Introduced By: Mayor Eberhart
Introduced: April 20, 2015

ORDINANCE NO. 5974

AN ORDINANCE AMENDING THE 2015 OPERATING AND CAPITAL BUDGETS FOR THE THIRD TIME

WHEREAS, this ordinance incorporates the changes outlined on the attached fiscal note to amend the 2015 operating and capital budgets; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows [amendments shown in **bold underlined** font; deleted text or amounts in ~~strikethrough~~ font]**:**

SECTION 1. There is hereby appropriated to the 2015 General Fund and the Capital Fund budgets the following sources of revenue and expenditures in the amounts indicated to the departments named for the purpose of conducting the business of the City of Fairbanks, Alaska, for the fiscal year commencing January 1, 2015 and ending December 31, 2015 (see pages 2 and 3):

GENERAL FUND

REVENUE	Ordinance 5967	INCREASE (DECREASE)	AS AMENDED
Taxes, (all sources)	$ 20,787,014	$ -	$ 20,787,014
Charges for Services	4,740,703	-	4,740,703
Intergovernmental Revenues	3,627,263	-	3,627,263
Licenses & Permits	1,965,194	-	1,965,194
Fines, Forfeitures & Penalties	962,605	-	962,605
Interest & Penalties	130,500	-	130,500
Rental & Lease Income	164,734	-	164,734
Other Revenues	224,500	-	224,500
Other Financing Sources	3,764,998	**(107,897)**	**3,657,101**
Total revenue appropriation	$ 36,367,511	$ (107,897)	**$ 36,259,614**
EXPENDITURES			
Mayor and Council	$ 602,561	$ -	$ 602,561
Office of the City Attorney	181,316	-	181,316
Office of the City Clerk	349,232	-	349,232
Finance Department	936,547	-	936,547
Information Technology	1,675,150	-	1,675,150
General Account	5,711,961	**70,000**	5,781,961
Risk Management	1,413,460	-	1,413,460
Police Department	7,323,835	**(70,000)**	7,253,835
Dispatch Center	2,022,870	-	2,022,870
Fire Department	6,551,262	**147,870**	**6,699,132**
Public Works Department	7,777,320	-	7,777,320
Engineering Department	694,845	-	694,845
Building Department	671,559	-	671,559
Total expenditure appropriation	$ 35,911,918	**$ 147,870**	**$ 36,059,788**
12/31/14 general fund balance	$ 11,369,516	**$ (9,271)**	**$ 11,360,245**
Increase (Decrease) to fund balance	664,771	**(255,767)**	**409,004**
Nonspendable	(473,423)	**(1)**	**(473,424)**
Committed for snow removal	(250,000)	-	(250,000)
Assigned PY encumbrances	(209,178)	-	(209,178)
Assigned self insurance	(793,207)	-	(793,207)
12/31/15 Unassigned balance	$ 10,308,479	**$ (265,039)**	$ 10,043,440
Minimum unassigned fund balance requirement is 20% of budgeted annual expenditures but not less than $4,000,000.			$ 7,211,958

CAPITAL FUND

REVENUE	Ordinance 5967	INCREASE (DECREASE)	AS AMENDED
Transfer from Permanent Fund	$ 541,254	-	$ 541,254
Transfer from General Fund	490,034	-	490,034
Equip Replacement			
Public Works	250,000	-	250,000
Building	10,000	-	10,000
Police	240,000	-	240,000
Dispatch	140,000	-	140,000
Fire	391,500	-	391,500
IT	100,000	-	100,000
Property Repair & Replacement	145,000	-	145,000
	$2,307,788	$ -	$2,307,788
EXPENDITURES			
IT Department	$ 204,751	$ -	$ 204,751
Police Department	311,385	-	311,385
Fire Department	523,265	-	523,265
Public Works Department	1,033,000	-	1,033,000
Property Repair & Replacement	916,485	-	916,485
Total appropriation	$2,988,886	-	2,988,886
12/31/14 capital fund balance	$6,634,841	$ -	$6,634,841
Increase to fund balance	4,788	-	4,788
Assigned PY encumbrances	(685,886)	-	(685,886)
12/31/15 Assigned fund balance	$5,953,743	$ -	$5,953,743

SECTION 2. All appropriations made by this ordinance lapse at the end of the fiscal year to the extent they have not been expended or contractually committed to the departments named for the purpose of conducting the business of said departments of the City of Fairbanks, Alaska, for the fiscal year commencing January 1, 2015 and ending December 31, 2015.

SECTION 3. The effective date of this ordinance shall be the ____ day of May 2015.

_____
JOHN EBERHART, MAYOR

AYES: Gatewood, Staley
NAYS: Pruhs, Cleworth, Matherly, Walley
ABSENT: None
FAILED to ADVANCE on April 20, 2015

ATTEST:

_____
D. Danyielle Snider, CMC, City Clerk

APPROVED AS TO FORM:

_____
Paul J. Ewers, City Attorney

FISCAL NOTE

ORDINANCE 5974, AMENDING THE 2015 OPERATING AND CAPITAL BUDGETS FOR THE THIRD TIME

ESTIMATED REVENUES and OTHER FINANCING SOURCES (USES)

$107,897 Decrease

1. Taxes – No Change
2. Charges for Services – No Change
3. Intergovernmental Revenues – No Change
4. Licenses & Permits – No Change
5. Fines, Forfeitures & Penalties – No Change
6. Interest & Penalties – No Change
7. Rental & Lease Income – No Change
8. Other Revenues – No Change
9. Other Financing Sources & (Uses) – $107,897 Decrease
    - $122,383 Decrease Transfer to Fairbanks Parking Garage
    - $ 14,486 Increase to Transfer from Permanent Fund for actual authorization

FISCAL NOTE CONTINUED
ESTIMATED EXPENDITURES

$147,870 INCREASE

1. Mayor & Council – No Change
2. City Attorney's Office – No Change
3. City Clerk's Office – No Change
4. Finance Department – No Change
5. Information Technology – No Change
6. General Account – $70,000 Increase
    - $70,000 Increase to Emergency Service Patrol – PSA funds
7. Risk Management – No Change
8. Police Department – $70,000 Decrease
    - $70,000 Decrease to outside contracts – PSA funds
9. Dispatch – No Change
10. Fire Department – $147,870 Increase
    - $58,777 Increase to Benefits – Arbitration retro January 1 – December 31, 2014
    - $36,959 Increase to Benefits – Arbitration retro January 1 – May 31, 2015
    - $52,134 Increase to Benefits – Arbitration adjust payroll health benefits to 80% - 20% June – December 2015
11. Public Works – No Change
12. Engineering – No Change
13. Building Department – No Change

FISCAL NOTE CONTINUED

Capital Fund

1. REVENUES

    - No change

2. OTHER FINANCING SOURCES (USES)

    - No Change

3. EXPENDITURES
    - No Change

4. INTERNAL TRANSFERS

    - No Change

Rec'd CAO 2/18/15

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

FAIRBANKS FIREFIGHTERS ASSOCIATION IAFF LOCAL 1324, Applicant, And CITY OF FAIRBANKS, Respondent.	Case No.: 4FA-14-02608 CI

ORDER CONFIRMING ARBITRATION AWARD

Applicant Union's *Application to Confirm Arbitration Award* having come before this court, and this court having reviewed any response or opposition thereto, and the court being duly apprised,

IT IS HEREBY ORDERED that Arbitrator Latsch's *Arbitration Award* of July 11, 2014 (i.e. Exhibit 2 to Applicant Union's Application) is hereby CONFIRMED ~~AND ORDERED~~. */

DATED this 14th day of February, 2015.

By _____
Superior Court Judge

*/ For the reasons stated in the Decision Confirming Arbitrator's Award of even date.

Certificate of Service
This is to certify that on the 15th day of September, 2014, a copy of the foregoing is being ___ faxed/ ___ hand-delivered/ X mailed via first class mail fully prepaid to the following:
Paul Ewers, City Attorney; City of Fairbanks;
City Hall – 8th and Cushman
Fairbanks, Alaska 99701
Maureen K. DeLaurier
for Cook Schuhmann & Groseclose

FILE
( ) U.S. Postal Svc. _____
( ) Other _____
HAND DELIVERY
(X) Courier Svc. Groseclose
(X) Pick Up Bin Eluers
( ) Fax _____
( ) Other: _____
35 2/17/15

LODGED
SEP 15 2014

OK SCHUHMANN
ROSECLOSE, INC.
OURTH AVE., SUITE 200
T OFFICE BOX 70810
AK 99707-0810
(907) 452-1855
FACSIMILE
(907) 452-8154

Rec'd CAO 2/18/15

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FAIRBANKS FIREFIGHTERS ASSOCIATION IAFF LOCAL 1324, Plaintiff, vs. CITY OF FAIRBANKS, Defendant	Case No. 4FA-14-2608 CI

DECISION CONFIRMING ARBITRATOR'S AWARD

I. Introduction

The union and city's collective bargaining relationship is governed by the Public Employment Relations Act (PERA).[1] The union representing Fairbanks firefighters seeks confirmation under the Revised Uniform Arbitration Act of a binding arbitration award concerning the sharing of health insurance costs between the city and union members.[2] The city opposes arguing that the confirmation provision of RUAA (RUAA § 490) does not apply.

The court concludes that the legislature contemplated the confirmation of arbitral awards governed by PERA § 200(b) when it amended PERA in 2004. Therefore, the arbitrator's award is confirmed. In the alternative, the court finds that confirmation is available under the common law. Confirmation is, however, subject to PERA § 215(a), which prohibits implementation of the arbitrator's award unless the City Council first appropriates the money necessary to fund the arbitrator's cost sharing decision.

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[1] The acronym "PERA" will be used throughout this decision. PERA is codified to AS 23.40.070—AS 23.40.260.

[2] "RUAA" will be used throughout this decision to refer to the Revised Uniform Arbitration Act codified to AS 09.43.300—AS 09.43.595. "UAA" refers to the Uniform Arbitration Act codified to AS 09.43.010—AS 09.43.180.

II. Facts

The facts are undisputed. Collective bargaining between the city and the union is governed by PERA. The firefighters are Class I public employees under PERA § 200(a)(1). The city and union entered into a collective bargaining agreement in May 2012.[3] The agreement covers three years, May 1, 2012 to April 30, 2015. Section 5.6B of the agreement addresses employer-employee sharing of health care plan costs. The city is required to pay $1,000 per member per month with union members paying any excess through payroll deduction. The city's share of the cost increases in August 2012 to $1,040 per month per member with the members paying the excess. Section 5.6 contains a re-opener in January 2014, requiring the parties to negotiate how health care plan costs will be shared for the remainder of the contract term.

Section 1.5 of the collective barging agreement provides that, in the event of an impasse in negotiations, the parties will engage in "mediation and/or binding arbitration under applicable state law." PERA § 200(b) also mandates arbitration for Class I employees following impasse or deadlock and unsuccessful mediation. The parties reached impasse on the health plan cost sharing, engaged in unsuccessful mediation, and went to binding arbitration in March 2014. In July 2014, the arbitrator issued a decision requiring the city to pay 80 percent of health care plan costs and requiring union members to pay 20 percent.[4]

In September 2014, the union filed a complaint seeking confirmation of the award and filed a summary judgment motion seeking confirmation. As stated above, the city opposes

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[3] A copy of the collective bargaining agreement is attached as Exhibit 1 to the union's complaint.

[4] The arbitrator's decision is attached as Exhibit 2 to the union's complaint.

confirmation on the basis that the confirmation section of RUAA, AS 09.43.490, does not apply to PERA-regulated collective bargaining agreements.[5]

III. Legal Standards Applicable

The underlying dispute in this case concerns statutory interpretation, which is a question of law. *State Div. of Workers' Compensation v. Titan Enterprises,* LLC, 338 P.3d 316, 324 (Alaska 2014) (citation omitted).

> In matters of statutory interpretation, [the court] must give effect to the intent of the legislature, with due regard to the meaning that the statutory language conveys to others. If a statute is unambiguous and expresses the legislature's intent, [the court] will not modify or extend it by judicial construction. However, in cases where the plain language of the statute permits more than one plausible interpretation, [the court will] apply a sliding scale: The plainer the language, the more convincing contrary legislative history must be. Thus, the inquiry begins with the text of the statute, buttressing the text with legislative history if necessary.

Young v. Embley, 143 P.3d 936, 944 (Alaska 2006) (citations and inner quotation and editing marks omitted).

This dispute also involves an issue of contract interpretation. Contract interpretation is generally an issue of law. *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.* 322 P.3d 115, 122 (Alaska 2014) (citations omitted). "Interpretation becomes a task for the trier of fact when the parties present extrinsic evidence to clarify a contract's meaning, when this evidence points towards conflicting interpretations of the contract, and when the contract itself is reasonably susceptible of either meaning." *Zamarello v. Reges*, 321 P.3d 387, 394 (Alaska 2014) (citations and inner quotation and editing marks omitted). "The goal of contract

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[5] At oral argument, the parties advised the court for the first time that the council declined to fund the arbitrator's award in November 2014. The issue of mootness based on the council's action was discussed. However, because mootness could have been, but was not, addressed in the briefing, and was first raised and discussed at oral argument—and because neither party has requested further briefing—the issue is waived.

interpretation is to give effect to the parties' reasonable expectations". *Id.* at 393 (citation omitted).

The parties raise no issue concerning extrinsic evidence about what the parties intended the language of their collective bargaining agreement to mean. There are no disputed issues of fact. "Summary judgment is proper if there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law." *West v. Board of Game*, 248 P.3d 689, 694 (Alaska 2010) (citation omitted). Therefore, summary judgment is appropriate here.

IV. Legal Analysis and Discussion

Resolution of this dispute requires examination of the parties' collective bargaining agreement and the intersection between PERA § 200(b) and RUAA § 480. The analysis begins with the collective bargaining agreement.

A. The Collective Bargaining Agreement Did Not Incorporate RUAA

The union argues that section 1.5 of the collective bargaining agreement incorporates all of RUAA into the contract, including the confirmation provision, RUAA § 490. Section 1.5 of the agreement provides: "If an impasse or deadlock is reached in collective bargaining, both parties agree to participate in mediation and/or binding arbitration according to applicable State law." The issue is whether RUAA is "*applicable* State law". To see if RUAA is applicable, PERA must first be examined.

Under PERA, firefighters are Class I public employees unauthorized to strike. Under PERA § 200(b),

> [i]f an impasse or deadlock is reached in collective bargaining between a public employer and employees in [Class I], and mediation has been utilized without resolving the deadlock, the parties shall submit to arbitration to be carried out under . . . AS 09.43.480 to the extent permitted by . . . AS 09.43.300.

AS 09.43.480 is the remedies section of RUAA and AS 09.43.300 is the applicability section of RUAA. The question that arises under PERA § 200(b) then is whether, by these references to RUAA, the legislature intended to incorporate all provisions of RUAA into PERA § 200(b).

AS 09.40.300 (RUAA § 300) is examined first because it is the applicability provision of RUAA. RUAA applies to all arbitration agreements entered into after January 1, 2005 and any pre-2005 arbitration proceeding where the parties agree to apply it. RUAA §§ 300(a) and 300(b). RUAA § 300(c) exempts from RUAA any labor-management contract unless RUAA is expressly made part of the contract. And RUAA § 300(d) exempts from RUAA collective bargaining agreements subject to PERA, "except as provided by AS 23.40.070 — 23.40.260 [i.e., except as provided by PERA]."

Therefore, RUAA § 300(d) *excludes* PERA collective bargaining agreements from RUAA's application, unless (and only to the extent that) PERA makes RUAA applicable. RUAA § 300(d) does, however, direct the reader to PERA to see if PERA incorporates RUAA into collective bargaining agreements to any degree.

There are two relevant sections of PERA that mention RUAA—PERA § 200(b) and PERA § 200(f).[6] PERA § 200(b) (quoted above) incorporates by reference one section of RUAA—RUAA § 480. Does incorporating one section of an Act evidence a legislative intent to incorporate the entire Act? The Alaska Supreme Court answered this question in *State v. Public Safety Employees Ass'n.*, 798 P.2d 1281 (Alaska 1990) (*PSEA*).

In *PSEA*, the court construed PERA § 200(b) as it was enacted before its amendment in 2004. Before 2004, PERA § 200(b) incorporated by reference one section of the Uniform Arbitration Act, AS 09.43.030. The court held: "[W]hile it is arguable that this reference

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[6] PERA § 200(c) mentions RUAA but PERA § 200(c) applies only to Class II employees and, therefore, does not apply to the collective bargaining agreement at issue in this case.

implicates all of the UAA, we believe that the legislature would have specifically indicated an intention to make the whole UAA applicable in arbitrations conducted under PERA if it had so intended." *Id.* at 1284-85 (footnote omitted).[7]

PSEA controls the analysis here. When PERA § 200(b) was amended in 2004, the legislature incorporated only RUAA § 480 into PERA § 200(b). *PSEA* compels the conclusion that the legislature did not intend to incorporate all provisions of the RUAA into PERA § 200(b) by incorporating only RUAA § 480. This conclusion leaves PERA § 200(f) to be considered.

PERA § 200(f) provides, in relevant part:

> The parties to a collective bargaining agreement may provide in the agreement a contract for arbitration to be conducted solely according to . . . AS 09.43.300 — 09.43.180 (Revised Uniform Arbitration Act) to the extent permitted by . . . AS 09.43.300 if . . . [the] *Act is incorporated* into the agreement or contract by reference.

(Emphasis added). The Alaska Supreme Court addressed this statute briefly (in dicta) in *State v. Alaska State Employees Ass'n, AFSCME, AFL—CIO*, 190 P.3d 720 (Alaska 2008). The court observed that, in order to apply RUAA to a PERA collective bargaining agreement, "the CBA must incorporate . . . the act[] into the agreement 'by reference.'" *Id.* at 724 n. 22. This observation denotes a literal reading of the portion of the statute italicized above. If the parties wish to arbitrate under the provisions of the RUAA, they must expressly incorporate the RUAA by reference into their collective bargaining agreement.

Section 1.5 of the collective bargaining agreement does not incorporate the "Act" into the agreement. It merely states that the parties will engage in "binding arbitration according to

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[7] In the omitted footnote, the court observed that, by failing to incorporate the UAA in its entirety, the legislature failed to set a statute of limitations on challenges to an arbitrator's award, thus undermining the goal of providing finality to employers and employees concerning arbitral awards. Because there is no common law statute of limitations on challenges to arbitral awards, the court has repeatedly asked for legislation to address this issue, but, so far, the legislature has not set a statute of limitations for challenging PERA-regulated arbitrations. *See PSEA*, 798 P.2d at 1285, n. 7; *International Brotherhood of Electrical Workers, Local Union 1547 v. City of Ketchikan*, 805 P.2d 340, 342 n. 5 (Alaska 1991); *Patterson v. State, Dep't of Agriculture*, 880 P.2d 1038, 1045 (Alaska 1994).

applicable State law." The RUAA is not "*applicable* State law" unless the parties expressly make it applicable by bargaining for its inclusion in their collective bargaining agreement and *expressly* incorporating RUAA by name or statutory reference into the agreement itself. The union and city did not expressly incorporate the RUAA into their May 2012 collective bargaining agreement and neither party has presented extrinsic evidence indicating that it was the parties' actual intent to do so at the time the collective bargaining agreement was signed. The court is compelled to conclude that RUAA is not a part of the parties' 2012 collective bargaining agreement.

Therefore, the court concludes that, under section 1.5 of the collective bargaining agreement, "applicable state law" means only PERA § 200(b) and RUAA § 480. This conclusion does not end the legal analysis, however, because RUAA § 480 mentions confirmation in the second sentence of RUAA § 480(c). The impact of RUAA § 480(c) is examined next.

B. Arbitration Awards under PERA § 200(b) are Subject to Court Confirmation

PERA § 200(b) does not expressly call for the confirmation of an arbitrator's award. But, as stated above, the legislature incorporated RUAA § 480 into PERA § 200(b) as follows: "[T]he parties shall submit to arbitration to be carried out under . . . [RUAA §] 480." Therefore, whether PERA arbitration awards are subject to confirmation turns on the proper interpretation of RUAA § 480(c), which, as explained above, mentions confirmation.

In interpreting RUAA § 480(c), it is important to keep in mind the legislature's purpose for requiring compulsory arbitration for Class I public employees like the firefighters. In *Alaska Public Employees Ass'n. v. City of Fairbanks*, 753 P.2d 725 (Alaska 1988), the supreme court recognized "the statutory right to compulsory binding arbitration" under PERA § 200(b) is the

"*quid pro quo*" for the loss of Class I employees' right to strike. *Id.* at 727. Flowing fairly from this observation is the conclusion that the legislature intended compulsory binding arbitration to mean something—it was not intended by the legislature to be a hollow gesture or meaningless exercise.

In *PSEA*, the supreme court observed: "Many states have statutes providing that impasses in public employee collective bargaining may be resolved by arbitration. The Alaska statute is somewhat unusual in not clearly specifying procedures for the arbitration." *PSEA*, 798 P.2d at 1284. Thus, the Alaska Supreme Court recognized that PERA does not set out mandatory arbitration *procedures*. Indeed, both before and after the 2004 amendments to PERA, the only procedures mandated in PERA § 200(b) are those incorporated into that statute by UAA § 030, which addresses the procedure for appointing arbitrators, but not the procedures related to how the arbitration will be conducted or confirmed. The parties agree that UAA § 030 does not apply to this case.

The only other arbitration provisions mandated by PERA § 200(b) are the terms of RUAA § 480. PERA § 200(b) provides that, following impasse and unsuccessful mediation, "the parties shall submit to arbitration to be *carried out under* . . . [RUAA §] 480." (Emphasis added). RUAA § 480, in turn, sets out the *remedies* available in arbitration proceedings: RUAA §§ 480(a) and 480(b) authorize awards of punitive damages and attorney's fees when otherwise available under state law; RUAA § 480(c) provides, in relevant part:

> As to all [other] remedies[,] . . . an arbitrator may order the remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that the remedy could not or would not be granted by the court is not a ground for *refusing to confirm* an award under [RUAA §] 490 or for *vacating* an award under [RUAA §] 500.

(Emphasis added). If the court cannot refuse to confirm an arbitrator's award on the ground that the court would not grant the same relief, *a fortiori*, RUAA § 480(c) contemplates that the remedies awarded by an arbitrator *will* be presented to the court for confirmation.[8]

The city argues that the reference in PERA § 200(b) to RUAA § 480 must be a drafting error; the legislature must have intended to refer to either RUAA § 420 (the arbitration procedures), or RUAA § 380 (the arbitrator appointment procedures).[9] The city concedes that it has no legislative history or other evidence to support this theory. But, even if PERA § 200(b) mistakenly refers to RUAA § *480* rather than RUAA § *380*, the court is without authority to correct it. *Alaskans for a Common Language v. Kritz*, 170 P.3d 183, 192 (Alaska 2007) (The "separation of powers . . . prohibits this court from . . . correcting defective statutes." (citations and inner quotation marks omitted)); 73 Am.Jur.2d *Statutes* § 121 (2010) ("Generally, courts will not undertake correction of legislative mistakes in statutes notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact." (Citations omitted)).

But, it is not clear that the incorporation of RUAA § 480 into PERA § 200(b) is a drafting error. PERA § 200(b) does not state that arbitrations "must be conducted in accordance with the procedures set out in AS 09.43.480": Rather, it requires arbitrations to "be carried out under . . . [RUAA §] 480." The phrase "carried out under" is broad enough to encompass procedural and remedial provisions of a statute.

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[8] The same logic applies to actions filed by employers to vacate an arbitral award. RUAA 480(c)'s limit on the court's authority to deny confirmation or vacate an award is not an issue in this case and need not be addressed. The important point is that RUAA § 480(c) contemplates that arbitral awards will be presented to the court for confirmation.

[9] The city's RUAA § 380 argument was advanced for the first time at oral argument. The city points out that RUAA § 380 is the provision in RUAA that parallels UAA § 030, also incorporated into PERA § 200(b).

Since the phrase "carried out under" is broad enough to encompass procedural *and* remedial provisions of a statute, the incorporation of RUAA § 480 into PERA § 200(b) does not create a nonsensical statute. "[T]here is a presumption that the legislature intended every word, sentence, or provision of a statute to have some purpose, force and effect, and that no words or provisions are superfluous." *Rydwell v. Anchorage School District*, 864 P.2d 531, 530-31 (Alaska 1993) (citation omitted). Because RUAA § 480 and the 2004 amendment to PERA § 200(b) deal with the same topic, and were enacted together in the same legislation, the statutes are *in pari material*; they must, therefore, be construed together, and harmonized if possible. *Borg-Warner Corp v. AVCO Corp.*, 850 P.2d 628, 633-34 (Alaska 1993); *Morton v. Hammond*, 604 P.2d 1, 3 n. 5 (Alaska 1979); *Hafling v. Inland Boatmen's Union of the Pacific*, 585 P.2d 870, 878 (Alaska 1978) (applying this principle to PERA and AS 23.40.040). And "[a] statute may adopt all or a part of another statute by a specific reference, and the effect is the same as if the statute or part thereof adopted had been written into the adopting statute." 73 Am.Jur.2d § 15 (2015) (citations omitted).

When construed under these interpretive principles—and keeping in mind the legislative purpose for compulsory arbitration—PERA § 200(b) is fairly read as providing for an arbitration where the potential remedies set out in RUAA § 480 are available for award *and* where court confirmation or disapproval of an award may be ordered. An interpretation that incorporated into PERA § 200(b) only the remedies available under RUAA § 480, but not the contemplated court confirmation or disapproval of those remedies, would read the second sentence of RUAA § 480(c) out of the statute and, thereby, out of PERA § 200(b). But, the city points to nothing in the language of PERA or the legislative history of the 2004 amendments to PERA that supports only a partial incorporation of RUAA § 480 into PERA § 200(b). If the legislature had intended

only a partial incorporation of RUAA § 480 into PERA § 200(b), one would have expected the legislature to expressly so state.

The court, therefore, concludes that PERA § 200(b) requires a compulsory arbitration proceeding where the remedies listed in RUAA § 480 will be available to all parties and where court confirmation or disapproval of the award, as appropriate, will also be available.

The city raises two concerns with this conclusion. First, the city asserts that, if confirmed, the union will seek entry of a judgment under RUAA § 520 requiring the city to appropriate funds to implement the arbitrator's 80/20 health plan cost sharing award. The union's reply brief eschews that motivation and acknowledges that the arbitrator's award is subject to PERA § 215(a). "The legislative appropriation requirement of [PERA] § 215(a) applies to arbitration awards under [PERA] § 200(b). . . . [A]nd nothing indicates an intent to make § 215(a) inapplicable to municipalities." *Fairbanks Police Dep't Chapter, Alaska Public Employees Ass'n. v. City of Fairbanks*, 920 P.2d 273, 275 (Alaska 1996) (citation omitted). Indeed, in *Fairbanks Police*, the court found a "clear legal requirement that no arbitration awards are final until they are legislatively approved." *Id.* at 276. Thus, the rule that the monetary terms of an arbitrator's award are subject to council appropriation under PERA § 215(a) before they can go into effect is well–settled. There is no dispute here that the arbitrator's cost sharing formula is a "monetary term of the agreement" subject to PERA § 215(a).[10] Therefore, as a matter of law, confirmation of the arbitral award in this case will not require the city to implement the award.

Second, at oral argument, the city expressed concern that incorporating RUAA §§ 490 and 500 into RUAA § 480 would lead to further incorporation into § 480 of the RUAA sections

[10] *See* AS 23.40.250(4)(C) (defining "monetary terms of an agreement" to include "health insurance benefits, whether or not an appropriation is required for implementation.").

mentioned §§ 490 and 500. This conclusion does not necessarily follow from the court's interpretation of § 480. The legislature incorporated RUAA § 480 into PERA § 200(b). Because RUAA § 480 contemplates confirmation or disapproval of an arbitrator's award, courts must honor that legislative intent and provide for confirmation or disapproval of an arbitrator's award issued under PERA § 200(b). Honoring that intent does not necessarily require incorporation of additional sections of RUAA into RUAA § 480 or PERA § 200(b).[11] Moreover, the city has not raised any issue related to other sections of RUAA other than its concern (addressed above) that a judgment requiring funding of an award would enter.

The court concludes that confirmation of arbitral awards is contemplated in RUAA § 480 and that, by incorporating all of RUAA § 480 into PERA § 200(b), the legislature likewise contemplated that PERA arbitral awards would be subject to court confirmation. In addition, by operation of law, PERA § 200(b) arbitral awards are subject to PERA § 215(a): PERA arbitral awards are not effective unless they are first funded by the relevant legislative body.

C. If Confirmation is Not Available under PERA § 200(b) and RUAA § 480, it is Available at Common Law

If the city is correct that confirmation is not available under PERA or RUAA, then the common law would apply and would authorize the court to consider confirmation of the arbitral award in the form of an action to enforce the collective bargaining agreement.

AS 01.10.010 provides: "So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state." Thus, if, as the city argues, PERA § 200(b) and RUAA § 480 do not provide for confirmation of an arbitral award, the common law applicable to arbitration contracts would provide "the rule of decision".

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[11] No opinion is expressed on this issue because it is not before the court.

The conclusion that the common law provides for court confirmation where PERA does not address confirmation is supported by the decision in *Alaska State Employees Ass'n,* 190 P.3d at 724. *ASEA* involved a suit brought to confirm an arbitrator's award on a grievance governed by a PERA-regulated collective bargaining agreement. The court found that the arbitrator's decision was not reviewable under any court rule, the UAA, or the RUAA. *Id.* The court observed that PERA "is silent on the subject of judicial review of arbitration awards." *Id.* In the absence of any applicable court rule or statute permitting judicial confirmation of the arbitral award, the court applied the common law, observing that:

> There are numerous authorities that hold that in the absence of statute a suit to confirm an arbitrator's award where arbitration has been contracted for is a suit to enforce a contract. At common law, an arbitration award is not self-enforcing. An action at law such as a contract action is an appropriate vehicle for enforcing the award. ASEA's action to enforce the arbitrator's award in this case fits comfortably within these authorities.

Id. at 724-25 (Citations and quotation marks omitted). One of the "numerous authorities" the court relied upon concluded: "'The award having been rendered, the parties are bound by their contract to abide by it; hence, the award partakes of the nature of a contract. . . . The enforcement of awards at common law, then . . . is governed by common law rules of contract and procedure.'" *Id.* at 725 n. 24 (quoting Dorothy Dowell, *Judicial Enforcement of Arbitration Awards in Labor Disputes*, 3 Rutgers L.Rev. 65, 70-71 (1949)).

The court in *ASEA* held that, in the absence of any statute providing for judicial review or expressly addressing confirmation of the arbitral award, the common law provided for judicial confirmation by way of a suit to enforce the parties' contract. That PERA required arbitration did not preclude the filing of a common law contract enforcement action.

At oral argument, the city argued that there is "no common law path"[12] available to confirm this award because, "the monetary terms of a collective bargaining agreement are not *effective* until the funds are appropriated by the legislature." *Public Safety Employees Ass'n, Local 92 v. State*, 895 P.2d 980, 986 (Alaska 1995) (quoting *Public Employees' Local 71 v. State*, 775 P.2d 1062, 1064 (Alaska 1989) (Emphasis added)). The city council has declined to fund the monetary terms of the arbitration award at issue in this case. Therefore, the city reasons that, because the arbitration award is not effective under PERA, it cannot be confirmed.

The city cites no authority suggesting that an arbitrator's award cannot be confirmed until a public employer funds the award and makes it effective. Indeed, in *Fairbanks Police*, the supreme court observed that "legislative funding [is] the last step in the collective bargaining process". *Fairbanks Police*, 920 P.2d at 276. If legislative funding is the last step in the process, logic dictates that confirmation, if sought, must precede funding.

As applied to PERA-regulated collective bargaining agreements, confirmation of an award is divorced from funding of the award, which is left to the discretion of the legislative body regardless of confirmation. Confirmation has, however, a useful purpose even if funding is declined. Confirmation establishes that an award was within the scope of issues subject to arbitration, made in a properly conducted proceeding by an unbiased arbitrator, without fraud or misconduct prejudicing the rights of parties, and without error under the appropriate standard of review. The city conceded at oral argument that confirmation would put to rest these issues, which could otherwise be raised at any time in future negotiations or litigation, because there is no statute of limitations for challenging a PERA-regulated arbitral award. And the city conceded that it would have no reason to oppose confirmation on these bases.

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[12] Feb. 9, 2015 oral argument audio at 3:16:00 – 3:18:00 p.m.

The city also seems to suggest that because PERA addresses arbitration, it completely preempts the common law. But, if the city is correct that PERA does not address confirmation, then, no statute applies and the common law is "the rule of decision". AS 01.10.010.

In this case, the parties entered into a contract to submit to binding arbitration under applicable state law when an impasse or deadlock is reached in collective bargaining. If the city is correct that no statute addresses confirmation of an arbitral award made under PERA § 200(b), then the common law provides for confirmation via an action to enforce the contract. *ASEA*, 190 P.3d at 724-25.

V. Conclusion

Court confirmation is available for collective bargaining agreements arbitrated under PERA § 200(b) because PERA § 200(b) incorporates RUAA § 480, which, in turn, contemplates court confirmation of arbitral awards.

In the alternative, if court confirmation is not available under PERA § 200(b), then, because there is no controlling statute, confirmation is available under the common law via a contract enforcement action.

The arbitrator's decision attached as Exhibit 2 to the union's complaint is confirmed.

Dated this 14th day of February, 2015, at Fairbanks, Alaska.

Paul R. Lyle
Superior Court Judge

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BEFORE THE ARBITRATOR

In the matter of the Interest Arbitration between: CITY OF FAIRBANKS and FAIRBANKS FIREFIGHTERS UNION	**ARBITRATION AWARD** FMCS No. 13-59010-8

Paul J. Ewers, City Attorney, appeared on behalf of the Employer.

Cook, Schuhmann and Groseclose by **Robert B. Groseclose**, Attorney at Law, appeared on behalf of the Union.

The City of Fairbanks (Employer) and the Fairbanks Firefighters Union (Union) selected the undersigned Arbitrator to determine a dispute arising from terms of a collective bargaining agreement in effect from May 1, 2012 through April 30, 2015. The collective bargaining agreement specified that the contract would be reopened on January 1, 2014 to negotiate changes in health insurance. The agreement was reopened, but the parties were unable to finalize new health care terms. Accordingly, the dispute was submitted to arbitration for resolution. A hearing was conducted in Fairbanks, Alaska on March 11 and 12, 2014. During the course of the hearing, both parties presented testimony and exhibits and had the opportunity to examine and cross-examine witnesses. The parties submitted closing briefs on April 18, 2014.

FACTUAL BACKGROUND

The City of Fairbanks is located in the Fairbanks North Star Borough, approximately 350 miles north of Anchorage, Alaska. Operating through a "Council-Mayor" form of government, policy and legislative authority is reserved to the City Council. The City

Council is composed of six elected Commissioners and the elected Mayor. At the time of hearing, the city and its surrounding area had a population of approximately 100,000.

The City Council adopts a general fund and a capital fund budget annually. The Council must ensure that the general budget is balanced, where current revenues cover current expenses. The Council's budget work is constrained by several tax limitations that inhibit the amount of revenue that can be raised. A "tax cap" specifies that the amount of municipal taxes that can be levied during a particular fiscal year may not exceed the total amount approved by the City Council for the preceding year by more than a fixed percentage. The percentage amount is determined by the percentage increase in the federal Consumer Price Index for Anchorage from the preceding fiscal year. In addition, property tax revenues are limited to a maximum of 4.9 mills.

The City of Fairbanks employs approximately 200 full-time employees. The Employer has collective bargaining relationships with four bargaining units:

- Fairbanks Firefighters Union (FFU)
- Public Safety Employees Association (PSEA) (police department and emergency communications employees),
- International Brotherhood of Electrical Workers (IBEW) (administrative and supervisory employees) and
- AFL-CIO Crafts Council (several trade unions covered by a single collective bargaining agreement).

The Employer's workforce has been reduced, and that reduction has a direct bearing on the instant dispute. In 1997, the City of Fairbanks sold its local public utility, the Fairbanks Municipal Utilities System. The sale, which had to be approved by a city-wide vote, meant that the City of Fairbanks would no longer receive revenue from electrical, water, sewer, telephone, steam and hot water heat services. With the citizens' approval, the utility was sold, and the Employer's workforce was reduced accordingly.

Prior to the utility sale, the City of Fairbanks was self-insured for health insurance. After the sale, the Employer's "pool" of eligible employees for insurance purposes was reduced to the point that it no longer made economic sense to maintain a self-insured position. The Employer then negotiated with its various collective bargaining units to have their members join other insurance plans. At the time of hearing, a number of city employees were covered by the IBEW and AFL-CIO insurance plans. In addition, police department and emergency communications employees were covered by the PSEA Healthcare Trust insurance plan, and Fairbanks firefighters participated in the Northwest Fire Fighters Trust healthcare insurance plan. It must be noted, that the firefighters had been covered under the PSEA health insurance plan until 2012, when the PSEA union exercised its option to drop the firefighters from coverage under the PSEA plan. The Fairbanks firefighters then looked for other insurance plans to provide health care coverage, finally deciding on the Northwest Fire Fighters Trust.

The Employer is subject to the provisions of AS 23.40.070 *et seq.*, the Public Employment Relations Act (PERA). The statute specifies that an impasse in negotiations between an employer and "fire protection employees" must be submitted to arbitration. Arbitration proceedings are to be carried out under terms of AS 09.43.030 or 09.43.480, to the extent allowed by AS 09.43.010 and 09.43.300. The arbitration process is set forth in AS 09.43.420 in the following terms:

> (a) An arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.
>
> (b) An arbitrator may decide a request for summary disposition of a claim or particular issue
>
> (1) if all interested parties agree; or

(2) on request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have reasonable opportunity to respond.

(c) In an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. On request of a party to the arbitration proceeding and for good cause shown, or on the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy on the evidence produced although a party who was notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at hearing.

(e) If an arbitrator ceases acting or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed under AS 09.43.380 to continue the proceeding and to resolve the controversy.

In this case, the parties negotiated a collective bargaining agreement effective from May 1, 2012 through April 30, 2015. As part of that agreement, the parties included a contract re-opener to negotiate concerning health insurance effective January 1, 2014 through the remainder of the collective bargaining agreement's term. The parties were unable to reach agreement on the insurance issue, and the dispute was referred to arbitration for resolution.

THE HEALTH INSURANCE ISSUE

There is no dispute that the parties agree that medical insurance must be provided to bargaining unit employees. The question is how much the Employer and bargaining unit employees must pay for that insurance. As the Employer noted in its closing brief, the parties have a very different view of the situation. The Union asked to compare health insurance premium rates with certain other cities in Alaska and in Washington State. The Employer argued that such a comparison is not relevant to this dispute, and that the primary comparison must be with other city employee groups. It is appropriate to examine both lines of argument to determine the proper approach for resolving this dispute.

The Union's Argument

The Union analyzed the health insurance issue in light of its need to find a new insurance plan. As noted above, firefighters were traditionally covered by the PSEA health insurance policy, but the PSEA exercised its right to drop the firefighters from coverage in 2012. The Union and the Employer signed a letter of agreement in December 2012, recognizing that the firefighters were moving to the Northwest Fire Fighters Trust (NWFFT). By moving to the NWFFT, the firefighters' monthly insurance premium was reduced by $250 to $350 dollars per month. According to the Union's analysis, the NWFFT health plan cost $1,443 a month, with the Employer paying $1040 for the insurance plan. The bargaining unit employees were responsible for the difference of $443. The Union contended that this "split" in payments meant that the Employer paid approximately 70% of the insurance premium cost and the Union employees paid approximately 30% of the premium cost.

The Union argued that the cost for medical coverage in Fairbanks, Alaska is very high, and is as much as 44% ahead of other cities of similar size. The Union noted that health care costs were still rising, with little evidence of any moderation in costs. The Union further argued that bargaining unit members have additional health care costs related to high deductibles and co-pays. At the time of hearing, each bargaining unit member had a $1,500 annual deductible along with a 20% co-pay on medical services received.

While acknowledging that Fairbanks is in a unique position, the Union argued that it found comparable jurisdictions in Alaska and Washington State that support its contention regarding an appropriate level of insurance contribution. The Union contended that the information gained from its set of comparables showed that the Employer did not meet its obligation to provide health insurance at reasonable rates for bargaining unit employees.

Finally, the Union maintained that the Employer's attempts to focus its economic analysis on purely internal comparisons should be discounted. The Union reminded the Employer that it can only bargain for its members, and that each of the Employer's other bargaining units must be responsible for their own health insurance coverages and payments. The Union argued that each bargaining unit had its own unique set of needs and must be treated individually. If one bargaining unit wanted a higher deductible, with money to be used for other wage related improvements, it would be unfair to impose the same constraints on the other bargaining units which may have very different needs for insurance coverage. The Union concluded by arguing that the Arbitrator should award a medical premium of at least 80% employer contribution and 20% employee contribution.

The Employer's Argument

The Employer argued that it was paying an appropriate amount for medical insurance premiums, and that the amount of its contribution should not be increased. The Employer acknowledged that the Union's NWFFT plan saved money over the amount paid under the PSEA plan, but contended that those savings should not automatically lead to an increase in premium payments now.

The Employer maintained that the Union did not set forth the entire amount of money paid by the City of Fairbanks each month for bargaining unit members. In addition to the $1040 monthly premium amount, the Employer also paid another $100 a month into a Medical Expense Reimbursement Plan associated with the health insurance coverage. According to the Employer's calculations, bargaining unit employees paid $302.44 per month for their

portion of the insurance premium. Following the Employer's reasoning and calculations, the City of Fairbanks provided 79% of medical insurance premium costs while bargaining unit members were responsible for 21% of premium costs.

The Employer maintained that the Union's effort to compare the situation in Fairbanks with other jurisdictions is not instructive for the instant dispute. While acknowledging that it had to be aware of what other jurisdictions do, the Employer argued that the most important comparison in this case is how the Union's employees match up with the rest of the Employer's workforce. Using this analysis, the Employer contended that the Union's bargaining unit was well-compensated and that it should not receive additional compensation in the form of higher health insurance premium coverage. The Employer contended that it would be unfair to the rest of its workforce if such a result occurred. Accordingly, the Employer asked to maintain the existing medical insurance rate for the remainder of the current collective bargaining agreement.

Analysis of the Issue Presented

The parties have a fundamental disagreement over the appropriate amount of money that the Employer should pay toward medical insurance premiums. In a sense, I must serve as an "interest arbitrator" in making the determination of an appropriate premium amount. In other words, I will be setting the parties' future interests in the collective bargaining agreement rather than deciding a grievance over a set of discrete events that have already taken place.

As the Employer properly notes in its closing brief, interest arbitration must be considered to be an extension of the collective bargaining process. I agree with Arbitrator Carlton Snow who set forth a controlling principle for interest arbitration decisions in *City of Seattle,* PERC Case No. 6502-1-86-148 (Snow, 1988):

> [A] goal of interest arbitration is to induce a final decision that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith.

A number of other arbitrators have expressed the same goal for interest arbitration. *See Kitsap County Fire Protection District No.* 7, PERC Case No. 15012-1-00-333 (Krebs, 2000); and *City of Centralia,* PERC Case No. 11866-1-95-253 (Lumbley, 1997). Arbitrator Snow's observation serves to provide a general framework for analyzing specific language and wage proposals. Arbitrator Timothy Williams stated this principle in the following terms:

> [T]he panel is mindful that the basic function of interest arbitration is to provide what should have been achieved at the bargaining table.

Clark County Public Transportation Benefit Area v. *Amalgamated Transit Union, Local 757,* PERC Case No. 24063-1-11-570 (2011).

Having established that interest arbitration must be considered as an extension of the collective bargaining process, several other principles have also been developed to refine the use of arbitration to conclude bargaining. For example, it must be remembered that interest arbitration is conducted in the context of an existing collective bargaining relationship. The arbitrator must be aware of the parties' bargaining history to provide an appropriate context for an award that will set their future rights and obligations. *See City of Seattle,* PERC Case No. 6576-1-86-150 (Beck, 1988). As noted in Elkouri and Elkouri, *How Arbitration Works,* Sixth Edition (BNA, 2003):

> [I]nterest arbitration is more nearly legislative than judicial . . . our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.

The parties' bargaining history is instructive because it shows that the Employer has set different wage rates for the firefighters as compared to the other bargaining units. The Union employees received a wage increase of 4.75% in the first year of the agreement, with no further wage increase for the remainder of the contract. In addition to the wage increase, the Employer provided a corresponding 4.75% increase in pension contributions for the bargaining unit.

The Employer and the AFL-CIO craft unions concluded negotiations for a successor collective bargaining agreement in effect for the 2014 – 2016 time period. It should be noted that under terms of the AFL-CIO agreement, each participating union has its own insurance plan with correspondingly different payment requirements. At the time of hearing, the AFL-CIO contract covered 13 employees in the Laborers Union, 20 employees represented by the International Union of Operating Engineers, one employee represented by the Carpenters Union, one employee represented by the Plumbers Union, and three employees represented by the Teamsters Union. The contract also covers the Painters Union, but there were no employees represented by that union at the time the contract was executed.

Under terms of the AFL-CIO contract, employees were granted a 1.5% increase in the "package rate" on January 1, 2014, with an additional one-time "signing bonus" equal to 1% of the package rate. The contract called for reopeners in 2015 and 2016 for wage and benefit negotiations. The "package rate" refers to the cost of providing a wage increase and an increase in medical premium benefits. The collective bargaining agreement specified that the unions involved in the AFL-CIO contract had the latitude to decide how much of the 1.5% increase would be applied to wage increases and how much would be applied to medical insurance premiums.

Each union in the AFL-CIO contract had its own health insurance plan to deal with, and the contract set differing amounts of Employer contribution for each group. The following charts express monthly insurance premium costs:

Total Premium	Employer Pays	Employee Pays	
Laborers Union	$ 1126.28	$ 1126.28	0
Operating Engineers	$ 1256.68	$ 1256.68	0
Carpenters	$ 1482.00	$ 1482.00	0
Plumbers	$ 1,130.00	$ 1130.00	0

Teamsters			
(employee only)	$ 1102.40	$ 1102.40	0
(employee + 1 or 2)	$ 1275.00	$1102.40	$ 172. 60
Painters	$ 1138.80	$1138.80	0

The 2014 through 2016 IBEW collective bargaining agreement covered 42 employees and was settled on different economic terms. In that contract, the parties agreed to a 2.5% increase in the "package rate" for 2014, with a 2% increase in 2015 and a 2% increase in 2016, applied to the "package rate" each year. The IBEW contract called for health insurance premium payments of:

Total Premium	Employer Pays	Employee Pays
$ 1590.00	$ 850.00	$ 740.00

The Employer has not used the "package rate" approach for the PSEA or the Fairbanks Firefighter Union contracts because the Employer's pension obligation is set by the Alaska State Public Employee Retirement System (PERS). The PERS contribution amount is set by the State of Alaska and cannot be modified by the parties in bargaining. The PSEA contract sets medical insurance premiums as:

	Total Premium	Employer Pays	Employee Pays
"Heritage Plan" (54 employees)	$ 1707.00	$ 1040.00	$ 667.00
"Catastrophic Plan" (14 employees)	$ 1128.00	$ 1040.00	$ 88.00

For the Fairbanks Firefighters Union, two insurance plans are offered. For the "500 Plan" (covering 2 employees), the total premium cost is $ 1,641.00, with the Employer paying $1040.00. Employees pay $601.40. For the "1500 Plan" (covering 40 employees), the total

premium cost is $1,442.44, with the Employer paying $ 1040.00. Employees must pay $402.44 as their share of the monthly insurance premium amount.

In its closing brief, the Employer argued that it had to be mindful of providing reasonable medical insurance premium compensation for all of its employee groups. The record shows that the Employer has attempted to address specific insurance premium issues with each of its bargaining units, with little similarity in approach among the different groups. While the IBEW group pays almost 50% of its premium costs, at least five other bargaining units do not pay anything toward insurance premium payments. Those differences came about because of collective bargaining that led to a number of different results. Each bargaining unit had different interests, and it is clear that the Employer attempted to meet those interests by allowing such a variety of insurance premium results.

The Employer finds itself in a difficult position. In many cities, single city-wide insurance plans are offered, with the same rates paid by all city employees. While this approach provides predictability and uniformity, it removes the flexibility to address issues within the numerous bargaining units.

Turning to the instant matter, I have carefully examined the evidence presented by the parties and their respective arguments concerning the appropriate medical insurance premium amount. I must conclude that the Employer should pay 80% of the monthly insurance premium, with employees being responsible for 20% of the premium. This is not an arbitrary decision. It is based on several factors. First, it is very unusual for firefighters to pay more than 20% for their insurance premium costs.

I recognize that the City of Fairbanks is somewhat remote from other jurisdictions, but it would be unrealistic to isolate the firefighters so completely. The Employer has already shown a great deal of flexibility in reaching a number of agreements concerning medical insurance premiums, and I recognize that the Employer has invested a good deal of its budget

to meet its commitments. I must also find that the Union has presented a compelling argument supporting its position, and the "80/20" split in payment is logical and appropriate.

I recognize that several months have passed since the January 1, 2014 reopener date. It would be impossible to reconstruct the actual usage of medical premiums during that time, but it is certainly possible to calculate the difference that the Employer was paying at that time as compared to the amount owed under the 80/20 formula. Accordingly, the Employer will be directed to compensate each bargaining unit member for the difference. The payment will be made as a separate check for those months that have passed, and will continue as a separate payment until such time as the Employer is able to start paying the 80% amount toward medical insurance premiums.

As part of its proposed award, the Union asks that I order the Employer to pay for the Union's costs and fees for the presentation of its case. I have considered the Union's request, and will not make such an order here. I believe that the imposition of attorneys' fees should be reserved to those situations where a party has acted in some kind of bad faith or has otherwise been obstructive to the litigation. I cannot make such a determination here. Both parties presented their positions in good faith, and, apart from a disagreement on the way to resolve their dispute, showed a willingness to work together in the collective bargaining process.

AWARD

Based on the foregoing and the record as a whole, effective January 1, 2014, the City of Fairbanks is directed to pay an amount equal to 80% of the medical insurance premium payment for the Northwest Fire Fighters Trust (NWFFT) plan in effect.

Employees represented by the Fairbanks Firefighters Union shall be responsible for 20% of the premium payments.

Until the City of Fairbanks is able to start paying the insurance premium to the NWFFT at the 80% amount, the Employer will pay bargaining unit members for the difference between the amount that the City of Fairbanks was paying and the amount to be paid at the 80% level.

The payments shall be made in a separate check, and not made part of the employees' base wages.

I retain jurisdiction in this matter for a period of 60 days to deal with any questions or difficulties in the implementation of this Award.

DATED at Lacey, Washington, this 11th day of July, 2014.

KENNETH JAMES LATSCH
Arbitrator