COMMITTEE REPORT

HOUSE

(11)

FURTHER:

4/15/85

Date: 4-26-85

The Committee on FINANCE has had HB 130

"An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 130 (H-CS) [X] same title [ ] new title

and recommends do pass

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Chairman

CHAIRMAN

Offered: 4/15/85
Referred: Finance

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 130 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE FIRST SESSION

A BILL

For an Act entitled: "An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds that public school employees are entitled to participate in formulating decisions that pertain to their employment and to the fulfillment of their professional duties. Effective and responsive administration of public schools is most readily obtained through the negotiation of labor agreements that incorporate both managerial and employee perspectives. The legislature further finds that providing for harmonious and cooperative relations between school boards and employee organizations will promote public education in the state. Accordingly, the legislature declares that it is in the best interests of the state to guarantee educational employees the opportunity to form employee organizations and to negotiate with respect to the terms of their employment.

* Sec. 2. AS 14.20.550 is repealed and reenacted to read:

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES. (a) A school board and an employee bargaining organization shall negotiate in good faith on matters pertaining to employment and the fulfillment of professional duties.

(b) In this section, "negotiate in good faith" means the performance of mutual obligations of the parties to meet at reasonable times and to participate actively, indicating a present intention to reach agreement, or to negotiate an agreement or a question arising under the agreement, and at the request of either party to execute a written contract incorporating any agreement reached. However, the requirement to negotiate in good faith may not be interpreted to compel either party to agree to a proposal or to make a concession.

* Sec. 3. AS 14.20.555(a) is amended to read:

(a) Negotiations between the [CERTIFICATED] employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the [CERTIFICATED] employees [, ONE TEAM REPRESENTING ALL THE CERTIFICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team representing all the participating regional school boards. In addition, if administrative personnel or noncertificated employees have joined together to negotiate independently as provided in AS 14.20.560(f), a team representing the independent employee organizations shall participate in the negotiations.

* Sec. 4. AS 14.20.560 is repealed and reenacted to read:

Sec. 14.20.560. NEGOTIATING UNIT. (a) In order to assure to employees the fullest freedom in exercising the rights provided under AS 14.20.540 - 14.20.610, the agency shall decide in each case the unit appropriate for the purposes of negotiation, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of negotiating, and the desires of the employees. Negotiating units must be as large as is reasonable. The agency shall avoid unnecessary fragmenting of the

units.

(b) Upon petition for certification by 30 percent of the employees in a proposed negotiating unit, and if the agency has reasonable cause to believe that a question of representation exists, the agency shall provide for an appropriate hearing after reasonable notice. If the agency finds that there is a question of representation, the agency shall direct an election by secret ballot to determine whether, or by which organization, the employees desire to be represented, and shall certify the results of the election. The parties may agree to waive a hearing for the purpose of a consent election, voluntary certification of an employee bargaining organization in accordance with the regulations of the agency, or an election in a negotiating unit agreed upon by the parties. The agency shall determine the persons eligible to vote in an election and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, the agency shall conduct a runoff election. The ballot in the runoff election must provide for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. The agency shall certify an organization that receives the majority of the votes cast in the election as the exclusive representative of all the employees in the negotiating unit.

(c) An election may not be held in a negotiating unit or in a subdivision of a negotiating unit if a valid election has been held within the preceding 12 months.

(d) The parties may agree to recognize an employee bargaining organization as the exclusive representative.

(e) The agency may direct an election in a negotiating unit in which there is in force a valid collective bargaining agreement only

during the 90-day period preceding the expiration date of the agreement. However, an agreement may not bar an election upon petition of persons in the negotiating unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

(f) Noncertificated employees or certificated administrative personnel may choose by secret ballot to negotiate independently of other personnel. If noncertificated employees or certificated administrative personnel seek to negotiate independently of other certificated employees, the agency shall review the submitted representation petition and, if 30 percent of the employees in a proper negotiating unit sign the petition, the agency shall conduct a representation election.

* Sec. 5. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board shall, upon the written request of an employee bargaining organization, meet with the representative of the organization within 20 days after the request, at a time and place to be agreed upon. In the same manner, representatives of an employee bargaining organization shall meet with a school board or its representatives within 20 days after receiving a written request.

(b) Notwithstanding AS 44.62.310, the parties may agree to hold a negotiation meeting in executive session, but the parties shall make all final agreements at a public meeting of the school board.

* Sec. 6. AS 14.20.570(a) is amended to read:

(a) Upon [THE] written request for mediation by an employee bargaining <u>organization</u> [AGENCY] or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have

terminated in an impasse, the following procedure must be followed [OCCURS]:

(1) Within seven days after [OF] the certification, the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute. The requesting party shall notify the agency that the parties have requested a mediator.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) [WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS, CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTENDED.

(4)] Each party to the dispute may select a team [OF NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and position of the group they represent [,] to the mediator.

* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify the agency when the parties jointly agree, or when the mediator independently determines, that further mediation would not promote resolution of the dispute. Following mediation, the parties shall observe a 10-day cooling-off period.

* Sec. 8. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.585. ARBITRATION. (a) If the agency is notified under AS 14.20.580 that further mediation will not promote resolution of the dispute, the parties shall submit to last-best-offer mediated arbitration. A collective bargaining agreement between a school board

and an employee bargaining organization must include a procedure to promptly select an arbitrator. If the parties are unable to agree on a procedure for the selection of an arbitrator, the agency shall direct the parties to use the services of and comply with the procedures of the United States Federal Mediation and Conciliation Service or the American Arbitration Association in the selection of an arbitrator.

(b) In last-best-offer mediated arbitration under this section, each party shall submit a final offer on each issue in dispute. Each party shall submit to the arbitrator oral or written evidence in support of its position, and must be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. At the request of either party, or on the motion of the arbitrator, the arbitrator may conduct a public meeting for the purpose of allowing the parties to present and explain their positions and final offers. The arbitrator shall allow each party to revise its last best offer before final submission to the arbitrator for decision.

(c) When making the decision, the arbitrator shall consider

(1) the history of negotiations between the parties before entering arbitration;

(2) the public interest and financial abilities of the school district;

(3) the interest and welfare of the employee group;

(4) changes in the cost of living;

(5) the existing employment conditions of the employee group compared with those of similar groups; and

(6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

(d) For each issue, the arbitrator shall adopt without modification the last best offer presented by one of the parties. The arbitrator shall issue a final and binding decision not more than 10 days after the parties have presented their last best offers.

(e) The parties shall share the cost of the arbitrator equally.

(f) Within 30 days after receipt of a final decision in an arbitration, a party to the arbitration may file a motion in the superior court for the judicial district in which the school district is located to vacate or modify the decision. The court, after hearing, may vacate or modify the decision if the substantial rights of a party have been prejudiced because

(1) the decision violates constitutional or statutory law;

(2) the decision exceeds the statutory authority of the arbitrator;

(3) the procedure in the arbitration was unlawful;

(4) the proceeding is affected by other error of law;

(5) the decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) the decision is arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

* Sec. 9. AS 14.20.590 is amended to read:

Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements must [EXECUTED AFTER JULY 1, 1975, SHALL] define "grievances" and provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The grievance procedures must [SHALL] provide that the final step in the procedure is [SHALL BE] binding arbitration. The negotiations agreement must [SHALL] provide a method for the selection of an arbitrator to resolve grievances.

* Sec. 10. AS 14.20.600 is amended to read:

Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases.

* Sec. 11. AS 14.20.600 is amended by adding a new subsection to read:

(b) The agency may adopt regulations setting out procedures consistent with the purposes of AS 14.20.540 - 14.20.615 to safeguard the rights of nonassociation of employees having bona fide religious convictions.

* Sec. 12. AS 14.20 is amended by adding new sections to read:

Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (a) There is established in the Department of Administration an educational employees labor relations agency that consists of three members appointed by the governor and confirmed by the legislature meeting in joint session. Members serve for terms of three years. Members serve at the pleasure of the governor. The governor shall appoint as members one representative of management, one representative of organized labor, and one public member. The members representing management and organized labor must have knowledge and experience in educational employment issues.

(b) Members of the agency receive no compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(c) The agency may employ staff to implement the provisions of AS 14.20.540 - 14.20.615.

Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The agency shall perform the functions described in AS 23.40.120 - 23.40.180 to carry out the provisions of AS 14.20.540 - 14.20.615.

(b) The prohibition of unfair labor practices, as described in

AS 23.40.110, applies to a school board and an employee bargaining organization.

* Sec. 13. AS 14.20.610 is amended to read:

Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.600] may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board, including its right to make final decisions on educational policies.

* Sec. 14. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.615. DEFINITION. In AS 14.20.540 - 14.20.615 "agency" means the educational employees labor relations agency.

* Sec. 15. Notwithstanding AS 14.20.605 enacted by sec. 12 of this Act, one initial member of the educational employees labor relations agency shall serve a term of one year and one initial member shall serve a term of two years.

* Sec. 16. This Act does not modify or terminate a negotiating unit or agreement in existence on the effective date of this Act.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: ____

REQUEST
Bill/Resolution No.: CSHB 130 (HES)
Title: Educational Employees' Collective Bargaining
Sponsor: Governor Bill Sheffield
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Independent Operations
BRU, Program or Subprogram(s) Affected: New--Educational Employees Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	68.3	72.4	76.7	81.3	86.2
300 CONTRACTUAL	-0-	90.2	95.6	101.3	107.4	113.8
400 SUPPLIES	-0-	1.0	1.1	1.2	1.3	1.4
500 EQUIPMENT	-0-	5.0	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	164.5	169.1	179.2	190.0	201.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	164.5	169.1	179.2	190.0	201.4
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	164.5	169.1	179.2	190.0	201.4

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: William J. Gibbons, Director
Phone: 465-4404
Division: Labor Relations
Date: March 29, 1985
Approved by Commissioner: Lisa Rudd
Date: 4/1/85
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Rev. 7/1/84

COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130 (L&C)
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 29, 1985

This bill establishes an Educational Employees' Labor Relations Agency (EELRA) to administer the revised teachers' collective bargaining act. The effect of the revisions is to extend the privileges of the collective bargaining process to all noncertificated educational employees, and to add finality to the bargaining process now authorized for teachers by Title 14.

The three-member EELRA, with the advice and assistance of a professional on contract (probably an attorney), will investigate matters brought before it, hold hearings, resolve Unfair Labor Practice Complaints and conduct elections. The office will be in Anchorage, where a full-time clerk typist (on contract) will provide technical and clerical support.

Since both EELRA staff members will be on contract, the costs of their services are allocated to Contractual Services ($76,200).

Rental charges for office space are estimated at $6,000, based on a General Services and Supply quotation of typical Anchorage office space costs. The balance of Contractual Services ($18,000) is reserved for other administrative costs such as telephone charges, office equipment rentals, duplicating materials, and equipment maintenance agreements.

The allotment for travel ($68,300) permits a total of 91 individual trips of three days each to various school districts throughout Alaska. This assumes a total of 26 hearings per year which will require travel. For 13 of the hearings a group of four is expected to travel (the three EELRA members plus the attorney). Only three people are expected to travel for the remaining 13 trips (two of the EELRA members--a quorum--plus the attorney). An average cost of $750 per individual trip in transportation and per diem expenses is assumed.

The budget for office supplies (paper, pens, typewriter ribbons, etc.) is $1.0. A one-time equipment expense of $5.0 is included for the initial purchase of office furniture and equipment (desks, chairs, file cabinets).

COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130 (L&C)
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 29, 1985

For future years' expenses, the following assumptions have been used:

1. An inflation rate of 6.0% per annum.

2. No significant change in the work load from FY 86 levels.

POSITION PAPER
CSHB 130 (L&C)

Collective Bargaining Between School Boards and Their Employees

The Committee Substitute for House bill 130 contains the following elements which the Department of Administration thinks are essential to meet the needs of educational collective bargaining:

1. The policy regarding public employment collective bargaining as stated by the Legislature in the Policy Declaration of AS 23.40 will protect the inherent right of elected public officials to manage, balanced against the employees' inherent right to participate in the development of the rules used to manage.

2. The need to continue the integrity of a separate Educational Title in the Alaska Statutes, where the needs of school district employees and school boards can be recognized.

3. The right of all school district employees to organize into representative groups of their own choosing, and to have a bilateral resolution to the collective bargaining process that will be overseen by an Educational Labor Relations Agency.

In addressing specific provisions of the bill, the Department of Administration finds itself in agreement with:

1. The establishment of an Educational Labor Relations Board composed of three members. The Board will hear unfair labor practice complaints, determine appropriate bargaining units, and conduct elections.

2. Clarifying the right of non-certificated educational employees to organize, thus making them equal to their counterparts in State service. This is looked upon by the Administration as an important step toward equitability in the law.

3. The establishment of a series of steps beyond impasse to bring bargaining to a conclusion by providing for mediated arbitration which is designed to spur both parties to seek compromise as quickly as possible.

The Department of Administration recommends that the bill be amended to authorize teleconferencing of EELRA hearings where all interested parties agree. Teleconferencing some hearings will reduce the EELRA's funding requirements, and will enable them to conduct more hearings within allotted funds.

For the reasons outlined above, the Department of Administration supports CSHB 130 (L&C).

Date: 3/[illegible]

William J. Gibbons
Director
Division of Labor Relations
Department of Administration

Date: 4/1/85

Commissioner Lisa Rudd
Department of Administration

MEMORANDUM State of Alaska

TO: Louann Cutler
Professional Assistant
House Finance Committee

DATE: April 25, 1985

FILE NO: 377-132-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

By: Peter Froehlich
Peter B. Froehlich
Assistant Attorney General
Legislation/Regulations Section

SUBJECT: Suggested teleconferencing addition to CSHB 130(HESS) on educational employee labor relations

In order to ensure that the new educational employees labor relations agency under CSHB 130(HESS) could use teleconferencing to the same extent as could agencies covered by the Administrative Procedure Act under CSHB 140(Rls), we suggest that a new statutory section be added to sec. 12 of the bill.

Page 9, line 3, insert:

Sec. 14.20.608. TELECONFERENCING. (a) The educational employees labor relations agency may use teleconferencing for the benefit or convenience of the parties, the public, or the agency, in connection with any proceeding or act authorized under this chapter, so long as all statutory and constitutional rights of the parties are either waived or adequately protected.

(b) Teleconferencing may be used to establish quorums, to receive public input, and to facilitate the participation of parties.

(c) In this section, "teleconferencing" means information exchange by audio or video medium.

Please let me know if I can answer any questions about this suggestion.

PBF:md

cc: Karen Clarke
Division of Labor Relations
Dept. of Administration

Sioux Plummer, Director
Division of Teleconference Services
Dept. of Administration

Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

MEMORANDUM State of Alaska

TO: Louann Cutler
Professional Assistant
House Finance Committee

DATE: April 25, 1985

FILE NO: 377-132-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General
By: Peter B. Froehlich
Assistant Attorney General
Legislation/Regulations Section

SUBJECT: Suggested teleconferencing addition to CSHB 130(HESS) on educational employee labor relations

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PBF:md

cc: Karen Clarke
Division of Labor Relations
Dept. of Administration

Sioux Plummer, Director
Division of Teleconference Services
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Arthur H. Peterson
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MEMORANDUM State of Alaska

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House Finance Committee

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cc: Karen Clarke
Division of Labor Relations
Dept. of Administration

Sioux Plummer, Director
Division of Teleconference Services
Dept. of Administration

Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

STATE OF ALASKA -- BUDGET UNIT SUMMARY 16:53 4/24/85

AGENCY: DEPARTMENT OF ADMINISTRATION
CATEGORY: GENERAL GOVERNMENT

PROGRAM: LABOR RELATIONS AGENCY

COMPONENT DESCRIPTION	FY85 ATH	FY85 SUP	ADJ BASE	REQUEST	GOVERNOR	GOV.AMD.	HOUSE	SENATE	C. C.	BILLS	LEG.REC
LABOR RELATIONS AGENCY	87.0		87.0	101.8	101.8	101.8	87.0				
** TOTAL	87.0		87.0	101.8	101.8	101.8	87.0				
** CHANGE VERSUS FY85 ATH				17.0%	17.0%	17.0%		-100.0%	-100.0%		
OBJECT DESCRIPTION											
TRAVEL	9.1		9.1	9.1	9.1	9.1	9.1				
CONTRACTUAL	75.9		75.9	90.7	90.7	90.7	75.9				
COMMODITIES	2.0		2.0	2.0	2.0	2.0	2.0				
FUNDING SUMMARY											
GENERAL FUND	87.0		87.0	101.8	101.8	101.8	87.0				
** GENERAL FUND CHANGE VS. FY85 ATH				17.0%	17.0%	17.0%		-100.0%	-100.0%		

AGENCY: DEPARTMENT OF ADMINISTRATION
CATEGORY: GENERAL GOVERNMENT

PROGRAM: LABOR RELATIONS AGENCY
SUB-PROGRAM: LABOR RELATIONS AGENCY

FISCAL YEAR 1986

EXPENDITURES & FUNDING	(01) FY84 ACT	(02) FY85 ATH	(03) FY85 RP	(04) FY85 SUP	(05) ADJ BASE	(06) REQUEST	(07) GOVERNOR	(08) GOV.AMD.	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(1 LEG.
01 PERS. SERV.													
02 TRAVEL	5.4	9.1			9.1	9.1	9.1	9.1	9.1				
03 CONTRACTUAL	90.4	75.9			75.9	90.7	90.7	90.7	75.9				
04 COMMODITIES	.8	2.0			2.0	2.0	2.0	2.0	2.0				
05 EQUIPMENT													
06 LANDS/BLDGS													
07 GRANTS, CLMS													
08 MISC.													
** TOTAL EXPEND	96.6	87.0			87.0	101.8	101.8	101.8	87.0				
09 I-A TRANSFER													
1004 GEN FUND	96.6	87.0			87.0	101.8	101.8	101.8	87.0				
15 FULL TIME													
16 PART TIME													
17 TEMPORARY													
18 STAFF MONTHS													

SECTION ANALYSIS
CSHB 130 (HESS)

An Act relating to Public School Employees Collective Bargaining

Section 1: Declaration of Policy; adds a new section AS 14.20.540 establishing that public school employees have a right to participate in formulating decisions pertaining to their employment, that such will provide cooperative and harmonious relationships and promote public education in the State.

Section 2: Repeals and reenacts AS 14.20.550 to define good faith bargaining.

Section 3: Amends AS 14.20.555 to make optional coordinated employee negotiations available to administrative certificated personnel and to classified employees.

Section 4: Repeals and reenacts AS 14.20.560 to establish guidelines for the Educational Employees Labor Relations Agency regarding who will be in a particular bargaining unit.

Section 5: Negotiation Meetings: Adds a new section AS 14.20.565, which establishes that negotiations will commence within 20 days of a request by either party and that all final agreements must be made at a public meeting of the school board.

Section 6: Amends AS 14.20.570 (A) to more clearly define the access to and utilization of the mediation procedure.

Section 7: Repeals and reenacts AS 14.20.580 to provide for a 10 day cooling off period in the event that mediation is unsuccessful in resolving the dispute.

Section 8: Arbitration: Amends by adding a new section, AS 14.20.585 which provides for last best offer mediated arbitration. It further provides that the parties attempt to agree on a procedure to select the arbitrator. If they are unable to agree the EELRA shall direct the parties to utilize the services and procedures of the Federal Mediation and Conciliation Service or the American Arbitration Association.

The arbitrator will receive the last best offer on each issue in dispute of each party; provide for argument, evidence, and testimony; may conduct a public hearing; and shall select the final offer on each issue of one of the parties as a binding determination.

Establishes criteria to be considered by an arbitrator in making a final decision.

Provides for court review of an arbitrator's decision.

The costs of the arbitrator are equally shared by the parties.

Section 9: Amends AS 14.20.590 to include all public school employees in the requirement that all collective bargaining agreements must contain a provision providing for a grievance procedure ending in arbitration.

Section 10: Provides for an employee's right, as an individual, to address a school board.

Section 11: Amends AS 14.20.600 to provide for bona fide religious objection to collective bargaining agreements containing provision for payment of a service fee to reimburse the exclusive bargaining agent for the expenses of representation.

Section 12: Adds a new section, AS 14.20.605, establishing an Educational Employees Labor Relation Agency which is responsible for the administration of the law.

Adds a new section, AS 14.20.606 which provides that the EELRA shall have responsibility to adjudicate unfair labor practices and incorporates, by reference, AS 23.40.120 - 180. Defines and prohibits unfair labor practices and incorporates by reference, AS 23.40.110.

Section 13: Legal Responsibilities of Boards: Amends AS 14.20.610 to clarify authority of a school board to make final decisions on educational policies.

Section 14: Defines "agency" as the educational employee labor relations agency.

Section 15: Provides for staggered terms of the agency members by making one initial term one year and a second initial term two years in duration.

Section 16: Provides grandparent protection to current recognized negotiating units and collective bargaining agreements in existence on the effective date of the Act.

Section 17: Effective date clause: immediate.

L85:04

NEA-ALASKA

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House Bill 130

RE: Educational Employees Collective Bargaining
Amends AS 14.20.550 - 610

NEA-ALASKA

CONCEPT OUTLINE

* Provides all school district employees the right to organize and negotiate.

* Establishes an Educational Employees Labor Relations Agency to administer the law.

* Continues to utilize mediation through the Federal Mediation and Conciliation Service.

* Provides for final offer arbitration on the issues not resolved in mediation. The arbitrator shall have authority to mediate an agreement before making a final decision.

* Provides a public hearing before selection of a final offer by the arbitrator.

* Provides for the selection of the arbitrator and for the costs of arbitration to be shared by the parties.

* Defines and prohibits unfair labor practices.

LCS:57

C2

4/85

HB 130 CS (HESS)

ALASKA:

HB 130 amends the current bargaining law for certificated employees of school districts by providing:

1) issue by issue last best offer mediated arbitration
2) statutory right of classified school employees to bargain
3) establish an educational employees labor relations board to address bargaining unit determination and unfair labor practices.

NEED FOR THE AMENDMENTS:

The current school employee negotiations law, AS 14.20.550-610, fails every reasonable test of equity and effective bilateral decision making.

	House Bill 130
* The right of all school employees to organize and participate in matters pertaining to negotiations does not have adequate statutory protection. Classified employees currently do not have the statutory right to bargain as do other public employees.	Addressed in Section 1
* Advisory arbitration does not achieve finality in the bargaining process. (Right now there are still three districts that have not yet settled the contract for 1984-85) The Alaska Supreme Court has ruled that the Anchorage teacher's strike of 1979 was illegal.	Section 8
* There is no administrative procedure for resolution of alleged unfair labor practices.	Section 12

SCOPE OF BARGAINING: This is addressed in the current bargaining statute with the language,

> "Section 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES. A school board and an employee bargaining organization shall negotiate in good faith on matters pertaining to employment and the fulfillment of professional duties."

HB 130 does not amend this language.

This language was interpreted by the Alaska Supreme Court in 1977. There has been no further litigation regarding scope since 1977. Both parties have lived with the list of non-negotiable and negotiable items of the Kenai Decision (attached).

Any amendment to the scope language would invite litigation because it would "undo" Kenai. HB 130 further provides that:

> * Section 13 AS 14.20.610 is amended to read:
> Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.600] may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board, including its right to make final decisions on educational policies.

This language is intended to reinforce the court standard applied in the Kenai Decision; i.e. educational policy is the prerogative of the school board.

L85:19

NEA-ALASKA

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April 1, 1985

TO: Representative Al Adams, Chair
Members of the Finance Committee

RE: CSHB 130 (HESS)

"An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

NEA-Alaska strongly supports and urges passage of CSHB 130 (HESS).

It brings much needed reform to the current teacher negotiations law and provides an effective means of getting to finality in the negotiations process through issue by issue, last best offer, meditated arbitration.

This bill has spent several weeks in the Labor and Commerce Committee, and the HESS Committee. The members of these Committees heard many hours of testimony, questioned and probed the components of the bill. From our perspective, the bill in its present form represents compromise. We feel that both sides were given full opportunity to advocate their positions and we believe the bill, if passed as is, would rectify the essential deficiencies of the current bargaining law.

We urge you to move the bill without further amendment.

Attached please find additional information which we hope will be useful to the Committee.

Thank you for your consideration of this crucial legislation.

Respectfully submitted:

Gayle Pierce
President

L85:05

Attachments

Article 6. Negotiation and Mediation.

Section
550. Negotiation with Certificated Employees
555. Optional Coordinated Employee Negotiations
560. Teachers bargaining groups
570. Mediation board
580. Duties of mediations board
590. Grievance procedures
600. Individual cases
610. Legal responsibilities of boards

Sec. 14.20.550. Negotiation with Certificated Employees. Each city, borough and regional school board, shall negotiate with its certificated employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties. (Sec. 1 ch 18 SLA 1970; am Sec. 3 ch 71 SLA 1972; am Sec. 21 ch 124 SLA 1975)

Sec. 14.20.555. Optional Coordinated Employee Negotiations. (a) Negotiations between the certificated employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the certificated employees, one team representing all the certificated administrative personnel if they have joined together to negotiate independently as provided in sec. 560(f) of this chapter, and one team representing all the participating regional school boards.

(b) Each team may consist of as many members as there are regional school boards. Each board is entitled to one member on the team. However, each negotiating team shall consist of not less than five members.

(c) A regional educational attendance area board may by resolution choose to conduct its own negotiations in accordance with sec. 550 of this chapter.

(Sec. 22 ch 124 SLA 1975)

Sec. 14.20.560. Teachers' bargaining groups. (a) When a majority of the certificated employees in a school district have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certificated staff, except superintendents of schools. The membership of any such recognized educational organization shall be composed principally of those employed in the teaching profession in Alaska.

(b) The organization representing a majority of the certificated employees of a school district shall, upon the request of the school board, submit an affidavit verifying that it does represent a majority of the certificated employees. Recognition of the employee bargaining agency by a school board is valid for one year or a term agreed upon by the two parties to an agreement, unless a majority of certified staff votes to request the termination of recognition of the employee bargaining agency. The school board is entitled to an affidavit of membership from the employee bargaining agency once each year.

(c) Upon the request of 25 percent of the certificated employees in a district, the school board shall hold, within 20 days, an election by secret ballot of all the certificated employees in order to determine their choice of a bargaining agency. The results of this election are binding for one year.

(d) A school board shall, upon the written request of the employee bargaining organization, meet with the representative of the organization within 20 days of the request at a time and place to be mutually agreed upon. In the same manner, representatives of an employee bargaining organization are required to meet with a school board or its representatives within 20 days after receiving a written request. The school board and the employee organization may not select more than five representatives each to negotiate for them.

(e) The negotiating meeting may be held in executive session upon mutual agreement of both parties, but all final agreements shall be made at a public meeting of the school board.

(f) Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other certificated personnel if they choose to do so as the result of a secret ballot. (Sec. 1 ch 18 SLA 1970; am Sec. 1 ch 43 SLA 1971)

Sec. 14.20.570. Mediation. (a) Upon the written request for mediation by an employee bargaining agency or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have terminated in an impasse, the following occurs:

(1) Within seven days of the certification the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) Within 30 days of the initial meeting of the parties to the dispute the mediator shall have reduced all the agreed terms, conditions and other items to a written contract. If mutually agreed the period for reporting the contract to both parties may be extended.

(4) Each party to the dispute may select a team of not more than five persons to present the evidence, thinking and position of the group they represent, to the mediator.

(b) If the mediation meetings are held during the school day, teachers representing an employee bargaining agency shall be released from classroom or other assigned duties without penalty or loss of pay.

Sec. 14.20.580. The Mediation Report. (a) Within 10 days each party to the dispute shall accept or reject in total the mediation report.

(b) If rejected by either party, the mediator shall have an additional five days to review the objections and prepare a final report.

(c) If the final report is rejected by either side, the governor may appoint an advisory arbitrator to review the issues and make recommendations for solution. (Sec. 1 ch 18 SLA 1970; am Sec. 2 ch 201 SLA 1975)

Sec. 14.20.590. Grievance Procedures. Negotiations agreements executed after the effective date of this Act shall define "grievances" and provide for grievance procedures for the certificated staff. The grievance procedures shall provide that the final step in the procedure shall be binding arbitration. The negotiations agreement shall provide a method for the selection of an arbitrator. (Sec. 1 ch 18 SLA 1970; am Sec. 3 ch 201 SLA 1975)

Sec. 14.20.600. Individual cases. Nothing in secs. 550—590 of this chapter prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases. (Sec. 1 ch 18 SLA 1970)

Sec. 14.20.610. Legal responsibilities of boards. Nothing in secs. 550—600 of this chapter may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board including its right to make final decisions on policies. (Sec. 1 ch 18 SLA 1970)

CHAPTER 80.
ADVISORY ARBITRATION: TEACHER NEGOTIATIONS

Section
10. Purpose
20. Request for appointment of advisory arbitrator
30. Appointment of advisory arbitrator
40. Arbitrator's report

4 AAC 80.010. PURPOSE. The purpose of this chapter is to set out the conditions upon which the governor will exercise his discretion to appoint an advisory arbitrator in certificated staff/school board negotiations under AS 14.20.580(c) and the procedures that will be followed in making the appointment. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.020. REQUEST FOR APPOINTMENT OF ADVISORY ARBITRATOR. (a) The bargaining representative for the certificated staff or the school board or both may request the governor to appoint an advisory arbitrator. Verbal requests for an advisory arbitrator must be followed by letter or telegram within five days.

(b) A request for an advisory arbitrator must contain the following:

(1) a statement, verified by the party not making the request, that the final report of a mediator, as provided for in AS 14.20.580(b), has been rejected by either or both parties to the negotiation process;

(2) a statement of how any expenses incurred by the advisory arbitrator will be funded by the parties; and

(3) a written nomination of up to three candidates for appointment as advisory arbitrator who are mutually acceptable to both parties in negotiations and who are willing to serve as advisory arbitrator, if appointed. If the parties cannot agree on any candidates for appointment as advisory arbitrator, the request must contain a statement that both parties will accept the appointment of an advisory arbitrator from the American Arbitration Association.

(c) A request for an advisory arbitrator may not contain any statement or description of the issues involved in the negotiations impasse. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.030. APPOINTMENT OF ADVISORY ARBITRATOR. (a) If the governor decides to exercise his discretion under AS 14.20.580(c), an advisory arbitrator will be appointed within 10 days of receipt of a request for an advisory arbitrator which conforms with the requirements of sec. 20 of this chapter. Notification of the appointment will be provided to both parties to the negotiations by the office of the governor.

(b) Following the notification of appointment to the parties, all communications related to the advisory arbitration of the issues at impasse must take place between the parties and the arbitrator. Attempts on the part of either party to discuss or otherwise communicate with the office of the governor with respect to the issues will not be acknowledged.

(c) If the governor decides not to exercise his discretion to appoint an advisory arbitrator under AS 14.20.580(c), both parties to the negotiations will be so advised within 10 days of receipt of the request for an advisory arbitrator. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

4 AAC 80.040. ARBITRATOR'S REPORT. At the conclusion of their arbitration duties, advisory arbitrators shall submit a summary of their activities and recommendations, along with a copy of their report, to the parties and to the office of the governor. (Eff. 6/17/77, Reg. 62)

Authority: AS 14.20.580(c)

E

NEGOTIABLE AND NON-NEGOTIABLE

according to

The ALASKA SUPREME COURT

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators
5. Teacher Aides
6. Para-Professionals
7. PTR Formula
8. Specialists
9. Calendar

Those items which are negotiable are:

1. Recognition
2. Negotiation Procedures
3. Grievance Procedures
4. Salary Schedule Conditions
5. Salary Schedule
6. Automatic Cost of Living
7. Extra Curricular and Extra Duty
8. Extended Contract
9. Additional Educational Employment
10. Life Insurance
11. Health Insurance
12. Liability Insurance
13. Automobile Allowance
14. Tuition/In-Service Workshops
15. Reimbursement for Physical Examinations
16. Sabbatical Leave
17. Career Development
18. Administrative Leave
19. Personal Leave
20. Sick Leave and Bereavement
21. Personal and Sick Leave for Half-Time Employees
22. Unpaid Leave of Absence
23. Maternity Leave
24. Political Leave
25. Duty-Free Lunch
26. Teacher Preparation Periods
27. Monthly Planning Time
28. In-Service Days
29. Discretional Materials
30. Personnel Files
31. Teacher Transfer
32. Teacher Retention
33. Job Openings
34. Reduction of Staff
35. Teacher Contracts
36. Association Rights and Privileges
    (a) Information
    (b) Release Time for Meetings
    (c) Use of School Buildings
    (d) Use of School Equipment
    (e) Supplies
    (f) Mail Facilities
    (g) Subcontracting
    (h) Non jeopardy
    (i) Exclusive Rights
    (j) KPEA Professional Leave
    (k) Dues Deduction/Continuing Membership
    (l) Other Deductions
    (m) Conformity to Law
    (n) School Board Agenda
    (o) Preliminary Draft of Budget
37. Agreement Print-up and Dissemination
38. Duration of Contract

F

4/85

Overview of the States
SCHOOL EMPLOYEE BARGAINING

Bargaining is prohibited by law in three states.

North Carolina, Texas, Virginia

There is no bargaining statute in 13 states.

Arizona, Arkansas, Colorado, Georgia, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, South Carolina, Utah, West Virginia, Wyoming

One state has meet and confer by statute.

Alabama

There is a bargaining statute for school employees in the other 33 states and the District of Columbia.

States	Finality provisions by statute
Alaska:	Supreme Court - no right to strike
Connecticut:	last best offer issue by issue arbitration
Dist. of Columbia:	conventional arbitration
Hawaii:	limited right to strike
Illinois:	limited right to strike
Iowa:	last best offer issue by issue
Massachusetts:	conventional arbitration
Minnesota:	conventional arbitration
Montana:	conventional arbitration
Nebraska:	conventional arbitration
New York:	conventional arbitration
Ohio:	limited right to strike
Oregon:	limited right to strike
Pennsylvania:	limited right to strike
Rhode Island:	conventional arbitration
Wisconsin:	last best offer package

18 strike not prohibited
5 limited right to strike provided
7 conventional arbitration
2 issue by issue last best offer arbitration
1 package last best offer

L85:20

4/85

LAST BEST OFFER BINDING ARBITRATION IN OTHER STATES

IOWA: A bargaining law was enacted in 1974. The first implementation of arbitration occurred in 1976 because of the effective date. The mechanism for finality is last best offer issue by issue mediated arbitration.

The law is a comprehensive public employees law.

RECORD WITH ARBITRATION:

Each year since 1976 statistics have been nearly constant:

* Approximately 420 K-12 units bargaining annually
* Approximately 300 settled voluntarily - 71%
* Approximately 100 settled after impasse and/or before arbitration - 24%
* Approximately 20 settled by arbitration (17 in 83-84) - 5%

There is no special pattern that is revealed by districts going to arbitration.

SETTLEMENTS: From 1976 to 1983 voluntary settlements were consistently higher for monetary items. In the last two years, settlements are comparable. The first 100 districts to settle voluntarily establish the standard statewide with slight variations depending on comparability with districts in proximity.

SCOPE OF BARGAINING: Iowa has a list of items that are bargainable and a management rights section with a list.

Since 1976 there have been approximately 2,000 disputes between management and labor regarding the interpretation of the scope list vs. the management rights list of the law.

There have been ten state Supreme Court cases and there are more cases pending at this time. A very high level of litigation over these sections continues.

The rule of the court has been that for a subject to be a mandatory subject of bargaining an item must be listed in the law and, where language in the scope and management rights sections are in apparent conflict, the negotiability of an item should be construed narrowly. The court has found, however, that procedures subject to bargaining should be construed broadly.

It is expected that the Iowa legislature will enact amendments to the law this year. The amendments will add to the negotiability list "discipline and discharge" and will direct the court to give listed items their conventional definition, not to construe them narrowly in view of the management rights section.

WISCONSIN:

Finality was enacted in 1977. The first implementation of arbitration occurred in 1978.

The mechanism for settlement is last best offer package mediated arbitration.

Prior to the adoption of the law, finality was by strike.

In Wisconsin, like Iowa, all public employees are covered by the same law.

RECORD WITH ARBITRATION

As part of the 1977 act, the Legislative Council was directed to make periodic reports regarding the effects of the law. A review was completed in 1984 and is currently being updated.

The 1984 review concluded that: In six years ....

* Total number of contracts negotiated 5,520
* Those settled voluntarily prior to impasse 2,983 - 54%
* Settlement after impasse and before arbitration 2,113 - 39%
* Settlements by arbitration 424 - 7%

There is no special pattern revealed by units going to arbitration.

SETTLEMENTS: The statistics reveal that throughout the six years of the law, voluntary settlements are consistently higher than arbitrated settlements on monetary items.

For settlements in 1983-84: The percent increase in base salaries in voluntary settlements was 6%. For a Master's in the tenth year the increase was 6.4%.

The percent increase in arbitrated settlements in base salaries was 5.6%. For a Master's in the tenth year the increase was 5.7%.

SCOPE OF BARGAINING: The Wisconsin legislation of 1977 did not amend scope which was broadly defined in existing statute as "wages, hours and conditions of employment". Although this language was litigated before 1977, there has been little litigation regarding scope in recent years with only one case, in 1980, going to the Court of Appeals.

CONNECTICUT:

Finality was enacted in 1979. Contracts for 1980-81 were the first bargained under the new provisions. The 1979 law amended the existing bargaining statute for certificated school personnel by providing binding arbitration. The mechanism for settlement is last best offer issue by issue arbitration. In Connecticut the arbitrator does not mediate. Prior to the enactment of binding arbitration, the Connecticut law had advisory arbitration as a process. Connecticut had a major strike in 1978.

In Connecticut the bargaining law is for teachers and administrators. Classified school employees and other public employees are covered under a separate law providing the statutory right to bargain and finality with binding arbitration.

RECORD WITH ARBITRATION

Contracts For	Total	Settled at Table	Mediation	Arbitration
1980-81	78	15	25	38
1981-82	78	28	27	23
1982-83	90	30	31	29
1983-84	89	16	36	37
1984-85	90	30	39	23
* 1985-86	90	22	42	26

All contracts to be bargained for the 1985-86 school year were completed in March of this year.

Totals:

* 517 contracts bargained
* 141 settled at the table - 27%
* 200 settled in mediation - 39%
* 176 settled in arbitration - 34%

Before the law, mediation was successful in only 10% to 15% of the cases that went to mediation.

After the law, mediation has been successful in 53% of the cases taken.

In Connecticut, two factors account for the relatively high percentage of bargaining situations ending in arbitration as compared to Iowa and Wisconsin.

1) In Connecticut, a town government can challenge a voluntary settlement but not an arbitration award. So many times, although the two parties agree without the assistance of a mediator or an arbitrator, they go to arbitration to protect their agreement.

2) In Connecticut, the arbitrator can not mediate, so more awards are written even though by the time the parties submit the last best offer they are virtually in agreement and the award in fact reflects a voluntary settlement.

SETTLEMENTS: Throughout the six years, voluntary settlements on monetary issues have been generally higher by a percent or 2 than the arbitrated settlements. Each year the first 15 voluntary settlements tend to set the pattern that all other settlements will follow.

The over-all impact of the binding arbitration provision has been to induce more meaningful bargaining before impasse and in mediation than occurred before the law was amended in 1979.

SCOPE OF BARGAINING: The Connecticut legislation did not amend the scope of what was bargainable or arbitrable. The language in Connecticut is "to negotiate with respect to salaries and other conditions of employment". This language was enacted in 1965 and was interpreted by the Connecticut Supreme Court in 1970 in a decision that listed negotiable and non-negotiable items (as did the Alaska Supreme Court in the Kenai case in 1977). Scope has not been an issue since 1970 in Connecticut. Both parties have abided by the 1970 court decision.

L85:18

4/85

PUBLIC OPINION IN ALASKA

Further, the public supports interest arbitration for teachers.

- Between 1979 and 1981 Senator Colletta, Representative Phillips, and Senator Kelly found constituent support for interest arbitration ranging from 67% to over 80%.

- In early 1983, a supermarket survey of nearly 5,000 shoppers in ten communities around the state found over 90% in support of arbitration for teachers.

- The 1983 Hellenthal Survey, commissioned by the Anchorage School District, reinforces the need for arbitration with a favorable response slightly in excess of 80%.

- In April of 1985 a supermarket survey of shoppers in ten communities again found over 90% in support of arbitration for teachers.

The question on the April 1985 survey was:

"Should teacher negotiation disputes be settled through - strike, or arbitration?"

L85:17

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that relates to the collective bargaining privileges of educational employees throughout the state.

Other than employees of the University of Alaska, noncertificated educational employees in the state do not at present enjoy an effective opportunity to participate in the establishment of the terms and conditions of their employment through the collective bargaining process. As sec. 1 of the bill provides, the policy embodied in this bill is to extend to noncertificated educational employees the fundamental privileges of the collective bargaining process, an essential process now available to certificated employees and most other public employees.

The bill amends AS 14 to establish a comprehensive collective bargaining process to be implemented under the auspices of a newly-established educational employees labor relations agency. In large part, the proposed procedures are identical to procedures established under the Public Employment Relations Act (PERA), AS 23.40.070 -- 23.40.260. To assure continuity and consistency in public employment matters, the membership of the educational employees labor relations agency includes the three current members of the state personnel board, who will serve in their new capacity along with two additional gubernatorial appointees.

Once employees exercise their privilege to form employee organizations, sec. 2 of the bill would require school boards to engage in collective bargaining with respect to the terms of employment. If the parties are not able to reach agreement, sec. 6 requires the parties to use the services of a mediator in an attempt to informally resolve the bargaining impasse. If mediation is unsuccessful, the

parties must observe a 10-day cooling-off period (sec. 7).

In the typical instance where the collective bargaining process reaches an impasse, employees are authorized to engage in a strike. Where educational employees are involved, however, the consequences of a strike pose unique and, in my view, unacceptable burdens to local communities. For that reason, the bill proposes that in the event of an impasse, the parties must resolve the impasse through binding arbitration. Under arbitration, each party must submit its last best offer to the arbitrator, and the arbitrator must decide which offer, in its entirety, is preferable. The "last best offer" form of arbitration is essential to the balance struck by this bill, because it provides a practical assurance that the parties will state realistic positions and, as importantly, that all parties will have an incentive to resolve their differences through bargaining, not arbitration.

I add that the purposes of this legislation could, in the alternative, be obtained through amendment of the Public Employment Relations Act (PERA; AS 23.40). While there are benefits to each of the possible legislative alternatives, I concluded that the policy consideration raised in defining the collective bargaining prerogatives of educational employees are sufficiently unique to merit a separate statutory scheme. Of course, I would be pleased to consider a bill that includes educational employees under PERA if that is the legislature's preference.

This bill provides a workable procedure which enables educational employees to enjoy the privileges of the collective bargaining process in a fashion which does not intrude upon the autonomy of local school boards.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

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(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

April 18, 1985

Chairman Al Adams
House Finance Committee
Pouch V
Room C-505
Juneau, AK 99811

RE: HB 130, letter of Superintendent Fred Pomeroy

Dear Chairman Adams:

Unfortunately, I did not review the enclosed letter from Superintendent Pomeroy until after the HESS Committee had considered HB 130. Thus, I was unable to distribute the letter to the members of the committee when we deliberated on the bill.

I am therefore requesting that your staff distribute the letter to your committee members, so that they may consider Mr. Pomeroy's suggestions.

Thank you for your courtesy in this matter.

Cordially,

Max F. Gruenberg, Jr.

MFG/ke
Encls.

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669 • Phone 907/262-5846

April 3, 1985

Representative Max Gruenberg
Pouch V
Juneau, Ak. 99811

Dear Representative Gruenberg:

I am corresponding with you in regard to Committee Substitute for HB 130(L and C).

The Kenai Peninsula Borough School District Board of Education is unequivocably opposed to any form of binding arbitration. The reason is quite simple. The Board of Education believes that it is the duly elected representative of the public, charged with the responsibility to deal with its employees in a fair and equitable manner.

The record in Alaska will show that there is only one instance where a strike has resulted involving school employees. Therefore, it would appear that the current provision of advisory arbitration, as set forth in statute, has served the school employees in Alaska quite well. The Board of Education does not believe it is necessary to involve a third party in the process to make binding decisions when the current procedure has been quite effective.

I would like to make the following observations regarding the proposed legislation as contained in the committee substitute:

Section 2 would mandate collective bargaining between Boards of Education and all groups of employees. Once again, it appears that the (meet and confer) arrangement which has existed between Classified Employees and Boards of Education has functioned quite well. To mandate collective bargaining where such an arrangement may not be desired by either party, employer or employee, seems an unnecessary effort on the part of the State of Alaska.

Section 8, sub-section C of the bill draft indicates that "When making the decision, the arbitrator shall consider" a number of stipulations. I would suggest that "shall consider" be replaced "shall rule based upon". It seems that if an arbitrator is going to be dealing in these areas he should not only consider but rule based upon the identified stipulations.

Section 8, sub-section F relates to provisions whereby an arbitrators ruling may be challenged in Superior Court. It appears that the statements contained in this sub-section are extremely vague. I would suggest in Item 7 which would indicate that the Superior Court "may vacate the arbitrators rulings if the rulings violate the stipulations set forth in sub-section C of Section 8."

Section 9 relates to grievance procedures. It appears to me that it must be made clear, in this section, that the grievance

procedure only applies to alleged violations of the negotiated agreement between the employer and the employee. The grievance procedure cannot relate to alleged violations of Board of Education policy.

Section 12 deals with the creation of an "Educational Employees Labor Relations Agency." I find it difficult to see the wisdom in creating another State Agency when the legislature is struggling with reductions in the budgets of existing agencies.

In conclusion, we would encourage your opposition to passage of this legislation. If it appears that this bill must move out of the HESS committee, I would appreciate your consideration to the comments in this correspondence.

Sincerely,

Fred Pomeroy

Fred Pomeroy
Superintendent

FP/dmr

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS

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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

April 18, 1985

Fred Pomeroy, Superintendent
Kenai Penninsula Borough School District
148 North Binkley Street
Soldotna, AK 99669

Dear Mr. Pomeroy:

Thank you very much for your letter of April 3 regarding House Bill 130. This legislation was taken up by the House HESS Committee and passed out on Thursday, April 11, 1985. I am enclosing a copy of the HESS Committee substitute. The bill will next go to the House Finance Committee.

My position has consistently been to support binding arbitration. I therefore voted for the HESS Committee substitute. I believe it is important to finalize the collective bargaining process. I must apologize to you because, although I received your letter approximately Monday, April 8 after I returned from Anchorage, due to the press of other business (evening committee meetings, etc.), I did not get a chance to review the letter until the evening of April 11, after the HESS Committee had passed the bill out.

Because you suggested specific amendments, I would have taken specific steps to distribute your letter to all members of the HESS Committee when we considered the bill. Thus they, too, would have had the benefit of your suggestions. I would have done this, although I do not agree with many of your suggestions. I want to be completely fair to you, however.

For this reason, I am forwarding your letter, with the enclosed letter, to Chairman Al Adams of the House Finance Committee, so that he may distribute it to the members of his committee for their consideration. I trust this will be satisfactory.

Once again, thank you very much for writing.

Cordially,

Max F. Gruenberg, Jr.

MFG/ke
cc: Rep. Al Adams

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P.O. BOX 179 SITKA, ALASKA 99835

February 14, 1985

The Honorable Bill Sheffield
Governor of Alaska, Juneau
Pouch "A" (MS0101)
Juneau, Alaska 99811

Dear Governor Sheffield:

I have enclosed a copy of a speech that the Honorable Coleman Young gave to the Michigan legislature.

Coleman Young was a former Senator in the Michigan legislature before he ~~was elected~~ Mayor of Detroit. I think the speech is very apropo in light of HB130 that ~~you have had~~ introduced into the Alaska house regarding binding arbitration.

Coleman Young ~~was always strongly backed~~ by labor as a Senator. He pushed hard and succeeded in getting mandatory binding arbitration (Act312) into Michigan law. Now, as you read his speech, remember that he is black, a Democrat, labor backed and a long-time Mayor of Det.oit.

I hear him saying over and over that we must preserve collective bargaining and I agree with that premise. He also repeatedly warns that binding arbitration is destroying collective bargaining and I have had enough background in Michigan to agree with that point as well.

SITKA SCHOOL DISTRICT

I hope you will consider calling him after you have digested his comments, because I am sure he can draw you a better picture of the impact that HB130 will have on the Alaskan economy than anything I can tell you as Superintendent of the Sitka School District.

I hope you will take the time to read over his remarks. Thank you.

Respectfully,

Art Woodhouse

Art Woodhouse
Superintendent

AW/sh

encs.

cc: √Legislators
State Board of Education

Address of Mayor Coleman A. Young to Legislative Forum on New Directions for Public Employee Labor Relations - LANSING, MICHIGAN - Dec 4, 1979

MAYOR yielded the title of prime sponsor of Act 312 when he was in the Legislature.

"What's Wrong with Public Employee Labor Relations in Michigan?"

I have been asked to come before you today and tell you what I think is wrong with public employee labor relations in Michigan. Most of you are experts on public employee labor relations and so you already know what's wrong. There are some greater problems and there are some lesser problems. I'm going to discuss the problems that have had the most serious affect on the City of Detroit.

The number one problem is, of course, compulsory arbitration. When Act 312 was first passed, most of us sincerely hoped it would be a success. It was a new idea and we felt it was certainly worth a try. After all, no one wants police or fire strikes or strikes by any other employees for that matter. The Romney Committee recommended trying it, several noted arbitration experts recommended trying it -- and so we voted to try it. I say "we" because I was a member of the State Senate at the time, and I voted for it too. We now know that compulsory arbitration has been a failure. Slowly, inexorably, compulsory interest

arbitration destroys collective bargaining and collective bargaining relationships and, even more disastrous for Detroit, compulsory arbitration destroys sensible fiscal management. The costs of paying the awards are too high. They come after a budget is planned, or, in our case, after two or even three, annual budgets are planned. The process is so slow that we not only don't know what our next budget should look like, we can't even close our books on old budgets long since passed.

The costs of the Act 312 awards have been astronomical in Detroit. We have calculated that these costs since the enactment of Act 312 are now $50 million dollars or more per year for the City of Detroit. The arbitrators seem to believe that there is no limit to how much of our money they should spend.

There are many procedural problems with Act 312, but I want to focus your attention on two fundamental problems: (1) Act 312 destroys collective bargaining, and (2) the awards we have had under Act 312 are

intolerable - and have caused more damage to the public service in Detroit than the strikes the law was designed to prevent.

Our claim that Act 312 destroys collective bargaining, as most of us understand that term, is not made lightly. We are convinced that compulsory arbitration, by its very nature, simply cannot resolve differences in the same way voluntary agreements resolve differences. Compulsory arbitrations differs sharply from voluntary binding arbitration in this respect also. If a party to a dispute does not voluntarily agree to its solution, either by direct agreement or agreeing to be bound by a third party's decision, then that party can, and probably will, repudiate that solution if he disagrees with it in any way. The non-voluntary "solution", then, really is no solution at all. The issue lives and will be raised again at the next opportunity.

At the bargaining table, Act 312 unions find it difficult, if not impossible, to bargain in good faith. How can they agree to drop, or

compromise on, any issue? Each issue is the favorite demand of some member or group of members. How can responsible union leadership, which must stand for election to keep their jobs, tell any part of the membership that their pet demand will not be pursued when Act 312 is readily available? The answer is: they usually can't; and they wind up going to arbitration with dozens of issues. The only way a union can avoid arbitration is to get the employer to grant its demands. As each issue is discussed at the bargaining table, the underlying position of the union is: "either give in or we'll arbitrate."

There is very little good faith bargaining. There is very little mutual understanding and mutual problem solving. Compromises are not made. Either we give in to the union or they arbitrate. The Act 312 unions in Detroit have proven they have no reluctance to go to arbitration. They are not deterred by the costs of the procedure as some smaller units in other parts of the state might be. Today, the City of Detroit deals with eight separate bargaining units that are entitled to

Act 312. Some of these have only recently been included in Act 312 coverage. So far there have been seventeen possible opportunities for Detroit unions to utilize Act 312. There have been eleven cases. In the other six situations, the City avoided arbitration only by promising to pass on to the union involved, the terms of the Act 312 award being determined in another case.

The destruction of the bargaining process caused by Act 312 is not solely a matter of opinion. There is evidence available to support this conclusion. Because Act 312 puts the parties in antagonistic positions - forces them to fight over virtually every issue - they tend to fight rather than try to agree on disputed questions.

In the last three years the City of Detroit has been involved in approximately 76 court actions involving city employee unions. Although the City deals with 57 unions, four of these unions, all Act 312 unions, have accounted for over 75% of the litigation. The other unions, the

non-Act 312 unions that are used to collective bargaining, tend to bring their problems to us so they can be solved through negotiation. The Act 312 unions tend to run to court. And they scream bloody murder if we exercise our right to go to court! I could talk all day about how Act 312 prevents collective bargaining, but I'll move on now to the other fundamental weakness of this Act.

Act 312 gives to an arbitrator broad powers - powers so broad that they undermine the democratic process and strip from the people of a community their ability to control their own affairs. This broad power makes it possible for an arbitrator to do almost any damn thing he, or she, wants. It is possible for good awards to issue, and there have been some. The problem is: there is no way to stop arbitrators from issuing bad awards. There are insufficient controls, no checks and balances, and no truly meaningful appeal mechanisms. Thus, if an arbitrator is biased in some way going into a case, or doesn't understand the issues, or just

has a bad day when he decides the case, there is very little anyone can do about it. We are hoping the courts of this state will see the very real need to provide a meaningful appeal process. There is so much at stake that we are confident the courts will deal directly with this problem. We have recently experienced some very bad awards, about which there has been much publicity, and we are hopeful the courts will see the very real need for them to act.

We were shocked by the recent police and fire arbitration awards we received. We have about as much experience as anyone with Act 312 and we are not naive. But we were shocked. The awards make no sense. There is no logic in their reasoning. They ignored obvious facts and ignored the factors that Act 312 requires them to follow. We put those factors in the law in the first place for a reason. We expected that arbitrators would adhere to them. But they chose to ignore the most important ones there.

Before I go on about the misplaced reasoning of arbitrators, I have to tell you a few things about the policies and attitudes of the City of Detroit.

First, and foremost in our labor relations policies, is our committment to the proposition that our employees should be paid fairly and equitably. Detroit is a town of working men and women. It is a union town. It is unthinkable that the City of Detroit would have any other policy. Furthermore, I have a deep personal life-long comittment to the concept of a fair day's pay for a fair day's work. It is sometimes true, as all of you know, when there is a financial situation facing an employer, either private or public, that makes it impossible to pay the going rate. I think the recent Chrysler-UAW agreement illustrates how that sort of problem might be handled. But that was <u>not</u> quite the situation with our police and fire employees. We were prepared to tighten our belts and pay fair wages. Our offers to our police and fire employees were more than fair. If they had been adopted by the arbitrators our

police and fire employees would have been the highest-paid in the nation. Both the salaries and the fringes would have been number one. Detroit has not been the traditional wage leader among the large cities, but the financial troubles of New York City and the effects on Los Angeles and San Francisco of Proposition 13 had slowed down wage increases in those cities. So it happened, that even though we were not the traditional leader, our offers to our police and fire employees would have made them the highest paid in the country. Our offers were also equal to our settlements with our other unions - and the strongest among them engaged in strikes to get those settlements. We were not ashamed of our offers. We were not hiding behind an inability to pay argument.

Despite some gossip to the contrary, we did present a great deal of evidence about our fiscal condition. I testified personally at length on that subject. I was there. The arbitrators could have asked me anything they felt they needed to know about our finances. We told those arbitrators that it would not be easy, but we could afford to pay fair wages.

we also told them we could not afford to pay excessive wages - that there were too many other essential programs for us to finance.

Despite all this, the Act 312 arbitrators chose to ignore the evidence and ignore the factors that Act 312 requires them to use. They ignored the factor of comparibility even though this is the one that arbitrators generally proclaim to be the most important; they ignored the factor that says "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

One of the arbitrators as much as admitted that he ignored all but one of the factors. He claimed he was moved by the cost of living factor, but when you read his award you can't find where he even used that. His award was to grant the same percentage increases that had been granted in the previous contract, apparently believing that to be self-justifying. Now think about that for a minute. What he was saying was that, if, for example, General Motors and the UAW agree to a .75¢ per

hour raise in 1974, then .75¢ per hour is the appropriate settlement in 1977 - no matter how different all the circumstances may be. If you followed this kind of logic, you'd have to say that no further bargaining would ever be required. The previous settlement will become the next one and so on.

The other arbitrator, whose award came out a little later, said he was compelled to follow the first guy. The first arbitrator's union has traditionally followed the second but this time the second felt he must follow the first. It was the classic case of the tail wagging the dog - as the second arbitrator later admitted. The problem is, these awards will cost the City $50 million dollars more than our offers would have cost. This is why we are appealing these awards and asking the courts to save us from these maniacs. And this is why we believe the time has come for the legislature to get rid of Act 312 and go back to the drawing boards.

Now this $50 million dollars is not the same $50 million I mentioned earlier. The non-police and fire employees of the City of Detroit are also very well paid. In fact, they too are among the best-paid in the country. However, since Act 312 was passed some 10 years ago, if police and fire employees had received wage increases similar to those increases negotiated with the City's other employees, the City's costs would be $50 million per year less than they are now.

These costs are tremendous! They exceed the total revenues from our unpopular, regressive utility excise tax. I could go on and on about how much $50 million a year could mean to us - suffice it to say that we believe damage done through Act 312 has exceeded the potential damage of any strikes Act 312 was designed to prevent. The costs in one budget of wages and fringes for just police and fire employees now exceeds the total revenues from both our local property taxes and our local income taxes.

The City of Detroit is not the only victim of Act 312. In our part of the state, we are now painfully aware of the crushing affect Act 312 has had on Wayne County. Arbitrators have not only imposed unreasonable financial costs on Wayne County, they have also hamstrung the County's efforts to control their costs with improved efficiency.

Although only a relatively small proportion of Wayne County's employees are covered by Act 312, the County has found it nearly impossible to keep the wage pattern established through Act 312 from spreading to its other Unions.

I think it can be safely said that most, of the County's current fiscal difficulties can be traced back to excessive Act 312 awards. The County's new budget, announced this past week, calls for approximately a 10% reduction in County employment and, therefore, in the levels of services the County will be able to provide it citizens.

It is time for a change in our labor laws. It is time for the repeal of Act 312. It doesn't work. It was a noble experiment but we now know it is a disaster.

In his state of the State address, the Governor announced he was going to have the Department of Labor review the state's labor laws and recommend any necessary changes. He told them he was specifically concerned about the impact of Act 312 on the fiscal solvency of the State's local units of government. Those dpartments did conduct a study and on May 21 of this year they issued their report. We were so disappointed in that Report that we felt compelled to write a criticism of it which we sent to the Director of the Department of Labor. Copies of our critique are available here today.

The Report to the Governor contained quite a few suggested modifications of Act 312, some of which are very good, but the Report did not deal with the basic problems.

First, the Report specifically rests upon the premise that a strike of public safety employees is always more costly to society when compared with the costs of an arbitration award. In other words, it is not possible for an award to hurt society more than a strike. We say no! It is possible. We have had such awards. The premise is false.

Our other quarrel with that report is that it fails to examine carefully the problem I discussed earlier: that Act 312, especially in the larger cities, has become, instead of a "strike substitute", a substitute for the collective bargaining process.

We believe those State departments should reexamine Act 312. We believe that a thorough, objective study will reveal that it is time to repeal Act 312.

There are many people who claim that if we are going to prohibit strikes then we must provice compulsory, binding interest arbitration.

They say we must have one or the other. Police and fire unions and arbitrators say we must have arbitration. They know a golden goose when they see it! I say, if that is the choice, one or the other, let it be the right to strike - exactly in the format used in the private sector.

But I hasten to add that I'm not convinced we have to be on the horns of that dilemma. There are some other things we haven't thoroughly tried yet. All of them designed to improve the climate for collective bargaining.

We should consider a closely limited, carefully regulated right to strike. If we do that, of course, we should learn a lesson from the private sector and exclude supervisors from collective bargaining. There should be a reasonable attempt to balance bargaining power as is done in the private sector under the National Labor Relations Act. There should be a far greater effort made by the State government in providing mediation services. Because in the public service we have a greater desire to

avoid strikes, the mediation effort should be greater than that provided to the private sector by the federal and state governments. Most of all we should be encouraging the process of collective bargaining. Many people are afraid of it or don't understand it. It works, we know it works, we should do everything possible to make it work. And we should remove every impediment to collective bargaining that exists. Most particularly we should remove compulsory arbitration.

I would like to read to you the words of one of the prominent labor leaders of this century. This is from a paper he wrote entitled "Union Leaders and Public Sector Unions." Here are the words of the recently retired president of the AFL-CIO, George Meany:

> "The success of voluntary arbitration in settling disputes unresolved at the bargaining table is based on the fact that such arbitration is itself a product of the collective bargaining process. It is not imposed by some outside authority against the will of either party.

And this is the rock against which the notion of compulsory arbitration has been shipwrecked every time it has been tried. The hasty, ill-conceived legislation with which Congress tried to break strikes in the airline and railroad industries only succeeded in making matters worse. In any guise, under any name - "mediation to finality," "final-offer" arbitration, or what have you - compulsory arbitration has been perceived by employers as an out that makes real bargaining unnecessary and by employees as a tool of tyranny that makes bargaining meaningless.

Collective bargaining is a two-handed tool that won't work unless both parties want it to work, and that goes for arbitration as well.

There are those who argue that collective bargaining is all very well in "non-critical" public services such as schools and sanitation departments, but that some substitute for the strike must be found in the areas of law enforcement, fire protection, and hospital services.

That would be fine if such a substitute could be found, but so far none has been found. There are no shortcuts and no substitutes for the bargaining table and mutual freedom of contract.

The proponents of this bill argue that public employees should have a legal right to strike, that public employees should not be deprived of a basic right enjoyed by their union brothers and sisters in the private sector. Don't be fooled by their sophistry! They no more want to be treated like their so-called brothers and sisters than you want to go live at the North Pole. They do not want to give up the protections they enjoy under the Civil Service rules or the Teacher Tenure Act. They do not want to exclude supervisors from unions, they do not want to give up the golden goose we call Act 312, and they do not want to limit collective bargaining to the subject matters traditional in the private sector. Public employees in Michigan now have many advantages under the State's labor laws that their private sector brothers and sisters do not have. Many of these were given them because there was no legal right to strike. Now they want to have their cake and eat it too! And they're quite willing to allow their brothers and sisters to continue to pay for the advantages they enjoy.

And compulsory arbitration - the favorite proposal of certain editorialists - just will not work because it is an abrogation of freedom. The crucial difference between voluntary and compulsory arbitration is the difference between freedom and its denial.

Fairly long experience convinces me that the best, surest and, indeed, only way to secure stability in labor-management relations in any area, including government service, is through the normal pattern of free negotiations on every aspect of wages and working conditions."

- End of Quote -

George is right. There is no substitute for collective bargaining. Act 312 destroys collective bargaining. Act 312 must be repealed. It's time to fold that hand and ask for a new deal.

However, Act 312 is not the only concern we have with the State's labor laws. As I'm sure you all know, there is currently pending in the House of Representatives a bill that is being called the "Right to Strike" bill. This is HB 4645.

In connection with HB 4645, the City of Detroit and other public employers have argued strenuously that the State's labor laws must provide a balance of power at the bargaining table, that, if the legislature feels we should pattern ourselves after the private sector, then we must go all the way, and adopt that kind of balance. There must be no collective bargaining for supervisory employees and the kinds of things that must be negotiated must be limited to the kinds of things that must be negotiated in the private sector. The public employee unions that endorse HB 4645 don't merely want the right to strike - they want a law that will virtually guarantee they'll win every strike. And there's an amendment to the bill before the House that would open up access to Act 312 to all public employee unions under certain circumstances.

Today the House may be voting on the Right to Strike Bill and several important amendments to it. I for one hope, and I am very confident, that the House of Representatives will act responsibly to assure that collective bargaining in this state will be given every chance to operate

in a balanced, fair, and reasonable manner.

I say to you today that the central theme of the State's Labor laws must be collective bargaining. This is the key to reasonable employee relations in the public sector in this state. We must not destroy collective bargaining with compulsory arbitration and we must not destroy it with lopsided changes in the labor laws.

Our Opinions

Suspend Arbitration

The case against Michigan's arbitration law for police and fire unions is now more convincing than ever.

Act 312, requiring compulsory arbitration of pay disputes between cities and their police and fire unions, has been often criticized. But, in light of Detroit's desperate financial plight, the case takes on a new urgency.

Not only must the city trim its payroll, swollen by arbitration, it must also finance a $119 million deficit with bonds. Rodkey Craighead, chairman of Detroit Bank & Trust Co., recently noted that his firm would find it very difficult to buy the city's deficit bonds without some changes to narrow the gap between Detroit's costs and revenues. Not least among the changes Mr. Craighead mentioned was relief from the effects of Act 312.

The concern of Mr. Craighead, and of other Detroit bankers, is understandable. As bankers are fond of saying when they are asked to make risky investments, it's not their money. They have obligations to their depositors.

Too, Mayor Young's blue-ribbon fiscal crisis committee has noted that Act 312 contains provisions that "have had the effect of compounding Detroit's employe-compensation cost problems and *have in fact directly accounted for more than half of the present deficit.*"

The arbitration award for the police-fire contract beginning in 1977 cost the city $79 million more than raises for all of the city's.

Arbitration is probably the soundest way to avoid dangerous police and fire strikes. But, as we've noted many times before, Michigan's law is seriously flawed — particularly with reference to a city's ability to pay.

The distortions created in Detroit's ledgers by the failure of arbitration panels to give attention to the city's fiscal position is all too apparent. Ability to pay needs much narrower definition. The law's current last-best-offer provision, which forces a panel to choose between two positions, with no room for compromise, also needs adjustment. Arbitration laws appear to be working in other states. With some amendments, Michigan's might also work.

But this is not the time for Lansing to fine tune a complicated statute. The city is asking the Legislature, as part of a package of bills enabling Detroit to issue the bonds, to suspend Act 312 for three years. This would have the effect of forcing the police and fire unions to the bargaining table, where agreements with the city's other unions have been held to reasonable levels in recent years.

If the police and fire unions won't agree to a voluntary waiver of Act 312 for this round of wage negotiations, the Legislature should act to suspend the law as an absolutely necessary part of the city's survival plan. The marketability of the bonds depends on it.

What lender or investor, surveying the damage already inflicted by Act 312 would

POSITION PAPER ON PUBLIC EMPLOYMENT LABOR RELATIONS POLICY FOR MICHIGAN

By Louis D. Beer
Kemp, Kline, Endelman and Beer

A Prescriptive Analysis Prepared On
Behalf of the Michigan Municipal League

December 4, 1979

THE LAW OF PUBLIC EMPLOYMENT LABOR RELATIONS IN MICHIGAN

Louis D. Beer

Synopsis

The major problem, stated concisely, is that Michigan public employee unions have rather artfully structured themselves to get the best of both worlds: they strike and demand all of the rights of private employee unions, yet they seek the job protection of civil service, and systems like civil service, the availability of binding arbitration, and the right to organize employees and bargain about issues that were granted only on the asumption they would not strike. All of this is done under the regulation of an agency which for a variety of reasons has found it necessary to beat several substantial retreats from the field. The problems are many, the issues sharply divide managers and unions, and the solutions in many cases are imperfect, at best. However, it is clear there is room for improvement.

This paper provides the reader with a frame of reference in considering a number of serious difficulties involving public employee labor relations. Part I is a background statement. Part II deals with the issue of strikes by public employees. Part III concerns the collective bargaining process. Part IV covers labor dispute resolution in the absence of agreement.

I BACKGROUND:

Until 1965, Michigan operated under a statute commonly known as the "Hutchinson Act" which effectively reduced public employment labor relations to what union adherents contemptuously referred to as "collective begging". While public employee unions did exist they were not widespread, and relied for what little support they had on their powerful private sector brethren who were able to wield political influence with the public employer. Public Act 379 of that year, known as the Public Employment Relations Act, changed all of that. It provided for a system of regulation of public employee unions roughly parelleling that of the National Labor Relations Board in the Private Sector, with the pivotal exception that all Unions in the public sector were absolutely forbidden to strike. However, unlike the Hutchinson act, "PERA", as it is commonly known, provided no mandatory discharge for strikers. Instead, it set up what proved to be a rather elaborate hearing process in the case of any discipline of a striker. With what appears to be amazing naivete with the benefit of fifteen years hindsight, the legislators chose to rely on fact finding. They believed, apparently, that "the shining of the light of public opinion" on the issues in dispute would resolve disputes, making strikes unnecessary. If it worked, it was only bri ly, and in only some communities, and public employee strikes, although illegal, proliferated.

In 1968 the Supreme Court of Michigan, in Holland v. Holland Education Association held that strikes by public employees were not automatically enjoinable, but rather required a full "due process" hearing

before an injunction could issue. The effect of this was to make it impossible for any public employer to prevent by court action a strike of at least limited duration, as long, at the least, as it took the employer to find a lawyer, write a complaint, file it, serve it, and hold a hearing, a course of events which often turned out to be time consuming indeed.

In 1969 police and firefighters, seeing little opportunity in the climate of those times for successful strike action, supported and obtained the passage of Public Act 312, which provides for arbitration of economic disputes between police and fire unions and public employers. Since that time, most public employers contend that the overwhelming number of arbitration settlements have favored the employees, resulting in serious economic consequences for the employer, and serious difficulties in settling labor disputes with other employees not covered by 312, but who believe their wages and benefits should follow the pattern assigned by their fellow employees under 312.

Through the first five (5) years of PERA settlements tended to favor the unions who often overwhelmed public managers with expertise and experience in the collective bargaining process which simply was not present in most governments. However, in the early seventies the tide of events began to turn. The generally high salaries and wages won by Michigan public employees, the entrance into the job market of the post war "baby boom" and the rising level of employer expertise in the collective bargaining process led to a much higher level of confrontation, to a general slowing down of the trend in the level of salary settlements and to many more public employee strikes.

The most significant such confrontation occurred in the Crestwood school district. In Rockwell v Crestwood the Supreme Court of Michigan affirmed the discharge of vitually the entire teaching staff of almost

three hundred (300) teachers and their replacement by new teachers. Although the Court empowered the Michigan Employment Relations Commission, or "MERC" (the agency that administers the Public Employment Relations Act) to intervene and prevent the dismissals, the Commission did not do so. Thus for the first time, a significant number of public employees permanently lost their employment for striking. Equally significant is that the strike in Crestwood had been ordered halted by court order, and the teachers had continued to strike in defiance of the order.

Since 1975, when a bill legalizing strikes for school teachers was passed by the legislature, but vetoed by the governor, there have been calls from many sources for legislative reform of the existing situation, but none have to date succeeded. Public employers of police and firefighters complain bitterly of the unfairness of Act 312. School boards complain bitterly of the fact that school teachers can "make up" salaries lost during a strike due to the mandate that school be kept 180 days per year. Unions complain bitterly that the illegality of strikes and the lackadaisical administration of the unfair labor practice provisions of the Act have led to an absence of meaningful collective bargaining in any unit not so large that sheer numbers would prevent its members from being discharged and replaced. None of these complaints, however, has of yet stimulated successful legislative action.

Overlaying the present legislative ferment is the incipient emergence of collective bargaining at the state level. State police officers have won the right to bargain collectively by electoral referendum, and the Governor's Commission on Civil Service Reform has recommended collective bargaining for state civil service employees.

This is then the present situation, with virtually no interested party satisfied with the status quo, but with no agreement between the major interest groups as to what should be done. To make the situation

even more complex, certain aspects of the situation bother certain unions, and certain types of public employers, much more than others. As a result, any type of consensus is extremely difficult to obtain. What follows is an attempt to cover the major points in dispute from a point of view which reasonably reflects the concerns of municipal officers and managers, but which has a reasonable chance of being supported by other elected officials and the public, and can at least be appreciated, if not agreed to, by the unions.

II DETERMINING WHAT IS, AND WHAT IS NOT, A STRIKE

Problem: Providing merely "the right to strike" gives the employee the right to engage in almost any kind of conduct, without fear of any adverse consequence other than the withholding of pay, plus generating as much conflict over who can get away with what as is generated over the issues of the strike.

Prescription: Any bill regulating the "right" to strike should as clearly as is possible define what a legal strike is, as well as clearly provide the right of the public employer to carry on service in the face of the strike, including the employment of permanent replacements, if necessary. PERA should provide for the right to replace strikers, without hearing, and for the waiver of job protections other than PERA in strike related situations.

PERA presently, in outlawing a strike, uses language which includes every conceivable kind of behavior in which an employer would not want his employees to engage. The result is that every kind of action against the employer is equally illegal, from the flat out refusal to come to work, to slowdowns, vandalism, threatening other employees and the like. As a result, all behavior gets punished, as in Crestwood, or even the most flagrant violations of the rights of fellow employees,

or the public, is condoned. Since in the vast majority of cases the employer's goal is to get the employees back to work, "no reprisal" agreements after illegal strikes are an almost universal rule, and so in most public employee strikes it is "anything goes". The bizarre result therefore in declaring all activity illegal is that there is often no conduct at all which is punished. Furthermore, PERA contemplates that the only response to the unlawful conduct of a striking public employee is to fire him. In the private sector, the NLRB has worked out a system which distinguishes "unlawful" or "unprotected" activity for which a striker may be fired, and "protected" activity during a legal economic strike for which a striker may be "replaced" by a permanent employee who is willing to work during the strike. (The status of the strking employee who is replaced is roughly equivalent to that of an employee on layoff). Given the complexity and the difficulty of discharge procedures under PERA, and the conflicting application of tenure acts, local civil service acts, veterans preference, and the like, it is ironically easier to "replace" a striker in the private sector where striking is legal, than it is in the public sector under PERA, where the strike is illegal!

Another problem in the PERA covered strike situation is that public employers and unions have spent large amounts of time, money and energy unproductively trying to determine who has the right to do what. When the ground rules are not clear, the parties will tend to fight over the ground rules, rather than over the issues at hand. Enraged public employers, responding often to an enraged public, have often focused more energy on suppressing certain forms of unlawful activity than they have on resolving the underlying disputes that caused it. By the same token, enraged public unionists, usually responding

Similarly, it is unlikely that a major employer would, for example, replace several hundred sanitationmen. It is not unlikely, however, that a smaller unit of government would not at least consider replacing a unit of four or five.

However, the result of collective bargaining negotiations is seldom influenced only by actual pressures used in the particular situation. The possibility that certain actions might be taken often greatly influences the negotiators and their constituents. Thus, the thought that the employer might if put in a desparate enough position, replace strikers, will be sufficient in many cases to modify union demands. By the same token, a union leader anxious to shore up a failing strike by sending some of his workers back to work and suddenly pulling a few of them out again, thereby disrupting the employer's operation but still providing paychecks to his members, might well be deterred if he knew that this could result in the discharge of some of his members.

III BARGAINING PROCESS

Problem: The "ground rules" for negotiations in the public sector in Michigan are in a shambles. Who is included in bargaining, and what they should bargain about are badly defined in ways that make effective bargaining more difficult, and which disadvantage public employers. Furthermore, the agency which is charged with enforcing the ground rules, in large measure is incapable of doing so in a fashion timely enough to have any real influence on the negotiation process.

Prescription: There should be a statutory definition of "supervisor" in the Public Employment Relations Act which should follow the federal model, excluding supervisors from the bargaining process. The scope of bargaining should be limited to wages, hours and term and conditions of employment fairly defined, with no deference given to the fact that public employees cannot strike, since in fact they do. And most critically, the funding structure and operations of the Employment

to enraged union members, have continuously attempted to test PERA's vague and unsatisfactory restrictions on strikes in order to find new leverage to move what they regard as implacable managements.

Debate in the legislature, and in public, over legalizing strikes is dominated by two misconceptions. The first is that all private employee strikes are legal. This is not so. Strikes in the private sector must be the subject, in most cases, of notice to the employer, and must be limited to a complete cessation of work and the peaceful picketing of the employers work place. "Sick outs", "blue flue", "hit and run" or "rolling" strikes (strikes of first one and then another of the employers jobs while work resumes at the first job) slowdowns, and other like activity are all classified as "unprotected", which means the employees can be fired for engaging in them.

The second misconception is that all strikes succeed in halting work. This is clearly untrue. While the most heavily publicized strikes, such as those in major industries usually result in shutdowns, strikes in smaller manufacturing concerns, or in service industries, frequently do not. Such major newspapers as the Washington Post have operated during lengthy strikes, for example, because of the inability of the unions to convince sufficient employees to leave their jobs to successfully halt production.

Any legislated change that equates the "right to strike" with the guarantee that the strike will succeed in stopping the provision of services will deal a direct body blow to the fiscal well being of every community in the state. To be sure, major cities will not be able to continue bus service, for example, if the bus drivers strike, but it does not necessarily follow that a smaller community might not be able to do so, if say five or ten bus drivers struck, and there was a supervisor or two on the scene who could also drive a bus.

Relations Commission need to be critically examined, so that whatever legislation is in existence may be effectively enforced so as to limit and bring order to whatever minimum of conflict might occur. Some suggestions for doing so include:

1. Adopting a system for processing Unfair Labor Practice charges which provides for investigation of them and disposition rather than routine issuance of complaints.
2. Making the position of a member of the Employment Relations Commission a full time position, or at least that of the chairman.
3. Refraining from the present practice of operating by office policy rather than promulgated rule.
4. Setting of specific maximum time limits during which a party has a right to obtain the disposition of an unfair labor practice matter.
5. Assigning specific counsel directly to the Commission, rather than indirect reliance on the attorney general's office, so that injunctive relief could be obtained more readily in emergency situations, and including a broader definition of emergency.
6. Separating the function of providing arbitrators and factfinders from the personnel responsible for preliminary handling of unit determination and unfair labor practice charges.

Present bargaining practice under PERA (and under Act 312) varies from the National Labor Relations Act in three major ways. All of them have caused problems with the process, and all of them have led either directly or indirectly to the present clamor for change.

First of these is the question of what is the appropriate "scope" of bargaining. In other words, what issues must management discuss, thereby presumably sharing some control over their ultimate disposition, with the union. Unions, particularly in traditionally public

sector activities such as police protection, school teaching, and medical care service, have sought to obtain what appears to them as control over their destiny, but what appears to public employers as an attempt to gain an illegitimate voice in the determination of ultimate public policy. Unionized employees of all sorts have sought a role in determining who is to be advanced to higher paying, often supervisory, jobs which would typically not be the concern of the private sector unions. Often, to an extent far greater than in the private sector, negotiations have focused on what it is that will be discussed, rather than actually discussing it.

Michigan case law has on several occasions extended the "duty to bargain" to issues not covered in the private sector specifically because the employees covered by PERA do not have the right to strike. The argument is, of course, that if the right to bargain about an issue does not lead to a strike over it, there should not be any harm in discussing it. Of course, since strikes do occur in the public sector with alarming regularity, the argument has limited validity.

The second problem is the question of which employees are entitled to the right to bargain. In the private sector, "supervisors" are clearly excluded from bargaining, and defined not only in terms of a definition written into the law, but by many years of case law. Under PERA in Michigan, however, some supervisors, generally those not involved in the formation of policy, are allowed to bargain, and although Michigan decisions recite the federal definition, there are several cases in which apparently supervisory employees have been classified as general employees by MERC.

The tugging and hauling over supervisors creates several problems. The most significant relates more to operating the government than to labor relations law. If a supervisor and the employee are both

members of the same union, even if they are in different locals, is the supervisor going to be truly effective in representing management interests, or does he really have a greater community of interest with the individual he supervises? Is management going to get effective representation at lower level grievance hearings when both management and labor are members of the same union? The answers are fairly obvious. Furthermore, in the event of any strike situation, legal or illegal, it is very difficult to imagine a unionized supervisor coming to work and maintaining services.

Finally, there is the question of the level of enforcement of those ground rules which do exist. It is not uncommon for cases brought by unions complaining that a management has refused to bargain in good faith with them to take several years to reach even an initial decision as to whether their complaint is valid. In tense, volatile, confrontative situations, such as contract negotiations, the union which will wait that long is rare indeed. Similarly, a management which sincerely believes it is being forced "out of bounds" by union demands has no choice other than to simply say no. There does not exist a realistic method in Michigan of testing, short of strike activity, the willingness of a party to fairly enter into the collective bargaining process.

It bears remembering that strikes and other labor disputes are seldom simple demands for money on the part of employees, and equally simple attempts to protect a budget by employers. Almost every situation has in it a substantial element of emotion, political involvement and personality. Furthermore, it is more likely than not that when a union comes to the table and demands money it is not only seeking economic betterment, but it is translating the employees' frustrations with their job circumstances into the language of negotiation. Irritations

and even passions that may have nothing to do with the wage scale may end up on the bargaining table as economic demands. Noneconomic demands often are more a seeking of personal recognition than a demand for a real remedy.

When a management for whatever reason, good or bad, is viewed by the union as refusing to deal with these issues, unionized employees tend to view it as a denial of the legitimacy of their union, and an attempt to diminish them as human beings. Under the Michigan system when this occurs, as it inevitably does, the only practicable remedy for the employees feeling is for them to strike. It is not a totally unrespectable notion to suggest that the current drive by unions for the right to strike is fueled more by a feeling of frustration over the lack of an effective way to resolve these problems than it is over the general level of economic settlements which Michigan public employees have achieved.

The reasons for this unhappy situation are complex. First, MERC has, through a variety of policies, often announced more through decision than regulation, or simply adopted by administrative practice, attempted to avoid a number of issues which would perhaps best be confronted. For example, MERC routinely issues a complaint and schedules a hearing every time an unfair labor practice charge is filed, regardless of its merits. No investigation is made beforehand. This contrasts with the Federal system in which each charge is investigated on an administrative level, and reported to the regional director of the NLRB. He then determines whether it has sufficient merit to justify proceeding.

The result is that the MERC docket is continuously filled with a large number of frivolous charges, and also with charges which the parties have no incentive to settle, since nothing will happen for months, if not years. Furthermore, all parties are proceeding with a total lack

of knowledge as to the facts, since MERC conducts no investigation, and has uniformly for years refused to allow a party to subpoena evidence from the other party. This compares with a federal system in which the vast majority of charges never end up in hearings because either they have been dismissed by the agency, or the party complained of has settled the complaint in order to avoid needless hearings.

There are a variety of other more particular examples which need not be examined in detail. In essence, a combination of limited budget, limited staff, and a reluctance to take on the complexities of the rule making process, has resulted in a series of actions designed to keep the agency from overextending itself. The result has been that the agency has often, except for its mediation function, become irrelevant to the bargaining process, and thereby been unable to minimize the number of strikes which have occurred or limit their intensity.

The answer to all three of the problems just discussed is the same: a strong, vigorous effective regulatory body, which enforces clear rules which are carefully thought out to enhance the likelihood that the bargaining process will result in dispute resolution without outside intervention. Allowing supervisors to organize and classifying virtually every subject of bargaining as mandatory solves MERC's problem nicely. If all supervisors are employees, and all issues are bargainable then there are no decisions left to be made. However, removing a problem from MERC and dumping it back into the bargaining process simply defeats the purpose of the agency. Rather than provide a well defined arena in which conflict can be resolved, it leads to larger, more bitter confrontations, and is in large measure responsible for the present clamor to change the act.

IV DISPUTE RESOLUTION IN THE ABSENCE OF AGREEMENT.

Problem: The public and the legislature will simply not accept a system in which there is no guaranteed resolution of public employee strikes. However, guaranteeing third party arbitration inherently inflates the settlements, and tends to destroy bargaining, thereby greatly inflating the cost of government.

Prescription: Limit access to arbitration where it is not now provided at most to those situations in which the public employer requests and receives a court order terminating a strike. Where public Act 312 is in effect, provide a right for a municipality to "opt out" by vote of the people into PERA, provide for a fairer selection of arbitrators, and require that unions in fact engage in good faith bargaining prior to 312 arbitrations being convened.

It is now apparent to almost all experienced observers that public employee bargaining inevitably will breed public employee strikes. This fact leads some to the simplistic conclusion that by merely legalizing such strikes they can be easily controlled, and therefore minimized. However, the better view holds that it is not quite that easy:

In the public sector, as well as in the private, it is possible that legitimate differences exist as to what is an affordable and acceptable rate of pay. What the market should require is not always crystal clear. Furthermore, as mentioned above, collective bargaining does not occur in an emotion free laboratory atmosphere, but more often amidst the swirling winds of passion and anger. Collective bargaining is often the outlet for job related tensions and anger that have little or nothing to do with the specific issues before the parties. It is well recognized in the private sector that sometimes strikes serve a necessary air-clearing function, and it is not unrealistic to presume that this sometimes happens in the public sector as well.

However, there are significant differences. In the private sector the application of the law of supply and demand is more obvious; there are plenty of examples of companies who have gone out of business because they entered into labor agreements they could not afford. Public employers do not have that option as a weapon at the bargaining table. Also, they face the fact that bargaining in the public sector is to some extent always public, influenced by the politics of the community and the legitimate self-expressions of the interest of the citizens and taxpayers.

Finally, it should recognize that, at least as a practical matter, public employee strikes of unlimited duration are politically intolerable. The legislature simply is not going to support legislation that allows all public employees to strike indefinitely.

There exists a widespread belief that somehow the problem can be wished away through the waving of a magic wand called "arbitration". Many people seem to feel that if a public employee negotiation becomes troublesome, with emotions running high and tempers flaring, the automatic availability of arbitration will resolve the problem. Of course, in police and fire situations, arbitration now exists at the request of either party, and to date resort to formalized strike activity has been rare among these employees. Experience has proven, however, that arbitration and collective bargaining as they are practiced in the United States, do not easily mix.

In a negotiation in which the availability of arbitration is a previously known quantity, one side or the other will tend to view it as to its advantage to arbitrate, believing that its ability to persuade a third party is greater than its power, persuasive or otherwise, at the

bargaining table. The result is to either make arbitration an issue in the negotiation, or perhaps in a strike resulting from the negotiation, or conversely, if arbitration is mandated beforehand, to reduce the bargaining to a meaningless exchange of formalities, sort of an appetizer before the main course of arbitration.

Under Act 312 in Michigan the advantage has been decidedly with the public employee unions, and against the employer. There are a variety of possible reasons for this, some of which can be explained by the system, and some of which cannot:

a) Public Act 312 arbitrators tend to be people who make their livings as arbitrators, either in whole or significant part. Under the voluntary rules of the American Arbitration Association, a participant in arbitration has what is tantamount to an absolute veto over a particular arbitrator. Under Act 312, the party does not have such a veto. The result is that unions, particularly the members of federations such as the AFL-CIO are in a position to "punish" an arbitrator who finds favorably to management in a 312 arbitration, by "blacklisting" him in future arbitrations with private employers who are not particularly concerned about his findings in public pay disputes. While there is no evidence that this goes on in a blatantly organized fashion, and certainly the vast majority of arbitrators are people of integrity, it is undeniable that a continuous subtle pressure is exerted by this situation.

b) 312 arbitration presentations by unions tend to be given either by in house arbitration specialists, or by attorneys who concentrate in the area. Too often, 312 presentations by employers are given by city attorneys or others who, while quite competent, simply are

not able to keep pace with persons who are immersed in the process on a day to day basis.

c) Many 312 arbitrators have interpreted the criteria for selecting which position to choose very narrowly. In considering, for example, the finances of the municipality, they tend to ignore the pattern setting nature of a police or fire award with regard to other groups, and therefore tned to underestimate costs.

d) Political realities sometimes require an employer to espouse a public position which cannot be maintained through negotiations. If the city councit for example, budgets a five (5%) percent salary increase in circumstances in which the prevailing salary pattern is eight (8%) percent, city bargainers can hardly take a position in which they would voluntarily pay more than the city budget. This, however, provides a bonus for the union. Since 312 arbitrations are "last best offer" arbitrations, meaning that the arbitrator may not "split the difference" between the proposals for the parties but must pick that one which is closest to being fair, the union can inflate its offer, knowing that the city cannot move beyond its authorized maximum. Thus, the union, in this example, can with relative safety obtain an arbitrated award of ten (10%) percent, even though eight (8%) percent is fair, because ten (10%) percent is closer to eight (8%) percent than to five (5%) percent.

In spite of these obvious problems with Act 312, it is apparent that the notion of simply allowing strikes to go on forever, even though it is not likely to happen in practice, is theoretically unacceptable to the public, or at least to its legislative representatives. Crestwood and similar situations indicate that absent the imposition of harsh measures which are not feasible in the Michigan political climate, court orders simply will not stop strikes absent some provision for the ultimate resolution of the dispute at hand.

The best answer, although not a totally satisfactory one, is to allow the employer to determine exclusively whether he wishes court intervention to prevent a strike from continuing, with the understanding that only if he so determines, may he be subject to third party arbitration of the dispute. (A possibility which should be explored in such circumstances is partial, but not total limitation of the strike, so that the public employer is impaired but not disabled from providing essential services, so that the strike can run its course without permanently damaging the community.)

Under this form of access to arbitration, no public employee group could be certain that the result will be arbitration. They must be prepared to strike, and to accept the consequences of striking, including replacement by other employees, before they could enter into an arbitration proceeding. This would hopefully introduce an element of realism into negotiation that is absent when arbitration is a foregone conclusion.

With regard to those employees who are already mandated into arbitration by Act 312, there are a number of procedural reforms which might at least help the situation. One obvious change would be to install full time 312 arbitrators, who did not engage in private practice, and who therefore would not be as susceptible to the kind of pressure which 312 arbitrators now endure. Another would be to allow municipalities by local option to be exercised some time before a contract expires to vote themselves out of 312 and into PERA. The possibility that this might occur might well have a steadying effect on both arbitrators and unions, as neither would wish to "kill the goose that lays the golden egg". Another possible reform would be to provide greater control by the parties over the selection of the arbitrator, either by permitting a

certain number of "strikes" from the total panel of arbitrators eligible for 312 arbitrations, or greater opportunity for cities to complain about appearance of a particular arbitrator on a final panel.

There are in addition several steps that cities can take on their own initiative. Maximum possible attention should be paid to the preparation of a 312 arbitration case. Greater efforts should be made to share information, both as to the presentation of cases, and also as to particular arbitrators (many lawyers in the private sector spend more time studying and selecting an arbitrator than they do actually preparing the facts of the case once he is selected.) Greater efforts should be made to insist, through unfair labor practice charges if necessary, that unions in fact engage in good faith bargaining before going to arbitration. As a practical matter, it is unlikely that changes in Act 312 can be brought about as long as the unions regard it as a form of salvation. Decisive action by employers to insure that it is something less than that will go a long way towards creating an atmosphere in which change can realistically be considered.

V CONCLUSION

There are a number of other matters which deserve mention in passing. There is not one word of Michigan law dealing with the internal regulation of Public Employee unions. Such unions, if they do not represent private employees, are not covered by the Landrum Griffin Act. Such a union is perhaps the most unregulated institution in our entire society. The public employee union member has no guarantee that his union will operate democratically, that it will manage his money fairly, or that it will honor his wishes with regard to striking or accepting offers.

Similarly, Michigan makes no provisions for some of the more vicious forms of union organizing, which have been outlawed at the Federal level. These include organizational picketing, secondary boycotts, and other activities which involve innocent third parties in labor disputes, particularly when a union is attempting to organize employees who may not wish to be organized. However, it has to be recognized that it will be difficult to convince the legislature to act in any major fashion with regard to these issues because there is no major history of difficulty relating to them.

Offered: 4/15/85
Referred: Finance

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 130 (HESS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds that public school employees are entitled to participate in formulating decisions that pertain to their employment and to the fulfillment of their professional duties. Effective and responsive administration of public schools is most readily obtained through the negotiation of labor agreements that incorporate both managerial and employee perspectives. The legislature further finds that providing for harmonious and cooperative relations between school boards and employee organizations will promote public education in the state. Accordingly, the legislature declares that it is in the best interests of the state to guarantee educational employees the opportunity to form employee organizations and to negotiate with respect to the terms of their employment.

* Sec. 2. AS 14.20.550 is repealed and reenacted to read:

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES. (a) A school board and an employee bargaining organization shall negotiate in good faith on matters pertaining to employment and the fulfillment of professional duties.

(b) In this section, "negotiate in good faith" means the performance of mutual obligations of the parties to meet at reasonable times and to participate actively, indicating a present intention to reach agreement, or to negotiate an agreement or a question arising under the agreement, and at the request of either party to execute a written contract incorporating any agreement reached. However, the requirement to negotiate in good faith may not be interpreted to compel either party to agree to a proposal or to make a concession.

* Sec. 3. AS 14.20.555(a) is amended to read:

(a) Negotiations between the [CERTIFICATED] employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the [CERTIFICATED] employees [, ONE TEAM REPRESENTING ALL THE CERTIFICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team representing all the participating regional school boards. In addition, if administrative personnel or noncertificated employees have joined together to negotiate independently as provided in AS 14.20.560(f), a team representing the independent employee organizations shall participate in the negotiations.

* Sec. 4. AS 14.20.560 is repealed and reenacted to read:

Sec. 14.20.560. NEGOTIATING UNIT. (a) In order to assure to employees the fullest freedom in exercising the rights provided under AS 14.20.540 - 14.20.610, the agency shall decide in each case the unit appropriate for the purposes of negotiation, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of negotiating, and the desires of the employees. Negotiating units must be as large as is reasonable. The agency shall avoid unnecessary fragmenting of the

units.

(b) Upon petition for certification by 30 percent of the employees in a proposed negotiating unit, and if the agency has reasonable cause to believe that a question of representation exists, the agency shall provide for an appropriate hearing after reasonable notice. If the agency finds that there is a question of representation, the agency shall direct an election by secret ballot to determine whether, or by which organization, the employees desire to be represented, and shall certify the results of the election. The parties may agree to waive a hearing for the purpose of a consent election, voluntary certification of an employee bargaining organization in accordance with the regulations of the agency, or an election in a negotiating unit agreed upon by the parties. The agency shall determine the persons eligible to vote in an election and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, the agency shall conduct a runoff election. The ballot in the runoff election must provide for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. The agency shall certify an organization that receives the majority of the votes cast in the election as the exclusive representative of all the employees in the negotiating unit.

(c) An election may not be held in a negotiating unit or in a subdivision of a negotiating unit if a valid election has been held within the preceding 12 months.

(d) The parties may agree to recognize an employee bargaining organization as the exclusive representative.

(e) The agency may direct an election in a negotiating unit in which there is in force a valid collective bargaining agreement only

during the 90-day period preceding the expiration date of the agreement. However, an agreement may not bar an election upon petition of persons in the negotiating unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

(f) Noncertificated employees or certificated administrative personnel may choose by secret ballot to negotiate independently of other personnel. If noncertificated employees or certificated administrative personnel seek to negotiate independently of other certificated employees, the agency shall review the submitted representation petition and, if 30 percent of the employees in a proper negotiating unit sign the petition, the agency shall conduct a representation election.

* Sec. 5. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board shall, upon the written request of an employee bargaining organization, meet with the representative of the organization within 20 days after the request, at a time and place to be agreed upon. In the same manner, representatives of an employee bargaining organization shall meet with a school board or its representatives within 20 days after receiving a written request.

(b) Notwithstanding AS 44.62.310, the parties may agree to hold a negotiation meeting in executive session, but the parties shall make all final agreements at a public meeting of the school board.

* Sec. 6. AS 14.20.570(a) is amended to read:

(a) Upon [THE] written request for mediation by an employee bargaining <u>organization</u> [AGENCY] or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have

terminated in an impasse, the following procedure must be followed [OCCURS]:

(1) Within seven days after [OF] the certification, the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute. The requesting party shall notify the agency that the parties have requested a mediator.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) [WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS, CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTENDED.

(4)] Each party to the dispute may select a team [OF NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and position of the group they represent [,] to the mediator.

* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify the agency when the parties jointly agree, or when the mediator independently determines, that further mediation would not promote resolution of the dispute. Following mediation, the parties shall observe a 10-day cooling-off period.

* Sec. 8. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.585. ARBITRATION. (a) If the agency is notified under AS 14.20.580 that further mediation will not promote resolution of the dispute, the parties shall submit to last-best-offer mediated arbitration. A collective bargaining agreement between a school board

and an employee bargaining organization must include a procedure to promptly select an arbitrator. If the parties are unable to agree on a procedure for the selection of an arbitrator, the agency shall direct the parties to use the services of and comply with the procedures of the United States Federal Mediation and Conciliation Service or the American Arbitration Association in the selection of an arbitrator.

(b) In last-best-offer mediated arbitration under this section, each party shall submit a final offer on each issue in dispute. Each party shall submit to the arbitrator oral or written evidence in support of its position, and must be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. At the request of either party, or on the motion of the arbitrator, the arbitrator may conduct a public meeting for the purpose of allowing the parties to present and explain their positions and final offers. The arbitrator shall allow each party to revise its last best offer before final submission to the arbitrator for decision.

(c) When making the decision, the arbitrator shall consider

(1) the history of negotiations between the parties before entering arbitration;

(2) the public interest and financial abilities of the school district;

(3) the interest and welfare of the employee group;

(4) changes in the cost of living;

(5) the existing employment conditions of the employee group compared with those of similar groups; and

(6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

(d) For each issue, the arbitrator shall adopt without modification the last best offer presented by one of the parties. The arbitrator shall issue a final and binding decision not more than 10 days after the parties have presented their last best offers.

(e) The parties shall share the cost of the arbitrator equally.

(f) Within 30 days after receipt of a final decision in an arbitration, a party to the arbitration may file a motion in the superior court for the judicial district in which the school district is located to vacate or modify the decision. The court, after hearing, may vacate or modify the decision if the substantial rights of a party have been prejudiced because

(1) the decision violates constitutional or statutory law;

(2) the decision exceeds the statutory authority of the arbitrator;

(3) the procedure in the arbitration was unlawful;

(4) the proceeding is affected by other error of law;

(5) the decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) the decision is arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

* Sec. 9. AS 14.20.590 is amended to read:

Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements must [EXECUTED AFTER JULY 1, 1975, SHALL] define "grievances" and provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The grievance procedures must [SHALL] provide that the final step in the procedure is [SHALL BE] binding arbitration. The negotiations agreement must [SHALL] provide a method for the selection of an arbitrator to resolve grievances.

* Sec. 10. AS 14.20.600 is amended to read:

Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.-20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases.

* Sec. 11. AS 14.20.600 is amended by adding a new subsection to read:

(b) The agency may adopt regulations setting out procedures consistent with the purposes of AS 14.20.540 - 14.20.615 to safeguard the rights of nonassociation of employees having bona fide religious convictions.

* Sec. 12. AS 14.20 is amended by adding new sections to read:

Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (a) There is established in the Department of Administration an educational employees labor relations agency that consists of three members appointed by the governor and confirmed by the legislature meeting in joint session. Members serve for terms of three years. Members serve at the pleasure of the governor. The governor shall appoint as members one representative of management, one representative of organized labor, and one public member. The members representing management and organized labor must have knowledge and experience in educational employment issues.

(b) Members of the agency receive no compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(c) The agency may employ staff to implement the provisions of AS 14.20.540 - 14.20.615.

Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The agency shall perform the functions described in AS 23.40.120 - 23.40.-180 to carry out the provisions of AS 14.20.540 - 14.20.615.

(b) The prohibition of unfair labor practices, as described in

AS 23.40.110, applies to a school board and an employee bargaining organization.

* Sec. 13. AS 14.20.610 is amended to read:

Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.600] may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board, including its right to make final decisions on educational policies.

* Sec. 14. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.615. DEFINITION. In AS 14.20.540 - 14.20.615 "agency" means the educational employees labor relations agency.

* Sec. 15. Notwithstanding AS 14.20.605 enacted by sec. 12 of this Act, one initial member of the educational employees labor relations agency shall serve a term of one year and one initial member shall serve a term of two years.

* Sec. 16. This Act does not modify or terminate a negotiating unit or agreement in existence on the effective date of this Act.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Offered: 3/27/85
Referred: Health, Education &
Social Services and Finance

Original sponsor: Rules/Governor

IN THE HOUSE

BY THE LABOR AND COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 130 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds that public school employees are entitled to participate in formulating decisions that pertain to their employment and to the fulfillment of their professional duties. Effective and responsive administration of public schools is most readily obtained through the negotiation of labor agreements that incorporate both managerial and employee perspectives. The legislature further finds that providing for harmonious and cooperative relations between school boards and employee organizations will promote public education in the state. Accordingly, the legislature declares that it is in the best interests of the state to guarantee educational employees the opportunity to form employee organizations and to negotiate with respect to the terms of their employment.

* Sec. 2. AS 14.20.550 is repealed and reenacted to read:

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES. (a) A school board and an employee bargaining organization shall negotiate in good faith on matters pertaining to employment and the fulfillment of professional duties.

(b) In this section, "negotiate in good faith" means the performance of mutual obligations of the parties to meet at reasonable times and to participate actively, indicating a present intention to reach agreement, or to negotiate an agreement or a question arising under the agreement, and at the request of either party to execute a written contract incorporating any agreement reached. However, the requirement to negotiate in good faith may not be interpreted to compel either party to agree to a proposal or to make a concession.

* Sec. 3. AS 14.20.555(a) is amended to read:

(a) Negotiations between the [CERTIFICATED] employees of the regional educational attendance areas and the respective regional school boards shall be conducted by one team representing all the [CERTIFICATED] employees [, ONE TEAM REPRESENTING ALL THE CERTIFICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team representing all the participating regional school boards. In addition, if administrative personnel or noncertificated employees have joined together to negotiate independently as provided in AS 14.20.560(f), a team representing the independent employee organizations shall participate in the negotiations.

* Sec. 4. AS 14.20.560 is repealed and reenacted to read:

Sec. 14.20.560. NEGOTIATING UNIT. (a) In order to assure to employees the fullest freedom in exercising the rights provided under AS 14.20.540 - 14.20.610, the agency shall decide in each case the unit appropriate for the purposes of negotiation, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of negotiating, and the desires of the employees. Negotiating units must be as large as is reasonable. The agency shall avoid unnecessary fragmenting of the

units.

(b) Upon petition for certification by 30 percent of the employees in a proposed negotiating unit, and if the agency has reasonable cause to believe that a question of representation exists, the agency shall provide for an appropriate hearing after reasonable notice. If the agency finds that there is a question of representation, the agency shall direct an election by secret ballot to determine whether, or by which organization, the employees desire to be represented, and shall certify the results of the election. The parties may agree to waive a hearing for the purpose of a consent election, voluntary certification of an employee bargaining organization in accordance with the regulations of the agency, or an election in a negotiating unit agreed upon by the parties. The agency shall determine the persons eligible to vote in an election and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, the agency shall conduct a runoff election. The ballot in the runoff election must provide for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. The agency shall certify an organization that receives the majority of the votes cast in the election as the exclusive representative of all the employees in the negotiating unit.

(c) An election may not be held in a negotiating unit or in a subdivision of a negotiating unit if a valid election has been held within the preceding 12 months.

(d) The parties may agree to recognize an employee bargaining organization as the exclusive representative.

(e) The agency may direct an election in a negotiating unit in which there is in force a valid collective bargaining agreement only

during the 90-day period preceding the expiration date of the agreement. However, an agreement may not bar an election upon petition of persons in the negotiating unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

(f) Noncertificated employees or certificated administrative personnel may choose by secret ballot to negotiate independently of other personnel. If noncertificated employees or certificated administrative personnel seek to negotiate independently of other certificated employees, the agency shall review the submitted representation petition and, if 30 percent of the employees in a proper negotiating unit sign the petition, the agency shall conduct a representation election.

* Sec. 5. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board shall, upon the written request of an employee bargaining organization, meet with the representative of the organization within 20 days after the request, at a time and place to be agreed upon. In the same manner, representatives of an employee bargaining organization shall meet with a school board or its representatives within 20 days after receiving a written request.

(b) Notwithstanding AS 44.62.310, the parties may agree to hold a negotiation meeting in executive session, but the parties shall make all final agreements at a public meeting of the school board.

* Sec. 6. AS 14.20.570(a) is amended to read:

(a) Upon [THE] written request for mediation by an employee bargaining <u>organization</u> [AGENCY] or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have

terminated in an impasse, the following procedure must be followed [OCCURS]:

(1) Within seven days after [OF] the certification, the requesting party shall ask the United States Federal Mediation and Conciliation Service to serve as the agency to resolve the dispute. The requesting party shall notify the agency that the parties have requested a mediator.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) [WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS, CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTENDED.

(4)] Each party to the dispute may select a team [OF NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and position of the group they represent [,] to the mediator.

* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify the agency when the parties jointly agree, or when the mediator independently determines, that further mediation would not promote resolution of the dispute. Following mediation, the parties shall observe a 10-day cooling-off period.

* Sec. 8. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.585. ARBITRATION. (a) If the agency is notified under AS 14.20.580 that further mediation will not promote resolution of the dispute, the parties shall submit to last-best-offer mediated arbitration. A collective bargaining agreement between a school board

and an employee bargaining organization must include a procedure to promptly select an arbitrator. If the parties are unable to agree on a procedure for the selection of an arbitrator, the agency shall direct the parties to use the services of and comply with the procedures of the United States Federal Mediation and Conciliation Service or the American Arbitration Association in the selection of an arbitrator.

(b) In last-best-offer mediated arbitration under this section, each party shall submit a final offer on all issues in dispute. Each party shall submit to the arbitrator oral or written evidence in support of its position, and must be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. At the request of either party, or on the motion of the arbitrator, the arbitrator may conduct a public meeting for the purpose of allowing the parties to present and explain their positions and final offers. The arbitrator shall allow each party to revise its last best offer before final submission to the arbitrator for decision.

(c) When making the decision, the arbitrator shall consider

(1) the history of negotiations between the parties before entering arbitration;

(2) the public interest and financial abilities of the school district;

(3) the interest and welfare of the employee group;

(4) changes in the cost of living;

(5) the existing employment conditions of the employee group compared with those of similar groups; and

(6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

(d) The arbitrator shall, without modification, adopt the last best offer of one of the parties, and shall issue a final and binding decision not more than 10 days after the parties have presented their last best offers.

(e) The parties shall share the cost of the arbitrator equally.

(f) Within 30 days after receipt of a final decision in an arbitration, a party to the arbitration may file a motion in the superior court for the judicial district in which the school district is located to vacate or modify the decision. The court, after hearing, may vacate or modify the decision if the substantial rights of a party have been prejudiced because

(1) the decision violates constitutional or statutory law;

(2) the decision exceeds the statutory authority of the arbitrator;

(3) the procedure in the arbitration was unlawful;

(4) the proceeding is affected by other error of law;

(5) the decision is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or

(6) the decision is arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

* Sec. 9. AS 14.20.590 is amended to read:

Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements must [EXECUTED AFTER JULY 1, 1975, SHALL] define "grievances" and provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The grievance procedures must [SHALL] provide that the final step in the procedure is [SHALL BE] binding arbitration. The negotiations agreement must [SHALL] provide a method for the selection of an arbitrator to resolve grievances.

* Sec. 10. AS 14.20.600 is amended to read:

Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases.

* Sec. 11. AS 14.20.600 is amended by adding a new subsection to read:

(b) The agency may adopt regulations setting out procedures consistent with the purposes of AS 14.20.540 - 14.20.615 to safeguard the rights of nonassociation of employees having bona fide religious convictions.

* Sec. 12. AS 14.20 is amended by adding new sections to read:

Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (a) There is established in the Department of Administration an educational employees labor relations agency that consists of three members appointed by the governor for terms of three years. Members serve at the pleasure of the governor.

(b) Members of the agency receive no compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(c) The agency may employ staff to implement the provisions of AS 14.20.540 - 14.20.615.

Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The agency shall perform the functions described in AS 23.40.120 - 23.40.180 to carry out the provisions of AS 14.20.540 - 14.20.615.

(b) The prohibition of unfair labor practices, as described in AS 23.40.110, applies to a school board and an employee bargaining organization.

* Sec. 13. AS 14.20.610 is amended to read:

Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 - 14.20.615 [AS 14.20.550 - 14.20.600] may be construed

as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board, including its right to make final decisions on educational policies.

* Sec. 14. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.615. DEFINITION. In AS 14.20.540 - 14.20.615 "agency" means the educational employees labor relations agency.

* Sec. 15. Notwithstanding AS 14.20.605 enacted by sec. 12 of this Act, one initial member of the educational employees labor relations agency shall serve a term of one year and one initial member shall serve a term of two years.

* Sec. 16. This Act does not modify or terminate a negotiating unit or agreement in existence on the effective date of this Act.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

CORRECTION

Discard HB 130

and retain this corrected version.

Introduced: 1/25/85
Referred: Labor & Commerce,Health,
Education & Social Services and
Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 130

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to educational employees' collective bargaining agreements; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.20 is amended by adding a new section to article 6 to read:

Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds that public school employees are entitled to participate in formulating decisions that pertain to their employment and to the fulfillment of their professional duties. Effective and responsive administration of public schools is most readily obtained through the negotiation of labor agreements that incorporate both managerial and employee perspectives. The legislature further finds that providing for harmonious and cooperative relations between school boards and employee organizations will promote public education in the state. Accordingly, the legislature declares that it is in the best interests of the state to guarantee educational employees the opportunity to form employee organizations and to negotiate with respect to the terms of their employment.

* Sec. 2. AS 14.20.550 is amended to read:

Sec. 14.20.550. NEGOTIATION WITH [CERTIFICATED] EMPLOYEES. Each city, borough and regional school board, shall negotiate with its [CERTIFICATED] employees in good faith on matters pertaining to their employment and the fulfillment of their professional duties.

* Sec. 3. AS 14.20.555(a) is amended to read:

(a) Negotiations between the [CERTIFICATED] employees of the regional educational attendance areas and the respective regional school boards must [SHALL] be conducted by one team representing all the [CERTIFICATED] employees[, ONE TEAM REPRESENTING ALL THE CERTIFICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team representing all the participating regional school boards. If administrative personnel or noncertificated employees have joined together to negotiate independently as provided in AS 14.20.560(f), a team representing the independent employee organizations shall participate in the negotiations.

* Sec. 4. AS 14.20.560 is repealed and reenacted to read:

Sec. 14.20.560. NEGOTIATING UNIT. (a) The educational employees labor relations agency shall, in order to assure to employees the fullest freedom in exercising the rights provided under AS 14.20.-540 -- 14.20.610, decide in each case the unit appropriate for the purposes of negotiation, based on such factors as community of interest, wages, hours, and other working conditions of the employees involved, the history of negotiating, and the desires of the employees. Negotiating units must be as large as is reasonable; unnecessary fragmenting of the units must be avoided.

(b) Upon petition for certification by 30 percent of the employees in a proposed negotiating unit, and if the educational employees labor relations agency has reasonable cause to believe that a question of representation exists, the agency shall provide for an appropriate hearing after reasonable notice. If the educational employees labor relations agency finds that there is a question of representation, that agency shall direct an election by secret ballot to determine

whether, or by which organization, the employees desire to be represented, and shall certify the results of the election. This section does not prohibit the waiving of hearings by stipulation for the purpose of a consent election or voluntary certification in conformity with the regulations of the educational employees labor relations agency, or an election in a negotiating unit agreed upon by the parties. The educational employees labor relations agency shall determine who is eligible to vote in an election and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, a runoff election must be conducted. The ballot in the runoff election must provide for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If an organization receives the majority of the votes cast in the election, it must be certified by the educational employees labor relations agency as the exclusive representative of all the employees in the negotiating unit.

(c) An election may not be held in a negotiating unit or in a subdivision of a negotiating unit if a valid election has been held within the preceding 12 months.

(d) This section does not prohibit recognition of an organization as the exclusive representative upon mutual consent of the parties.

(e) An election may only be directed by the educational employees labor relations agency in a negotiating unit in which there is in force a valid collective bargaining agreement during the 90-day period preceding the expiration date of the agreement. However, an agreement may not bar an election upon petition of persons in the negotiating unit but not parties to the agreement if more than three years have

elapsed since the execution of the agreement or the last timely renewal, whichever was later.

(f) This section does not prohibit noncertificated employees or certificated administrative personnel from choosing by secret ballot to negotiate independently of other personnel. If noncertificated or certificated administrative personnel seek to negotiate independently of other certificated employees, the educational employees labor relations agency shall review the submitted representation petition and, if 30 percent of the employees in a proper negotiating unit sign the petition, the agency shall conduct a representation election.

* Sec. 5. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board shall, upon the written request of an employee bargaining organization, meet with the representative of the organization within 20 days after the request, at a time and place to be agreed upon. In the same manner, representatives of an employee bargaining organization are required to meet with a school board or its representatives within 20 days after receiving a written request.

(b) Notwithstanding AS 44.62.310, a negotiation meeting may be held in executive session upon agreement of both parties, but all final agreements must be made at a public meeting of the school board.

* Sec. 6. AS 14.20.570(a) is amended to read:

(a) Upon [THE] written request for mediation by an employee bargaining agency or a school board, and upon certification by the requesting party that the parties cannot agree on an independent private mediator and that good faith negotiations have terminated in an impasse, the following <u>procedure must be followed</u> [OCCURS]:

(1) Within seven days <u>after</u> [OF] the certification, the requesting party shall ask the United States Federal Mediation and

Conciliation Service to serve as the agency to resolve the dispute. The requesting party shall notify the educational employees labor relations agency that the parties have requested a mediator.

(2) The mediator shall chair all mediation meetings between the disputing parties and attempt to resolve the differences between the disputing parties and reach common acceptance of terms and conditions or other items in dispute wherever possible.

(3) [WITHIN 30 DAYS OF THE INITIAL MEETING OF THE PARTIES TO THE DISPUTE THE MEDIATOR SHALL HAVE REDUCED ALL THE AGREED TERMS, CONDITIONS AND OTHER ITEMS TO A WRITTEN CONTRACT. IF MUTUALLY AGREED THE PERIOD FOR REPORTING THE CONTRACT TO BOTH PARTIES MAY BE EXTENDED.]

(4) Each party to the dispute may select a team [OF NOT MORE THAN FIVE PERSONS] to present the evidence, thinking, and position of the group they represent[,] to the mediator.

* Sec. 7. AS 14.20.580 is repealed and reenacted to read:

Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify the educational employees labor relations agency when the parties jointly agree, or when the mediator independently determines, that further mediation would not promote resolution of the dispute. Following mediation, the parties shall observe a 10-day cooling-off period.

* Sec. 8. AS 14.20 is amended by adding a new section to read:

Sec. 14.20.585. ARBITRATION. (a) If the educational employees labor relations agency is notified under AS 14.20.580 that further mediation will not promote resolution of the dispute, the parties shall submit to last-best-offer mediated arbitration. A collective bargaining agreement between a board and an employee group must include a procedure to promptly select an arbitrator. If the parties

are unable to agree on a procedure for the selection of an arbitrator, the educational employees labor relations agency shall direct the parties to use the services of and comply with the procedures of the United States Federal Mediation and Conciliation Service or the American Arbitration Association in the selection of an arbitrator. An arbitrator selected under this subsection must be a resident of this state.

(b) In last-best-offer mediated arbitration under this section, each party shall submit a final offer on all issues in dispute. Each party shall submit to the arbitrator oral or written evidence in support of its position, and must be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. At the request of either party, or on the motion of the arbitrator, the arbitrator may conduct a public meeting for the purpose of allowing the parties to present and explain their positions and final offers. The arbitrator shall allow each party to revise its last best offer before final submission to the arbitrator for decision.

(c) The arbitrator shall, without modification, adopt the last best offer of one of the parties, and shall issue a final and binding decision not more than 10 days after the parties have presented their last best offers.

(d) The parties shall share the cost of the arbitrator equally.

* Sec. 9. AS 14.20.590 is amended to read:

Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements executed after July 1, 1975, must [SHALL] define "grievances" and must provide for grievance procedures [FOR THE CERTIFICATED STAFF]. The grievance procedures must [SHALL] provide that the final step in the procedure is [SHALL BE] binding arbitration. The negotiations agreeme

must [SHALL] provide a method for the selection of an arbitrator to resolve grievances.

* Sec. 10. AS 14.20.600 is amended to read:

Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. (a) Nothing in AS 14.20.550 -- 14.20.590 prohibits an employee from addressing a school board, as an individual, through the regular procedures of the school board for hearing individual cases.

(b) The educational employees labor relations agency may adopt regulations setting out procedures consistent with the purposes of AS 14.20.540 -- 14.20.610 to safeguard the rights of nonassociation of employees having bona fide religious convictions.

* Sec. 11. AS 14.20 is amended by adding new sections to read:

Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (a) There is established in the Department of Administration an educational employees labor relations agency that consists of five members. The three members of the state personnel board (AS 39.25.-060) are members of the educational employees labor relations agency. The governor shall appoint two additional members to the agency. The two gubernatorial appointees to the educational employees labor relations agency serve at the pleasure of the governor.

(b) Members of the educational employees labor relations agency receive no compensation for their services, but are entitled to per diem and travel expenses authorized for boards and commissions.

(c) The educational employees labor relations agency may employ staff assistance as it considers necessary to implement the provisions of AS 14.20.540 -- 14.20.610.

Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The educational employees labor relations agency shall perform the functions described in AS 23.40.120 -- 23.40.180 to carry out the

provisions of AS 14.20.540 -- 14.20.610.

(b) The prohibition of unfair labor practices, as described in AS 23.40.110, applies to a school board and an employee organization.

* Sec. 12. AS 14.20.610 is amended to read:

Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 [14.20.550] -- 14.20.600 may be construed as an abrogation or delegation of the legal responsibilities, powers, and duties of the school board, including its right to make final decisions on educational policies.

* Sec. 13. This Act does not modify or terminate a negotiating unit or agreement in existence on the effective date of this Act.

* Sec. 14. This Act takes effect immediately in accordance with AS 01.-10.070(c).