collective bargaining agreement between the MOA and the IBEW, attached hereto and described in the Assembly Memorandum submitted herewith, is ratified by the Assembly.

**Section 2.** This resolution shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 2nd day of December, 2008.

  
Chair

ATTEST:

  
Municipal Clerk



# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 782-2008

Meeting Date November 18, 2008

1 **FROM: MAYOR**

2  
3 **SUBJECT: A RESOLUTION RATIFYING A FIVE YEAR**  
4 **COLLECTIVE BARGAINING AGREEMENT**  
5 **BETWEEN THE MUNICIPALITY OF ANCHORAGE**  
6 **AND THE INTERNATIONAL BROTHERHOOD OF**  
7 **ELECTRICAL WORKERS, LOCAL UNION 1547.**

8  
9 The Municipality of Anchorage (MOA) and the International Brotherhood of Electrical  
10 Workers, Local Union 1547 (IBEW) recently reached agreement on a five year collective  
11 bargaining agreement (CBA). The agreement would extend until September 30, 2013.  
12 The previous contract expired October 1st, 2008. The CBA has been ratified by the  
13 IBEW membership.

14  
15 This bargaining unit is made of 246 MOA employees. 171 are ML&P (Utility)  
16 employees and 75 General Government employees in Development Services, Traffic,  
17 Maintenance & Operations and Weatherization.

18  
19 This CBA successfully addresses each of the challenges identified in AR-2007-84. These  
20 Assembly directives were very helpful in setting appropriate expectations for both  
21 negotiating teams. Key elements of this agreement and examples of compliance of this  
22 CBA with AR 2007-84 are:

- 23  
24 • Reduces use of the Service Recognition Program (SRP) and allows employees to  
25 participate in a Performance based pay system.  
26 • Requires employees to share in increases in health benefits over the life of the  
27 contract.  
28 • Wage increases:  
29     o 2009 a 3.0% increase  
30     o 2010 a CPI-U (minimum of 2.5% and maximum of 3.9%).  
31     o 2011 a CPI-U (minimum of 2.5% and maximum of 3.9%) 2012 a CPI-U  
32     o (minimum of 2.5% and maximum of 3.9%).  
33     o 2013 a CPI-U (minimum of 2.5% and maximum of 3.9%)  
34     o Effective January 2010 and for the following years, either party may  
35     request a wage reopener instead of the CPI-U.  
36 • Pension Plan increases:  
37     o 2009 - \$.50 increase  
38     o 2011 - \$.25 increase  
39     o 2013 - \$.25 increase

Attachment 6



- Non-cashable leave was given to IBEW and is consistent in the leave code provisions for NON REP leave (3.30.152)
- Health and Welfare is through the IBEW Health Plan. This contract applies a new base of \$1248 with the employee paying an additional \$5.00. Increases in outer years will be at 90/10 split with the employee paying 10%.

This CBA follows the pattern of the recently approved Teamster, Local 959 CBA and Public Employees, Local 71 and Operating Engineers, Local 302.

Adoption of a five (5) year CBA will enable these employees and these departments to enjoy the benefits of a stable labor environment for the foreseeable future.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF A RESOLUTION RATIFYING A FIVE YEAR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE MUNICIPALITY OF ANCHORAGE AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1547.**

Prepared by:	Employee Relations Department
Approved by:	David K.F. Otto, Employee Relations Director
Concur:	James N. Reeves, Municipal Attorney
Concur:	Michael K. Abbott, Municipal Manager
Respectfully submitted:	Mark P. Begich, Mayor



**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY INFORMATION MEMORANDUM**

No. AIM 23-2009

Meeting Date: February 24, 2009

1 **FROM:** Acting Mayor

2  
3 **SUBJECT:** MOA/ML&P/IBEW Collective Bargaining Agreement & Classification  
4 Committee Action pertaining to wages decoupled from the Journeyman  
5 Lineman rate of pay  
6

7 In the Collective Bargaining Agreement between the Municipality of Anchorage  
8 Municipal Light & Power and the International Brotherhood of Electrical Workers (IBEW  
9 Local 1547) Article 3.9, Classification of Employees, outlines the classification process  
10 for wages and job classifications for employees covered under this agreement.  
11 Appendix 1 of the Collective Bargaining Agreement establishes the appropriate  
12 classification level and compensation for these bargaining unit classifications. For more  
13 than 40 years, these classifications have been tied to a percentage of Journeyman  
14 Lineman wages. Thus, the compensation paid to Engineers and Generation Plant  
15 Operator/Mechanics and various clerical positions was directly linked to the  
16 Journeyman Lineman's hourly wage rate. If the wages of the Journeyman Lineman  
17 were increased as a result of negotiations, all of the other classifications also received  
18 wage increases based on their particular percentage of pay.

19  
20 In recent years the Journeyman Lineman wage rate of ML&P had fallen behind that of  
21 other Alaskan Railbelt Utilities. Consequently ML&P has been unable to recruit  
22 competitively or to retain employees in several critical professional and technical  
23 positions, such as Engineers and Generation Plant Operators, and a number of these  
24 critical positions remain vacant. Over a recent 18 month period, four Engineers left  
25 ML&P for financial reasons, specifically due to our inability to pay market-based  
26 compensation. One of the major competitors is Chugach Electric Association (CEA)  
27 which offers a better compensation package.

28  
29 In June of 2007 Mayor Begich met with ML&P employees to discuss the possible  
30 merger of ML&P with CEA. During the discussions for a proposed merger between  
31 CEA and ML&P, it was also decided that the two utilities should look at combining  
32 forces on joint projects. With these two goals in mind, it was clear that the pay  
33 inequities between the two utilities would have to be resolved if they were to work  
34 together successfully.

35  
36 In January of 2008 the IBEW Business Manager, the MOA Employee Relations Director  
37 and the ML&P General Manager began discussions concerning the Collective

Attachment 7

1 Bargaining Agreement that was about to expire. They concluded that a Classification  
2 Committee should be convened in the Spring of 2008 to address the wage scale  
3 adjustments necessary for those ML&P classifications compensated below the market  
4 rate. The parties also agreed to discontinue the long standing practice of predating  
5 any one job classification on the 100% wage scale of Journeyman Lineman. This  
6 decoupling of classifications was a major concession by the IBEW. The Classification  
7 Committee was formed in June 2008, and began its review of classifications. It met  
8 frequently for extended periods of time. After a month it was determined more time was  
9 needed and it continued to work on the project throughout the summer and fall and  
10 concluded in late November/early December.

11  
12 The final result was the conclusion that a new Utility Base Wage should be established.  
13 This determination took into account market based data and research as well as  
14 identification of those selected classifications that have been difficult to fill as a result of  
15 historic under- compensation. In January 2009, the Classification Committee formalized  
16 its approval of the list of ML&P classifications eligible for implementation of the new  
17 Utility Base Wage rate effective January 5, 2009. This retroactive wage adjustment for  
18 January 5, 2009 has yet to be implemented, and has been delayed in part because of  
19 the necessary steps that must be coordinated with the Municipality's Peoplesoft  
20 systems, as well as with Municipal Payroll.

21  
22 Recommended by: James M. Posey, General Manager, ML&P

23 Requested by: Sharon Weddleton, CFO

24 Concur: Michael K. Abbott, Municipal Manager

25 Respectfully submitted: Matt Claman, Acting Mayor

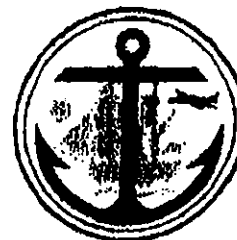
AGREEMENT COVERING  
TERMS AND CONDITIONS OF EMPLOYMENT

between

MUNICIPALITY OF ANCHORAGE



MUNICIPAL LIGHT & POWER



and



INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS  
LOCAL UNION 1547

AFL-CIO

Anchorage, Alaska

October 1, 2008 through October 31, 2013

Attachment 7

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committee of four (4) members equally representing the Union and Management which shall be known as the Municipal Light and Power Joint Apprenticeship and Training Committee. The Committee shall select co-chairmen from its members.

3.8.2 It shall be the duty of the Committee to administer all apprenticeship and trainee programs affecting bargaining unit employees including, but not limited to, those in Warehouseman Trainee, Operator-Mechanic Trainee, Clerk Trainee, Engineering Assistant I, and Engineer in Training positions.

3.8.3 The Committee will.

3.8.3.1 Review step rate placement for apprentice-trainees hired;

3.8.3.2 Provide for establishing training standards and programs;

3.8.3.3 Evaluate apprentice and trainee progress; and

3.8.3.4 Recommend whether an apprentice/trainee should advance to regular status or be terminated from employment.

## **Article 3.9 Classification of Employees.**

### **3.9.1 Job Classifications.**

3.9.1.1 The parties recognize the Bargaining Unit job classifications as listed and contained in Appendix 1 of this Agreement, and concur that such classifications have been agreed upon and are in existence upon the signing of this Agreement.

3.9.1.2 Pursuant to Municipal Ordinance AO 82-56, the parties recognize that a new job classification may be created or existing job classifications changed during the life of this Agreement if negotiated and mutually agreed to by the Union. Such changes shall be negotiated and agreed upon, and if not agreed upon, resolved pursuant to the classification committee and arbitration procedures hereinafter described

### **3.9.2 Classification Committees**

3.9.2.1 The Union and Utility Manager shall immediately establish a standing internal classification committee for ML&P consisting of two (2) management representatives and two (2) IBEW representatives. The MOA Employee Relations Director and the Union shall establish a separate but comparable classification committee to address job classifications in the other

MOA departments covered by this Agreement. The committees shall be charged with reviewing newly proposed job classifications or changes in existing classifications falling within the scope of this Agreement. A majority vote of the committee shall be controlling. The initial decision whether or not to simply create a new classification or to initiate a change in an existing classification is within the sole discretion of the Employer. Once such an initial decision is made, the provisions of this Article 3.9, Classification of Employees, shall apply.

3.9.2.2 Both the Union and the Employer shall appoint a co-chairman. Either co-chairman shall have authority to convene a meeting of the committee with three (3) calendar days advance notice.

3.9.2.3 If the Classification Committee does not agree on the establishment of the new job classification or the proposed changes, the matter may be submitted immediately to local arbitration through the striking method by which the Chief Steward and the Employer will jointly select a local arbitrator. The local arbitrator shall be selected and a decision rendered in five (5) calendar days. The decision of the arbitrator shall be final and binding on all parties.

3.9.2.4 The Classification Committee has the right, and the obligation, to establish wage rates for all classifications within its jurisdiction.

#### **Article 3.10 Resignation.**

An employee who desires to terminate shall give at least two (2) weeks notice, in writing, to his/her immediate Management supervisor and foreman. Notice of resignation shall become part of the employee's personnel record. The required period of notice may be reduced or waived by the Employer upon recommendation of the Utility Manager/Department Director. Upon approval of the Utility Manager/Department Director, an employee may withdraw his/her resignation at any time prior to the effective date of the resignation. Failure to give adequate notice will be noted on the employee's separation documents and may render the employee ineligible for rehire by the Municipality. The effective date of termination shall be the last day worked or date noticed for those employees who do not return from leave without pay.

#### **Article 3.11 Loan of Employees.**

The Employer shall not loan, or cause to be loaned, to any other employer the members of the Union in its employ without first securing permission of the Union representative

Agenda  
1pm

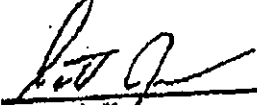
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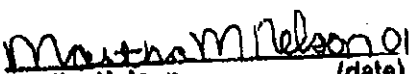
## MUNICIPAL LIGHT & POWER


Classification Committee For  
Implementing a New Base Utility Wage Rate  
Pursuant to the June 13, 2008, Letter of Understanding  
Between IBEW Local 1547 and Municipal Light & Power

By mutual agreement, Municipal Light & Power and IBEW Local 1547 agreed to convene this Classification Committee pursuant to Article 3.9.2 of the ML&P/IBEW Collective Bargaining Agreement. The committee met several times over the Summer and Fall of 2008. They reviewed and approved the attached lists of Utility classifications, consisting of two (2) pages total, which was prepared last summer. We hereby formalize our approval of this list of ML&P Utility classifications which are eligible for implementation of the new Base Utility Wage Rate effective January 5, 2009.

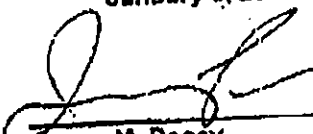
  
Scott Jeffries  
Generation Plant 2 Supt.  
1/21/09  
(date)


  
Kelly Moran  
Chief Shop Steward, ML&P  
1-21-09  
(date)

  
Martha Nelson  
Human Resources Analyst  
01/21/09  
(date)

  
Virginia Ruggles  
Finance Division  
1/21/09  
(date)

Implementation of new base utility wage percentage increases for  
selected classifications as listed on page 2 will occur as follows:  
January 5, 2009 - 25%; March 30, 2009 - 60%; and September 14, 2009 - 25%.

  
James M. Posey,  
General Manager, ML&P  
JAN 22 2009  
(date)

  
Larry Bell  
Business Manager, IBEW Local 1547  
1/22/09  
(date)

See Attached Lists of ML&P Utility Classifications pages 2 & 3

cc: Karen Burgos, ML&P HR Manager  
Jean Sagan, ML&P Labor Relations



## List of ML&amp;P IBEW Classifications with Changes

Contract Description	Current %	Proposed %
1 Assistant Warehouseman	87.50%	100.00%
2 Associate Engineer - Grandfathered	107.50%	128.50%
3 Associate Engineer w/PE	110.00%	133.00%
4 CPR Engineer	100.00%	114.00%
5 Customer Service Coordinator	85.00%	110.00%
6 Cut-In/Cut-Out Lineman	100.00%	114.00%
7 Electrical Leadman	105.00%	118.00%
8 Engineer in Training - in college	95.00%	109.00%
9 Engineer in Training - tested	102.50%	118.00%
10 Engineer in Training - untested	100.00%	114.00%
11 Engineering Assistant I	75.00%	90.00%
12 Engineering Assistant II	80.00%	95.00%
13 Engineering Assistant III	85.00%	100.00%
14 Engineering Assistant IV	90.00%	105.00%
15 Engineering Assistant V	95.00%	110.00%
16 Generation Design Technician	95.00%	110.00%
17 Generation Electrical Foreman	112.50%	128.00%
18 Generation Leadman	105.00%	118.00%
19 Generation Mechanic Foreman	112.50%	128.00%
20 Generation Plant Foreman	112.50%	128.00%
21 Head Warehouseman	100.00%	114.00%
22 Inspector	100.00%	114.00%
23 Journeyman Lineman	100.00%	114.00%
24 Journeyman Meterman	100.00%	114.00%
25 Journeyman Operator/Electrical	100.00%	114.00%
26 Journeyman Operator/Mechanical	100.00%	114.00%
27 Journeyman Technician - Electronics/Communications	112.50%	128.00%
28 Line Foreman	105.00%	118.00%
29 Loopwagon Leadman	105.00%	118.00%
30 Mechanical Leadman	75.00%	90.00%
31 Meter Reader	80.00%	95.00%
32 Meter Reader Leadman	105.00%	118.00%
33 Meterman Leadman	100.00%	114.00%
34 ML&P Journeyman Wireman	112.50%	128.00%
35 Power Dispatcher	102.50%	117.00%
36 Power Dispatcher Trainee - after training	105.00%	120.00%
37 Power Dispatcher Trainee - in training	105.00%	118.00%
38 Relay/Substation Leadman	100.00%	114.00%
39 Relay/Substation Technician	112.50%	128.00%
40 Relay/Substation Working Foreman	115.00%	147.00%
41 Senior Engineer, P.E. Licensed	107.50%	120.00%
42 Senior ROW/Cadastral Engineer	95.00%	110.00%
43 Service Design & Extension Coordinator	112.50%	128.00%
44 Service Foreman	102.50%	118.00%
45 Sr. Electronics Communications Tech	112.50%	128.00%
46 Transformer Foreman	100.00%	114.00%
47 Transformer Journeyman	87.00%	97.00%
48 Vehicle Fueler	112.50%	128.00%
49 Working Foreman - Electronics/Communications	112.50%	128.00%
50 Working Meter Foreman		

## List of ML&amp;P IBEW Classifications without Changes

Contract Description		Current %	Proposed %
1	Accountant	80.00%	no change in %
2	Apprentice Lineman	85% - 86% - 6% increments	no change in %
3	Apprentice Operator Mechanic	85% - 86% - 5% increments	no change in %
4	CPR Senior Clerk	87.00%	no change in %
5	Electronics/Communications Technical Trainee	80.00%	no change in %
6	Generation Technician	100.00%	no change in %
7	Journeyman Mechanic	100.00%	no change in %
8	Journeyman Mechanic/Welder	85.00%	no change in %
9	Journeyman Facility Maintenance Tech	80.00%	no change in %
10	Junior Accountant	47.00%	no change in %
11	Junior Clerk	100.00%	no change in %
12	Light & Power Maintenance Journeyman	95.00%	no change in %
13	Locator	80.00%	no change in %
14	Masterman Trainee	85% - 85% - 5% increments	no change in %
15	Operator/Mechanic Helper	80%, 80%, 95%	no change in %
16	Operator/Mechanic Trainee	87.00%	no change in %
17	Senior Clerk	107.50%	no change in %
18	Senior Engineer	100.00%	no change in %
19	Surveying Engineer	50.00%	no change in %
20	Temporary Student Aide	100.00%	no change in %
21	Tree Trimmer	112.50%	no change in %
22	Tree Trimmer Foreman	40.00%	no change in %
23	Utility Account Representative I	43.00%	no change in %
24	Utility Account Representative II	50.00%	no change in %
25	Utility Account Representative III	60.00%	no change in %
26	Utility Account Representative IV	70.00%	no change in %
27	Utility Account Specialist	70.00%	no change in %
28	Utility Technical Assistant	80.00%	no change in %
29	Vehicle Mechanic Helper	47%, 52%, 59%, 66%, 73%, 80%, 87.5%	no change in %
30	Warehouseman Trainee	112.50%	no change in %
31	Working Mechanic Foreman		

Attachment 7



**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**  
**NO. AM 145-2009**

Meeting Date: March 3, 2009

1     **From:**       ASSEMBLY MEMBER STARR  
2     **Subject:**   **AR 2009-66 – Motion to Rescind Assembly Action Approving AR**  
3                   **2008-307 (Ratification of APDEA Contract)**  
4

5     By notice dated February 24, 2008, I gave notice of intent, as provided in the Rules of  
6     Procedure for the Assembly, AMC 2.30.080.H, to move to rescind the Assembly's  
7     December 16, 2008 action on AR No. 2008-307. My motion to rescind Assembly action  
8     approving AR 2008-307 (ratification of a 5-year contract with APDEA) is based on the  
9     following factors, nonconformities, and material mistakes:

- 10
- 11     • **Certification required by code is absent:** Certification and confirmation of  
12       available funding is mandatory under municipal code. AMC 6.30.050 requires prior  
13       certification and confirmation of funding availability and the absence and  
14       unavailability of mandatory certification and confirmation nullifies the Assembly's  
15       passage of AR 208-307.
    - 16       ○ **AMC 6.30.050 is mandatory:** *"No contract, agreement or other obligation*  
17         *involving the expenditure of money shall be entered into, nor shall any*  
18         *ordinance, resolution or order for expenditure of money be passed by the*  
19         *assembly or be authorized by any officer of the municipality, unless the chief*  
20         *fiscal officer shall first certify to the assembly or to the proper officer, as*  
21         *the case may be, that the money required for such contract, obligation or*  
22         *expenditure has been appropriated to the credit of the fund from which it is to*  
23         *be drawn, and not appropriated for any other purpose."* \*\*\*\*
    - 24       ○ **The public is protected by certification:** Prior verification of the  
25         Municipality's ability to pay contractual obligations is for the public's  
26         protection. Where code provisions exist to protect the citizens and taxpayers  
27         of the municipality from ill-considered contracts, the provisions must be  
28         followed, or ratification by the Assembly is invalid.
    - 29       ○ **There is no authority or discretion to waive:** As this Assembly  
30         experienced in *Stuart v. Municipality of Anchorage*, Case No 3AN-07-4155 CI  
31         (Wal-Mart decision dated February 1, 2008, page 17 of 26), the Assembly  
32         does not have the discretion or authority to waive the protections afforded to  
33         the public in code.
  - 34     • **Fiscal health as measured by status of fund balance:** Prior to Assembly action  
35       on AR 2008-307, the fiscal environment of the municipality was represented in  
36       various reports on the status of revenue and spending under the FY 2008 Budget.  
37       The fund balance forecast report distributed on November 17, 2008 described the  
38

1 anticipated year-end fund balances as intact, with no forecast or reference to deficit  
2 spending needs for FY 2008. AR 2008-307 was approved by the Assembly based  
3 on a material mistake: That the balance between 2008 spending and 2008 revenue  
4 was not projected to require deficit spending from fund balances for FY 2008.  
5

- 6 • **Extent of FY 2008 Budget shortfall unavailable to Assembly:** The biennial  
7 General Government Operating Budget, adopted in November 2007 and setting  
8 forth projected annual budget requirements for FY 2008 and 2009, was reviewed  
9 and updated for FY 2008 under AO 2008-102(S), as amended and approved by the  
10 Assembly on November 25, 2008. Beginning in January 2009 and continuing to  
11 date, the Administration is confirming projected municipal fund deficits. As of Friday,  
12 February 13, 2009, the Administration confirmed projected municipal fund deficits in  
13 excess of \$17 Million for 2008 Issues and \$11 Million for 2009 Revenue shortfall  
14 issues, leading to a subtotal of nearly \$29 Million in potential shortfall, before any  
15 spending cuts. Of this subtotal, the projected deficit in General Government is \$21.3  
16 Million, before any spending cuts. Increases to municipal revenue from property  
17 taxes are not available, due the "tax cap" provision in the Charter.  
18
- 19 • **Deficiencies in the Summary of Economic Effects:** The Summary of Economic  
20 Effects (SEE) that accompanied AR 2008-307 includes minimal financial data,  
21 deferring to an analysis prepared by the Internal Auditor at the request of the  
22 Assembly. The referenced analysis was completed by the Internal Auditor and  
23 presented to the Assembly under cover memorandum dated December 12, 2008.  
24 However, the data available to the Assembly and the Internal Auditor prior to action  
25 on AR 2008-307 fails to reflect the Municipality's financial situation for FY 2009 and  
26 forward, and items in the financial analysis now appear significantly understated due  
27 to limitations in the information available for review by the Internal Auditor and the  
28 Assembly.  
29
- 30 • **The public interest warrants rescission of Assembly ratification:** The public  
31 was not served by premature termination of the collective bargaining agreement in  
32 place with APDEA, in favor of a new contract for which the certification required by  
33 code in advance of Assembly action is absent, and the information necessary to  
34 comply with code requirements remains outstanding or unresolved. Premature  
35 action by the Assembly in these circumstances was not authorized in code and will  
36 lead to unnecessary adverse consequences for all concerned. Public safety is  
37 important enough to this community for the Assembly to ensure that all necessary  
38 information is before the Assembly prior to Assembly ratification.  
39

40  
41 Respectfully submitted:

42  
43 Bill Starr, Assembly Member, Section 2  
44