

H B

1 5 0

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

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

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

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

7

8

9

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

10

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

11

12

13

14

15

16

17

18

19

20

21

22

23

24

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.

25

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 AS 14.20.550 is repealed and reenacted to read:

26

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES.

27

(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.

28

29

1 (b) In this section, "negotiate in good faith" means the perfor-
2 mance of mutual obligations of the parties to meet at reasonable times
3 and to participate actively, indicating a present intention to reach
4 agreement, or to negotiate an agreement or a question arising under
5 the agreement, and at the request of either party to execute a written
6 contract incorporating any agreement reached. However, the require-
7 ment to negotiate in good faith may not be interpreted to compel
8 either party to agree to a proposal or to make a concession.

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

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

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 AS 14.20.560 is repealed and reenacted to read:

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

1 units.

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

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

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

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

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

6 (f) Noncertificated employees or certificated administrative
7 personnel may choose by secret ballot to negotiate independently of
8 other personnel. If noncertificated employees or certificated admin-
9 istrative personnel seek to negotiate independently of other certifi-
10 cated employees, the agency shall review the submitted representation
11 petition and, if 30 percent of the employees in a proper negotiating
12 unit sign the petition, the agency shall conduct a representation
13 election.

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

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

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

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

26 (a) Upon [THE] written request for mediation by an employee bar-
27 gaining organization [AGENCY] or a school board, and upon certifica-
28 tion by the requesting party that the parties cannot agree on an
29 independent private mediator and that good faith negotiations have

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

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

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

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

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

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

20 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify
21 the agency when the parties jointly agree, or when the mediator inde-
22 pendently determines, that further mediation would not promote resolu-
23 tion of the dispute. Following mediation, the parties shall observe a
24 10-day cooling-off period.

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

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

1 and an employee bargaining organization must include a procedure to
2 promptly select an arbitrator. If the parties are unable to agree on
3 a procedure for the selection of an arbitrator, the agency shall
4 direct the parties to use the services of and comply with the proce-
5 dures of the United States Federal Mediation and Conciliation Service
6 or the American Arbitration Association in the selection of an arbi-
7 trator.

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

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

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

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

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

25 (4) changes in the cost of living;

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

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

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

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

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

12 (1) the decision violates constitutional or statutory law;

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

15 (3) the procedure in the arbitration was unlawful;

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

17 (5) the decision is clearly erroneous in view of the reli-
18 able, probative and substantial evidence on the whole record; or

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

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

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

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

1 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.-
2 20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee
3 from addressing a school board, as an individual, through the regular
4 procedures of the school board for hearing individual cases.

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

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

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

11 Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY.

12 (a) There is established in the Department of Administration an
13 educational employees labor relations agency that consists of three
14 members appointed by the governor for terms of three years. Members
15 serve at the pleasure of the governor.

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

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

21 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The
22 agency shall perform the functions described in AS 23.40.120 - 23.40.-
23 180 to carry out the provisions of AS 14.20.540 - 14.20.615.

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

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

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

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

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

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

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

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

14 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

HB 130 FILE CONTENTS

- 1) Bill Summary - Legislative Reporting Service
- 2) Overview -- Committee Staff
- 2) Sectional Analysis -- by National Educational Association
- 4) Governor's Letter of Transmittal
- 5) Fiscal Note -- Dept. of Administration
(with fiscal analysis)
- 6) Fiscal Note -- Dept. of Education
- 7) Current Teacher's Negotiation Law --Statutory Backup
(14.20.510-630).
- 8) Back-up materials provided by NEA
 - a) Concept Outline
 - b) Excerpts: Public Employee Relations Act (AS 23.40.110-180)
(included by reference in AS 14.20.606 of HE 130)
 - c) NEA -- Position Paper
 - d) Public Surveys
 - e) Collective Bargaining Quarterly
- 9) Proposed Amendments to HB 130 -- by Bob Manners, NEA
- 10) Definitions of Terms -- Submitted by NEA

March 4, 1985 Additions:

- 11) Copy of William Gibbon's testimony to Committee Feb 18.
- 12) Proposed CS for HB 130 -- Dept. of Administration, with letter
of transmittal by Bill Gibbon

COMMITTEE REPORT
HOUSE

(7)

FURTHER: FINANCE

3/27/85

Date: 11 April 1985

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES 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)
- replace with CS for HB 130 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without ^{INDIVIDUAL} recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Do Not Pass - should only include certification

[Signature]

[Signature] DO NOT PASS WITHOUT AMENDMENTS

[Signature] (NO REC)

[Signature] NO REC

[Signature]
CHAIRMAN
[Signature]

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. The notification from the mediator to the agency shall indicate the items at impasse that qualify for arbitration determination. Those items shall be limited to wages and fringe benefits of a monetary nature. Following mediation, the parties shall observe a 10-day cooling off period.

DISTRICT 27:
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMEN'S BAY

Alaska State Legislature



House of Representatives

REPRESENTATIVE
DAVE THOMPSON
WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498
P.O. BOX 75
KODIAK, ALASKA 99615
(907) 486-4899
(907) 486-3116

April 1, 1985

Amendment #1

To: HESS committee
Fr: Rep. Dave Thompson *DWT*
Re: CSHB 130 (Labor and Commerce)

What follows are my recommendations for amendments to the CSHB 130, Labor and Commerce.

Page Two (2), line ten (10), insert:

" certificated " between the words " the " and " employees ".

Page Two (2), line thirteen (13), insert:

" certificated " before the word " employees ".

Page Two (2), line sixteen (16), delete:

everything after the word " boards " through and including line twenty (20).

The effect of these changes would be to restrict this legislation to certificated employees only.

Thank you for your consideration of these amendments.

yes: Thompson
Hanley
Taylor
no: Koponen
Hurley
Gruenberg

DISTRICT 27:
AKHIOK
CHIGNIK
CHIGNIK LAGOON
CHIGNIK LAKE
CHINIAK
IVANOF BAY
KARLUK
KODIAK
LARSEN BAY
OLD HARBOR
OUZINKIE
PERRYVILLE
PORT LIONS
WOMEN'S BAY

Alaska State Legislature



House of Representatives

REPRESENTATIVE
DAVE THOMPSON
WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2487
(907) 465-2498
P.O. BOX 75
KODIAK, ALASKA 99615
(H)(907) 486-4899
(L)(907) 486-8116

Amendment #2

April 1, 1985

To: HESS committee
Fr: Rep. Dave Thompson *JWT*
Re: CSHB 130 (Labor and Commerce)

What follows are my recommendations for amendments to CSHB 130, Labor and Commerce.

Page three (3), line two (2), change:

" 30 percent " to " 50 percent ". ¹

The effect of this change would be that proposed bargaining unit must have the approval of half of the effected employees .

Thank you for your consideration of this amendment.

¹ Page Four (4), line eleven (11) should also be changed from " 30 percent " to " 50 percent ".

yes: Hanley
Thompson
Taylor

no: Koponen
Hurley
Greenberg

Delete section 12 [yes: Hurley, Thompson, Taylor
no: Koponen, Greenberg, Hurley

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. The notification from the mediator to the agency shall indicate the items at impasse that qualify for arbitration determination. Those items shall be limited to wages and fringe benefits of a monetary nature. Following mediation, the parties shall observe a 10-day cooling off period.

yes Thompson
Taylor
Hanley

no 3 Koponen
Hanley
Gruenberg

A M E N D M E N T

#2

Offered in the Health, Education and Social Services Committee By Hanley
TO: CSHB 130(L&C)

Page 8, line 14, after "governor" insert:

"and confirmed by the legislature meeting in joint session. Members
serve"

Page 8, line 15, after "governor." insert:

"The governor shall appoint as members one representative of manage-
ment, 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.

yes unanimous

no: Hanley
Fitzgerald
Thompson

yes: Koponen
Hanley
Greenberg #1

AMENDMENT

Offered in the Health, Education and Social Services Committee By Hanley
TO: CSHB 130(L&C)

Page 8, line 5, delete "a new subsection" and insert "new subsections"

Page 8, after line 9, insert:

"(c) An employee is entitled to

(1) organize, form, join, or assist an employee organization;

(2) negotiate collectively through representatives of the employees' choosing;

(3) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection if the activity is not prohibited by law;

(4) refuse to join or participate in the activities of employee organizations, including the payment of dues, fees, or assessments or service fees of any type."

Page 9, after line 3, insert a new bill section to read:

** Sec. 14. AS 14.20.610 is amended by adding a new subsection to read

(b) In addition to the powers and duties established by law, school board has the exclusive power and duty to

(1) direct the work of its employees;

(2) hire, promote, demote, transfer, assign, and retain employees in positions within the school district;

(3) suspend or discharge school district employees for proper cause;

(4) maintain the efficiency of governmental operations;

(5) relieve school district employees from duties because of lack of work or for other legitimate reasons;

(6) ascertain and implement the methods, means, assignments and personnel by which the school district's operations are to be conducted;

(7) take actions necessary to carry out the duties of the school district; and

(8) initiate, prepare, certify, and administer its budget."

Renumber remaining bill sections accordingly.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

147 S. FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

April 1, 1985

TO: Representative Niilo Koponen and Max Gruenberg, Co-Chairs
Members of Health Education and Social Services Committee

RE: CSHB 130 (L & C)

"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 (L & C).

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 last best offer arbitration.


This bill has spent several weeks in the Labor and Commerce Committee. The Committee members heard many hours of testimony, questioned and probed the components of the bill and finally adopted the Committee Substitute you have before you. 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

ENCLOSURES

- A CSHB 130 (L&C)
- B Section Analysis
- C Concept Outline
- D Current Teacher Negotiation Law (AS 14.20.550-610)
- E Excerpts: Public Employee Relations Act sections included in CSHB 130 (L&C) by reference (AS 23.40.110-180)
- F Governor Sheffield's message to the House re HB 130
- G List of bargainable/non-bargainable issues---Alaska Supreme Court
- H NEA-Alaska Position Paper
- I Public Survey
- J State Board of Education supports last-best-offer binding arbitration in Connecticut.

A.

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

Original sponsor: Rules/Governor

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

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

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

7

8

9

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

10

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

11

12

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.

13

14

15

16

17

18

19

20

21

22

23

24

25

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

26

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES.

27

(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.

28

29

1 (b) In this section, "negotiate in good faith" means the perfor-
2 mance of mutual obligations of the parties to meet at reasonable times
3 and to participate actively, indicating a present intention to reach
4 agreement, or to negotiate an agreement on a question arising under
5 the agreement, and at the request of either party to execute a written
6 contract incorporating any agreement reached. However, the require-
7 ment to negotiate in good faith may not be interpreted to compel
8 either party to agree to a proposal or to make a concession.

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

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

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

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

A₃

1 units.

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

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

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

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

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

6 (f) Noncertificated employees or certificated administrative
7 personnel may choose by secret ballot to negotiate independently of
8 other personnel. If noncertificated employees or certificated admin-
9 istrative personnel seek to negotiate independently of other certifi-
10 cated employees, the agency shall review the submitted representation
11 petition and, if 30 percent of the employees in a proper negotiating
12 unit sign the petition, the agency shall conduct a representation
13 election.

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

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

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

25 * Sec. 6. AS 14.20 570(a) is amended to read:

26 (a) Upon [THE] written request for mediation by an employee bar-
27 gaining organization [AGENCY] or a school board, and upon certifica-
28 tion by the requesting party that the parties cannot agree on an
29 independent private mediator and that good faith negotiations have

A₃

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

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

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

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

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

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

20 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify
21 the agency when the parties jointly agree, or when the mediator inde-
22 pendently determines, that further mediation would not promote resolu-
23 tion of the dispute. Following mediation, the parties shall observe a
24 10-day cooling-off period.

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

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

1 and an employee bargaining organization must include a procedure to
2 promptly select an arbitrator. If the parties are unable to agree on
3 a procedure for the selection of an arbitrator, the agency shall
4 direct the parties to use the services of and comply with the proce-
5 dures of the United States Federal Mediation and Conciliation Service
6 or the American Arbitration Association in the selection of an arbi-
7 trator.

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

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

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

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

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

25 (4) changes in the cost of living;

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

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

A7

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

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

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

- 12 (1) the decision violates constitutional or statutory law;
13 (2) the decision exceeds the statutory authority of the
14 arbitrator;
15 (3) the procedure in the arbitration was unlawful;
16 (4) the proceeding is affected by other error of law;
17 (5) the decision is clearly erroneous in view of the reli-
18 able, probative and substantial evidence on the whole record; or
19 (6) the decision is arbitrary, capricious, or characterized
20 by abuse of discretion or clearly unwarranted exercise of discretion.

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

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

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

1 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.-
2 20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee
3 from addressing a school board, as an individual, through the regular
4 procedures of the school board for hearing individual cases.

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

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

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

11 Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY.

12 (a) There is established in the Department of Administration an
13 educational employees labor relations agency that consists of three
14 members appointed by the governor for terms of three years. Members
15 serve at the pleasure of the governor.

16 (b) Members of the agency receive no compensation for their
17 services, but are entitled to per diem and travel expenses authorized
18 for boards and commissions under AS 30.20.180.

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

21 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The
22 agency shall perform the functions described in AS 23.40.120 - 23.40.-
23 180 to carry out the provisions of AS 14.20.540 - 14.20.615.

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

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

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

A9

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

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

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

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

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

14 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
15 10.070(c).

B

SECTION ANALYSIS
CSHB 130 (L & C)

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 of each party; provide for argument, evidence, and testimony; may conduct a public hearing; and shall select the final offer 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.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

147 S. FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

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

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.

D₂

(7) 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)

EDUCATION

4 AAC 80.010
4 AAC 80.040

**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)

election it shall be certified by the labor relations agency as exclusive representative of all the employees in the bargaining unit.

(c) An election may not be held in a bargaining unit or in a subdivision of a bargaining unit if a valid election has been held within the preceding 22 months.

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by a public employer by mutual consent.

(e) No election may be directed by the labor relations agency in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 90-day period preceding the expiration date. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining 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.

Sec. 23.40.110. Unfair labor practices.

— (a) A public employer or his agent may not

(1) interfere, restrain or coerce an employee in the exercise of his rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter;

(2) dominate or interfere with the formation, existence or administration of an organization;

(3) discriminate in regard to hire or tenure of employment or a term or condition of employment to encourage or discourage membership in an organization;

(4) discharge or discriminate against an employee because he has signed or filed an affidavit, petition or complaint or given testimony under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter;

(5) refuse to bargain collectively in good faith with an organization which is the exclusive representative of employees in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative.

(b) Nothing in this chapter prohibits a public employer from making an agreement with an organization to require as a condition of employment

(1) membership in the organization which represents the unit on or after the 30th day following the beginning of employment or on the effective date of the agreement, whichever is later; or

(2) payment by the employee to the exclusive bargaining agent of a service fee to reimburse the exclusive bargaining

agent for the expenses of representing the members of the bargaining unit.

(c) A labor or employee organization or its agents may not

(1) restrain or coerce

(A) an employee in the exercise of the rights guaranteed in Sec. 80 [Sec. 23.40.80] of this chapter, or

(B) a public employer in the selection of his representative for the purposes of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer, if it has been designated in accordance with the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter as the exclusive representative of employees in an appropriate unit.

Sec. 23.40.120. Investigation and conciliation of complaints. — If a verified written complaint by or for a person claiming to be aggrieved by a practice prohibited by Sec. 110 [Sec. 23.40.110] of this chapter, or a written accusation that a person subject to Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter has engaged in a prohibited practice, is filed with the labor relations agency, it shall investigate the complaint or accusation.

If it determines after the preliminary investigation that probable cause exists in support of the complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during this endeavor may be used as evidence in a subsequent proceeding.

Sec. 23.40.130. Complaint and accusation. — If the labor relations agency fails to eliminate the prohibited practice by conciliation and to obtain voluntary compliance with Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, or, before it attempts conciliation, it may serve a copy of the complaint or accusations upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with the administrative adjudication portion of the Administrative Procedure Act (AS 44.62).

Sec. 23.40.140. Orders and decisions. — If the labor relations agency finds that a person named in the written complaint or accusation has engaged in a prohibited practice, the labor relations agency shall issue and serve on the person an order or decision requiring him to cease and desist from the prohibited practice and to take affirmative action which will carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter. If

the labor relations agency finds that a person named in the complaint or accusation has not engaged or is not engaging in a prohibited practice, the labor relations agency shall state its findings of fact and issue an order dismissing the complaint or accusation.

Sec. 23.40.150. Enforcement by injunction. — The labor relations agency may apply to the superior court in the judicial district in which the prohibited practice occurred for an order enjoining the prohibited acts specified in the order or decision of the labor relations agency. Upon a showing by the labor relations agency that the person has engaged or is about to engage in the practice, an injunction, restraining order, or other order which is appropriate may be granted by the court and shall be without bond.

Sec. 23.40.160. Power to investigate and compel testimony. — (a) For the purpose of the investigations, proceedings, or hearings which the labor relations agency considers necessary to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the labor relations agency may issue subpoenas requiring the attendance and testimony of witnesses and the production of relevant evidence.

(b) The labor relations agency may administer oaths, examine witnesses, and receive evidence.

(c) The attendance of witnesses and the production of evidence may be required from any place in the state at any designated place of hearing.

(d) If a person refuses to obey a subpoena issued under Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter, the superior court in the district in which the person resides or is found may, upon application by the labor relations agency, issue an order requiring him to comply with the subpoena.

Sec. 23.40.170. Regulations. — The labor relations agency may adopt regulations under the Administrative Procedure Act (AS 44.62) to carry out the provisions of Secs. 70-260 [Secs. 23.40.70 to 23.40.260] of this chapter.

Sec. 23.40.180. Penalty for violation of order or decision. — A person who violates a provision of an order or decision of the labor relations agency is guilty of a misdemeanor and is punishable by a fine of not more than \$500.

Sec. 23.40.190. Mediation. — If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between a public

HB 118

HOUSE BILL NO. 118 by the Rules Committee by request of the Governor, entitled:

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

was read the first time and referred to the Labor & Commerce, Health, Education, & Social Services and the Finance Committees.

HB 118

A zero fiscal note and a fiscal note were attached. The fiscal note appears in House Journal Supplement No. 8.

The Governor's transmittal letter, dated January 25, 1985, appears below:

"Dear Representative Grossendorf:

Under the authority of art. III, sec. 10, 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,

G

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. Discretionary 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



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

H.

ANCHORAGE REGIONAL OFFICE

1411 W 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

147 S. FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

NEA-Alaska Position Statement Teacher Negotiations Law AS 14.20.550-610

The absence of finality to the process of teacher negotiations is not in the public interest of the State of Alaska and is inconsistent with the public policies of the State as they pertain to employer/employee relationships for all other public employees.

Collective negotiations is well established in both the public and private sectors as the best procedure for employees to equitably share in the decision making processes regarding their terms and conditions of employment. The State of Alaska in AS 23.40.070, the public employee negotiations law, has further stated that it is the public policy of the State to promote harmonious and cooperative relationships between employees and government and that government will be more effective and responsive when employees have such opportunity.

The current teacher negotiations law fails every reasonable test relative to equity and effective bilateral decision making.

- There is no meaningful incentive for school boards to reach agreement on terms and conditions of employment as a result of the good faith negotiations requirement.
- The dispute settlement mechanism does not achieve finality in the process.
- The law does not define unfair labor practices.
- There is currently no administrative procedure for resolution of alleged unfair labor practices except through costly and time consuming court procedures.
- Bargaining unit determination procedures are ambiguous at best.
- Time, energy and valuable resources (human and financial) are being spent in a collective bargaining process which is substantially increasing in its length and its frustrations.
- The right of employees to organize and participate in matters pertaining to negotiations does not have adequate statutory protection.
- The law is silent on the negotiation of fair representation fees.

Minimally, the legislative reform should address finality through arbitration, preferably final offer on an item by item basis.

Final offer interest arbitration is the only effective labor relations alternative to strike as a method of achieving finality to a negotiations dispute.

H₂

In the public sector it is a better alternative than strike, in that it provides for a continuity of services and does not adversely effect the public interest, health, safety, and welfare.

Final offer interest arbitration is effective because it represents a risk for both parties to a dispute and it subjects their positions to neutral scrutiny, thus causing them to be more defensible and rational.

The reality of final offer interest arbitration is that a very low percentage of disputes actually end up in written arbitration awards. The mere presence of such an arbitration procedure enhances the settlement potential and results in more bilateral agreements between the parties short of the arbitration itself.

In his dissenting opinion in the Supreme Court determination that teacher strikes are illegal, Justice Rabinowitz said: "If public school teachers are so essential to society that they must be denied the right to strike, then they should be given the right to compulsory arbitration".

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 He'llenthal Survey, commissioned by the Anchorage School District, reinforces the need for arbitration with a favorable response in excess of 80%.

The NEA-Alaska desire for finality through arbitration has been a matter of record for a number of years. Our commitment only intensifies as each round of bargaining with school districts produces a lengthening process and greater frustrations for our members.

NEA-Alaska recommends the following as minimal revision to AS 14.20.550-610.

- a) Include a policy statement similar to PERA (As 23.40.070)
- b) Clarify procedures regarding questions of representation and bargaining unit determination
- c) ESTABLISH FINAL OFFER (item by item) ARBITRATION AS THE NEGOTIATIONS DISPUTE SETTLEMENT MECHANISM
- d) Define unfair labor practices
- e) Provide administrative procedures for resolution of alleged unfair labor practices
- f) Establish an agency for administration of the teacher negotiations law
- g) Provide non certified public school employees access to a negotiations law.

H3

The following points effectively summarize the positive effect of the recommended revisions to the teacher negotiations law.

1. Achieves finality in an expeditious way
2. Reinforces equity in the process
3. Reinforces good faith negotiations
4. Final offer is a risk for both parties
5. Final Offer forces the position to be defensible, rational
6. Third party assistance is sometimes necessary/desirable
7. An improper award can be challenged in court and set aside
8. Currently, too much time, money and energy is wasted in the impasse process
9. Management rights/prerogatives are protected by statute
10. Arbitration stops strikes
11. The public favors interest arbitration.

Attached please find:

- a) Summary of the Connecticut final offer arbitration law. It was passed subsequent to the 1979 Bridgeport teacher strike (the Anchorage teacher strike was also in 1979). The effect has clearly been an increase in the number of bilateral agreements reached short of the arbitration award itself. (Phi Delta Kappan)
- b) An article summarizing the viability and acceptability of arbitration as an alternative to teacher strikes. (American School Board Journal)
- c) A summary of the mediation-arbitration process which focuses on the Wisconsin procedure.

Enclosures

R2:42

Public Survey Results
 re: Arbitration vs Strike
 Sponsor: Anchorage School Bd.

I

Junior High students?

None (0 Minutes).....	2.9%
1-29 Minutes.....	0.2%
30 Minutes (One-Half Hour).....	4.3%
31-59 Minutes.....	4.2%
60 Minutes (One Hour).....	36.4%
61-119 Minutes.....	18.7%
120 Minutes (Two Hours).....	26.4%
Over 120 Minutes.....	6.8%

MEAN	= 86.330	SAMPLE SIZE	= 1417
MEDIAN	= 87.905	STANDARD DEVIATION	= 42.279
SKEWNESS	= 1.060	KURTOSIS	= 3.256

High School students?

None (0 Minutes).....	3.1%
1-29 Minutes.....	0.1%
30 Minutes (One-Half Hour).....	1.5%
31-59 Minutes.....	1.1%
60 Minutes (One Hour).....	21.4%
61-119 Minutes.....	15.8%
120 Minutes (Two Hours).....	34.9%
Over 120 Minutes.....	22.1%

MEAN	= 113.940	SAMPLE SIZE	= 1409
MEDIAN	= 119.406	STANDARD DEVIATION	= 59.350
SKEWNESS	= 1.398	KURTOSIS	= 5.379

36. The Anchorage School Board conducts collective bargaining sessions with the local teachers' association (THE ANCHORAGE EDUCATION ASSOCIATION). These sessions should allow the Board and Teachers' Association to reach mutual agreement on issues such as teachers' wages and working conditions. In the event an agreement cannot be reached between the Teachers' Association and the School Board, would you favor or oppose a plan that would require the dispute to be settled by the decision of an arbitrator or a panel acceptable to both the Teachers' Association and the School Board?

FAVOR.....	89.9%
OPPOSE.....	6.6%
DON'T KNOW.....	3.5%
(n = 1595)	

37. Should teachers have the right to strike?

YES.....	49.1%
NO.....	45.6%
DON'T KNOW.....	5.2%
(n = 1589)	

MAR 15 1985

J

ASSOCIATION

CONTACT

A Leadership Publication of The Connecticut Education Association

Volume Two/Number 11

February 28, 1985

CEA Lobbying Effort In High Gear

The lobbyists for the Connecticut Education Association have been very busy during the past month keeping close tabs on all of the education bills that have surfaced over at the legislature.

Heavy emphasis was spent dealing with a number of anti-binding arbitration bills that surfaced in the Education Committee. "Through the efforts of our CEA lobbyists, three bills that would have gutted the arbitration process have been boxed in committee," said CEA President Robert F. Eagon. The CEA President added, "Although these three bills are now dead in this session, there are other binding arbitration bills that still remain alive and if they are passed by the Education Committee, the binding arbitration issue would come to the floor of the General Assembly."

CEA Executive Director Tom Mondani said, "Local associations must continue to contact their local senator and representatives, particularly members of the Education Committee, urging them not to change any aspect of binding arbitration."

Michael Cooper, CEA Bargaining Services Coordinator, indicated that HB - 5595, which deals with the selection process of the neutral arbitrator, is one bill that still remains alive. Cooper said, "It is important for local associations to urge members of the Education Committee to reach the defeat of this bill."

On another education front, many of the legislative initiatives introduced by the State Board of Education will be nearing the public hearing stage. Among the issues to be discussed will be teacher certification and a longer school year.

CEA Legislative Commission To Hold Workshops

The CEA Legislative Commission will be conducting four regional workshops during March. The program is designed to educate association members on the CEA legislative package; and to provide local association members with information on how they can be helpful in promoting the CEA legislative agenda.

The workshops are scheduled from 4:30 p.m. to 7 p.m. at the following locations:

- March 5 — Ridge Hill School, Hamden
- March 6 — Stratford High School, Stratford
- March 7 — Kelly Junior High School, Norwich
- March 12 — Farmington Junior High School, Farmington

For more information, contact CEA Government Relations Coordinator, Jane Glover at the CEA in Hartford.

State Board Supports Binding Arbitration

At its meeting on February 6, the State Board of Education took an unprecedented action when it passed a motion in support of last-best-offer binding arbitration. Below is the text of the motion passed by the board.

"Resolved that since the educational interests of the state have been well served by binding arbitration, the State Board of Education endorses in principle the concept of binding arbitration as provided for in Section 10-153a et seq. of the Connecticut General Statutes and urges the General Assembly not to amend or repeal said Act, and empowers the Commissioner to take the necessary action."

Speaking for Commissioner Gerald Tirozzi at a public hearing held on this topic on February 9, by the Education Committee of the General Assembly, Lee Williamson, State Consultant for Teacher Board Negotiations, said, "The educational community has been well served by the arbitrators currently on the panel and by the administration of the arbitration process by the Department of Education. I can see no benefit in drastically changing a system that works."

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. The notification from the mediator to the agency shall indicate the items at impasse that qualify for arbitration determination. Those items shall be limited to wages and fringe benefits of a monetary nature. Following mediation the parties shall observe a 10-day cooling off period.

Effect of amendments. — The 1980 amendment substituted "the pay plan for state employees in AS 39.27.011(a)" for "AS 39.27.010" at the end of paragraph (7) of subsection (a).

Editor's notes. — The revisor of statutes, under the authority of AS 01.05.031 and § 4, ch. 58, SLA 1982, deleted "of

education" following "commissioner" in subsection (a)(4) and subsection (b), and, in subsection (a)(7), substituted "executive secretary" for "him" and "executive secretary's" for "his."

Legislative history reports. — For report on ch. 77, SLA 1972 (SB 120), see 1972 House Journal, p. 1208.

Sec. 14.20.475. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations and proceedings under AS 14.20.370 — 14.20.510. (§ 5 ch 9 SLA 1975)

Sec. 14.20.480. Effect of standards. Members of the teaching profession are obligated to abide by the professional teaching standards adopted by the commission. (§ 35 ch 98 SLA 1966)

NOTES TO DECISIONS

Applied in Renfree v. Green. Sup. Ct. Op. No. 225 (File Nos. 4394, 4481), 626 P.2d 1068 (1980).

Sec. 14.20.500. Support. In addition to available state funds, the commission shall also be financed by members of the profession in accordance with regulations adopted by the department including, if necessary, an increase in the fees for certificates. (§ 35 ch 98 SLA 1966; am § 1 ch 73 SLA 1973)

Revisor's notes. — The word "adopted" was substituted for "promulgated" by the revisor of statutes under AS 01.05.031.

Sec. 14.20.510. Short title. AS 14.20.370 — 14.20.510 shall be known as the Professional Teaching Practices Act. (§ 35 ch 98 SLA 1966)

Article 6. Negotiation and Mediation.

Section
550. Negotiation with certificated employees
555. Optional coordinated employee negotiations
560. Teachers' bargaining groups and meetings with the groups

Section
570. Mediation
580. The mediation report
590. Grievance procedures
600. Individual cases
610. Legal responsibilities of boards

14.20.510

issioner" in
n(b) and, in
l "executive
cutive secre-

rts. — For
SB 126), see

rocedure
s to regu-
ch 9 SLA

teaching
standards

funds, the
profession in
cluding, if
SLA 1966;

shall be
198 SLA

boards

§ 14.20.550

EDUCATION

§ 14.20.550

Legislative history reports. — For report on ch. 18, SLA 1970 (HB 391 am S), see 1970 Senate Journal, p. 296.

Opinions of attorney general. — While these provisions waive the state's sovereign immunity and that of its political subdivisions from having to bargain collectively with teachers in the public schools, they do not address, expressly or

even impliedly, any right to strike on the part of teachers of school districts. May 19, 1977, Op. Att'y Gen.

Teachers of school districts do not presently have the right to strike because the state has not waived its or its political subdivisions' immunity from strikes by teachers. May 19, 1977, Op. Att'y Gen.

Collateral references. — 48A Am. Jur. 2d Labor and Labor Relations, §§ 1727 — 1775.

51A C.J.S. Labor Relations, § 402.
Right of school authorities to make membership or nonmembership in teachers' association or other organization

a condition of employment as a teacher. 72 ALR 1225.

Bargainable or negotiable issues in state public employment labor relations. 84 ALR3d 242.

Union security arrangements in state public employment. 95 ALR3d 1102.

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. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)

NOTES TO DECISIONS

Constitutionality. — This section and AS 14.20.610 state two goals which apparently conflict, but since the supreme court construes this section fairly narrowly, it finds no constitutional infirmity in this section and AS 14.20.610. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Requirements of section. — This section merely requires a school board to negotiate with a union. It does not require a board to accept any particular proposal a union might offer. It does not require, and probably does not permit, a board to delegate to a union the sole power to make any decision. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

As to matters which affect educational policy and are, therefore, not negotiable, there is nevertheless

implicit in the Alaska Statutes the intention that the school boards meet and confer with the unions. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Negotiable items. — Salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

The salary of teachers is a proper subject of collective bargaining under Alaska's statutes. Rouse v. Anchorage School Dist., Sup. Ct. Op. No. 2106 (File No. 4715), 613 P.2d 263 (1980).

Nonnegotiable items. — Such items as (1) relief from nonprofessional chores, (2) elementary planning time, (3) paraprofessional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher

ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees are, under the existing statutory language, nonnegotiable. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File

Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Dismissal of complaint held proper. — Change in teachers' salaries brought about by contract renegotiation did not abuse any "vested" rights entitled to judicial protection, and dismissal of the complaint for failure to state a claim for which relief could be granted was proper. *Rouse v. Anchorage School Dist.*, Sup. Ct. Op. No. 2106 (File No. 8715), 613 P.2d 263 (1980).

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 AS 14.20.560(f), 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 AS 14.20.550. (§ 22 ch 124 SLA 1975)

Sec. 14.20.560. Teachers' bargaining groups and meetings with the 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 per cent 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.

(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. (§ 1 ch 18 SLA 1970; am § 1 ch 201 SLA 1975)

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 mediator may appoint an advisory arbitrator to review the issues and make recommendations for solution. (§ 1 ch 18 SLA 1970; am § 2 ch 201 SLA 1975)

Sec. 14.20.590. Grievance procedures. Negotiations agreements executed after July 1, 1975 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. (§ 1 ch 18 SLA 1970; am § 3 ch 201 SLA 1975)

Sec. 14.20.600. Individual cases. 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. (§ 1 ch 18 SLA 1970)

Sec. 14.20.610. Legal responsibilities of boards. Nothing in 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 policies. (§ 1 ch 18 SLA 1970)

NOTES TO DECISIONS

Constitutionality. — AS 14.20.550 and this section state two goals which apparently conflict, but since the supreme court construes AS 14.20.550 fairly narrowly, it finds no constitutional infirmity in AS 14.20.550 and this section. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

As to matters which affect educational policy and are, therefore, not negotiable, there is nevertheless implicit in the Alaska Statutes the intention that the school boards meet and confer with the unions. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Negotiable items. — Salaries, fringe benefits, the number of hours worked, and the amount of leave time are negotiable. *Kenai Peninsula Borough School Dist. v. Kenai Peninsula Educ. Ass'n*, Sup. Ct. Op. No. 1537 (File Nos. 2470, 2492, 2563), 572 P.2d 416 (1977).

Nonnegotiable items. — Such items as (1) relief from nonprofessional chores, (2) elementary planning time, (3) paraprofessional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher rep-

§ 14.20.610

school day,
ll be released
r loss of pay.

10 days each
iation report.
an additional
port.
governor may
make recom-
01 SLA 1975)

as agreements
id provide for
evance proce-
all be binding
method for the
:01 SLA 1975)

14.20.550 —
l board, as an
ool board for

Nothing in AS
ion or delega-
e school board
§ 1 ch 18 SLA

— Salaries, fringe
hours worked, and
me are negotiable.
gh School Dist. v.
Ass'n, Sup. Ct. Op.
0, 2492, 2563), 572

s. — Such items as
essional chores, (2)
time, (3) parapro-
cher specialists, (5)
class size, (7)
(8) a teacher
her evaluation of
hool calendar, (11)
nal materials, (12)
department heads,
r preparation and
(14) teacher rep-

§ 14.20.620

EDUCATION

§ 14.20.630

resentation on school board advisory com-
mittees are, under the existing statutory
language, nonnegotiable. Kenai Peninsula
Borough School Dist. v. Kenai Peninsula

Educ. Ass'n, Sup. Ct. Op. No. 1537 (File
Nos. 2470, 2492, 2563), 572 P.2d 416
(1977).

Article 7. Interstate Agreement on Qualification of Educational Personnel.

Section

620. Entry into agreement
630. Terms and provisions of agreement
640. Designated state official to make
contracts

Section

650. Filing and publishing of contracts

Sec. 14.20.620. Entry into agreement. The interstate Agreement on Qualification of Educational Personnel is enacted into law and entered into in behalf of the State of Alaska with all other states and jurisdictions legally joining in it in a form substantially as contained in AS 14.20.630. (§ 1 ch 83 SLA 1970)

Sec. 14.20.630. Terms and provisions of agreement. The terms and provisions of the agreement referred to in AS 14.20.620 are as follows:

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL.

ARTICLE I. PURPOSE, FINDINGS, AND POLICY.

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated. declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence,

**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)



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

147 S FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

NEA-Alaska Position Statement Teacher Negotiations Law AS 14.20.550-610

The absence of finality to the process of teacher negotiations is not in the public interest of the State of Alaska and is inconsistent with the public policies of the State as they pertain to employer/employee relationships for all other public employees.

Collective negotiations is well established in both the public and private sectors as the best procedure for employees to equitably share in the decision making processes regarding their terms and conditions of employment. The State of Alaska in AS 23.40.070, the public employee negotiations law, has further stated that it is the public policy of the State to promote harmonious and cooperative relationships between employees and government and that government will be more effective and responsive when employees have such opportunity.

The current teacher negotiations law fails every reasonable test relative to equity and effective bilateral decision making.

- There is no meaningful incentive for school boards to reach agreement on terms and conditions of employment as a result of the good faith negotiations requirement.
- The dispute settlement mechanism does not achieve finality in the process.
- The law does not define unfair labor practices.
- There is currently no administrative procedure for resolution of alleged unfair labor practices except through costly and time consuming court procedures.
- Bargaining unit determination procedures are ambiguous at best.
- Time, energy and valuable resources (human and financial) are being spent in a collective bargaining process which is substantially increasing in its length and its frustrations.
- The right of employees to organize and participate in matters pertaining to negotiations does not have adequate statutory protection.
- The law is silent on the negotiation of fair representation fees.

Minimally, the legislative reform should address finality through arbitration, preferably final offer on an item by item basis.

Final offer interest arbitration is the only effective labor relations alternative to strike as a method of achieving finality to a negotiations dispute.

In the public sector it is a better alternative than strike, in that it provides for a continuity of services and does not adversely effect the public interest, health, safety, and welfare.

Final offer interest arbitration is effective because it represents a risk for both parties to a dispute and it subjects their positions to neutral scrutiny, thus causing them to be more defensible and rational.

The reality of final offer interest arbitration is that a very low percentage of disputes actually end up in written arbitration awards. The mere presence of such an arbitration procedure enhances the settlement potential and results in more bilateral agreements between the parties short of the arbitration itself.

In his dissenting opinion in the Supreme Court determination that teacher strikes are illegal, Justice Rabinowitz said: "If public school teachers are so essential to society that they must be denied the right to strike then they should be given the right to compulsory arbitration".

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 in excess of 80%.

The NEA-Alaska desire for finality through arbitration has been a matter of record for a number of years. Our commitment only intensifies as each round of bargaining with school districts produces a lengthening process and greater frustrations for our members.

NEA-Alaska recommends the following as minimal revision to AS 14.20.550-610.

- a) Include a policy statement similar to PERA (As 23.40.070)
- b) Clarify procedures regarding questions of representation and bargaining unit determination
- c) ESTABLISH FINAL OFFER (item by item) ARBITRATION AS THE NEGOTIATIONS DISPUTE SETTLEMENT MECHANISM
- d) Define unfair labor practices
- e) Provide administrative procedures for resolution of alleged unfair labor practices
- f) Establish an agency for administration of the teacher negotiations law
- g) Provide non certified public school employees access to a negotiations law.

The following points effectively summarize the positive effect of the recommended revisions to the teacher negotiations law.

1. Achieves finality in an expeditious way
2. Reinforces equity in the process
3. Reinforces good faith negotiations
4. Final offer is a risk for both parties
5. Final Offer forces the position to be defensible, rational
6. Third party assistance is sometimes necessary/desirable
7. An improper award can be challenged in court and set aside
8. Currently, too much time, money and energy is wasted in the impasse process
9. Management rights/prerogatives are protected by statute
10. Arbitration stops strikes
11. The public favors interest arbitration.

Attached please find:

- a) Summary of the Connecticut final offer arbitration law. It was passed subsequent to the 1979 Bridgeport teacher strike (the Anchorage teacher strike was also in 1979). The effect has clearly been an increase in the number of bilateral agreements reached short of the arbitration award itself. (Phi Delta Kappan)
- b) An article summarizing the viability and acceptability of arbitration as an alternative to teacher strikes. (American School Board Journal)
- c) A summary of the mediation-arbitration process which focuses on the Wisconsin procedure.

Enclosures

R2:42

COLLECTIVE BARGAINING ALTERNATIVES

Compulsory Binding-Interest Arbitration In Connecticut

by Leo L. Mann

The state of Connecticut reacted to a bitter teacher strike by enacting a law mandating mediation and compulsory binding-interest arbitration. Now, more than two years later, Mr. Mann reports that the law may have served as a catalyst to improve the negotiation process.

LEO L. MANN (University of Bridgeport Chapter) is a professor of educational management at the University of Bridgeport, Bridgeport, Conn.

A revised Connecticut statute that took effect on 1 July 1979 may go a long way toward improving the working relationship between teacher bargaining units and boards of education in the state. The statute revision had its roots in a lengthy and bitter teacher strike in Bridgeport, the state's largest city (population 139,552), in September 1978. The 19-day strike closed all 37 Bridgeport schools; 274 members of the teacher association were jailed, and the association was assessed \$194,000 in damages. The strike sent shock waves across Connecticut.

Gov. Ella Grasso reacted by calling for change in the state law governing teacher contract negotiations. Following her lead, the Connecticut State Legislature enacted the revised law. Its significant changes are a mandated mediation process and compulsory binding-interest arbitration; this latter provision makes Connecticut the seventh state (after Iowa, Maine, Nebraska, Nevada, Rhode Island, and Wisconsin) to provide such arbitration for teachers.

The Mediation Process

Under the revised law, negotiations between a board of education and a teacher bargaining unit must begin 180 days before the board is scheduled to submit its budget. If the parties fail to reach an agreement on the terms and conditions of teachers' employment, either side may submit the issues to the commissioner of education for mediation. This action can be taken at any time during the first 60 days of negotiations. If, after the first 60 days, the parties have neither reached an agreement nor initiated mediation, the commissioner must order mediation to begin.

From a panel of mediators approved by the state department of education, the parties mutually select the person who will work with them. The parties share equally in mediation costs. The mediator must make his or her recommendations within 30 days of the date that mandated mediation began. These recommendations are not binding, however.

The school board and the teacher bargaining unit are required to report their settlement to the state commissioner of education no later than the 90th day before the board is scheduled to submit its budget. (The date for submitting a budget is determined locally.) If issues remain unresolved at this point, the matter goes automatically to arbitration.

The Arbitration Process

Connecticut's 15 arbitrators for public education disputes are appointed by the governor and must be approved by the legislature. This panel of arbitrators represents the interests of local boards of

education, certified employees, and the general public. Each of these constituencies has a voice in the selection process.

The parties in arbitration may jointly select a single arbitrator, or each may choose an arbitrator who represents its own exclusive interests. When the second option is exercised, the two arbitrators, within five days of their selection, must appoint a third arbitrator who represents the interests of the general public. This arbitrator chairs the three-member panel. As in the case of mediation, arbitration costs are shared equally by the local board of education and the teacher bargaining unit.

The law strictly specifies the next steps. The school district must hold a hearing on the 10th day after the arbitrator or arbitrators have been named. Five days prior to the hearing, the parties to the dispute and the governmental body with budgetary responsibility for the school district must be notified in writing of the time and place of the hearing. The hearing must last no longer than 20 consecutive days.

Only unresolved items are addressed at this arbitration hearing. In fact, negotiators for the two sides may continue to meet and discuss items at issue while arbitration is going on. Should the parties manage to agree on a given contract provision before arbitration ends, they can stipulate that this provision be included in the arbitration decision.

The parties submit to arbitration their respective positions on each unresolved issue in the form of a "last best offer." The arbitrator or arbitrators accept either the last best offer of the board or the last best offer of the teachers. There can be no middle ground. Each unresolved issue is handled in this way.

Six factors influence an arbitration decision: 1) the negotiations between the parties before entering arbitration, 2) the public interest and the financial capability of the school district, 3) the interests and welfare of the employee group, 4) changes in the cost of living, 5) the existing employment conditions of this 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.

The arbitrator(s) must present a decision in writing within 15 days after a hearing ends. This decision is binding on both parties and is not subject to rejection. Because arbitration is a quasi-judicial process, however, the law does provide for formal judicial review. Within 30 days of receiving the arbitration decision, a dissatisfied party may file a motion in superior court to annul or modify the arbitration award. After a hearing, the court may modify or annul an award if, in its judgment, the substantial rights of a party have been prejudiced.

During the first two years under the revised law, 71 Connecticut teacher contracts were settled annually for negotiation. The number of contracts settled at the table through local bargaining increased slightly, from 25 in 1980-81 to 29 in 1981-82. This represents a 5% increase in the number of contracts settled without third-party intervention.

A marked change occurred during this same interval in the number of settlements reached through mediation and arbitration. Of 53 attempted mediations in 1980-81, only 15 (28%) were successful. By contrast, 26 of 49 attempted mediations (53%) resulted in settlements in 1981-82. During this second year under the revised law, 26 of the 78 open teacher contracts (33%) were settled through mediation. In 1980-81, by contrast, only 15 of the 77 open teacher contracts (19%) were settled in this manner.

As the number of successful mediations increased between 1980-81 and 1981-82, the number of arbitration awards declined sharply. Arbitration awards accounted for 38 of the 78 teacher contract settlements (49%) in 1980-81, but such awards accounted for only 23 of the 78 settlements (29%) in 1981-82. From another perspective, 52% of open teacher contracts were settled locally or through mediation in 1980-81, and 71% were settled in this fashion in 1981-1982.

When the legislature passed the new law, a doomsday view of the future of good-faith bargaining spread across Connecticut. The fact that nearly 50% of all teacher contracts went to arbitration in the first year under the new law suggests that good-faith bargaining *did* suffer a reversal. By 1981-82, however, slightly fewer than 30% of all teacher contracts went to arbitration. This suggests that boards of education and teacher bargaining units now seek to avoid arbitration when that is possible. Both parties give up control over the final outcome when they turn to arbitration. They are left instead to implement decisions made by an external agent. Many Connecticut school districts discovered in 1980-81 that settling contracts through arbitration can be traumatic.

Because it is frequently difficult to live with the results of arbitration awards, teachers and school boards tried more vigorously to settle contracts for 1981-82 through mediation. The increase in the number of contracts settled through mediation in 1981-82 suggests that initial concern about the potential of binding arbitration to undermine good-faith bargaining in Connecticut is unjustified. The binding arbitration provision may, in fact, serve as a catalyst for improving the negotiation process between boards of education and teacher bargaining units in the state. □

What's good about binding arbitration: It puts an end to teacher strikes

By Bernadette Marczyk

IMAGINE negotiating your teacher contract months before the old contract expires, eliminating the nasty chance that contract negotiations will drag on into the summer—in short, ending once and for all the threat of a teacher strike in your school system. Connecticut has come close to making this dream a reality: The state has legislated an end to teacher strikes, and so far, the law is working. But ironically, that doesn't mean everyone is happy (see article on page 32). More on why in a moment.

Before Connecticut passed the Teacher Negotiation Act in October 1979, the state had its share of strikes and strikes threats. Not so anymore. Sponsored by the Connecticut Education Association (an affiliate of the National Education Association) and supported by the administration of the late Governor Ella Grasso, the law provides school boards a tightly structured blueprint for the process of negotiating teachers' contracts—ending, if need be, with binding arbitration. In brief, compulsory binding arbitration replaces strikes as the final step in resolving board/teacher impasses in contract negotiations.

Here's how the law mandates negotiations: The process begins when the local school board selects a budget submission date—that is, a date on which the board will submit to the local governing body its itemized estimate of what it will cost to run the system's public schools in the following year. (In Connecticut, school board budgets must be approved by the local government unit.) The school system's teacher contract negotiations then are keyed to this date (for an example, a March 15 budget-submission date for a contract that takes effect June 1). Once that date is established, no time is to be lost in beginning the negotiations process.

If the teacher contract has not been settled by the 120th day before the budget submission date, the law requires that negotiators for both the board and the teacher union mutually select a mediator who will try to help them resolve their

remaining differences. (Working back from a March 15 deadline, the mediator would be selected by November 15 of the year prior.) If the mediator's efforts do not succeed and unresolved issues still exist on the ninetieth day before budget submission (mid-December of the year prior, if March 15 is the budget submission date), both sides are compelled to begin the arbitration phase of the process.

Essentially, this phase involves choosing an arbitrator (or a panel of three arbitrators—one representing the board, one representing teachers, and one representing the public interest) to decide between the proposals submitted by each side for resolving each unresolved issue. Example: If the negotiations are stuck on two points—salary increases and teacher medical benefits—the arbitrator selected must deal with each of the two issues separately. The proposals submitted by the board and the teachers for this final judgment must represent the *last and best offer* each side is willing to make. Not only are both sides under legal mandate to settle, they also are jointly responsible for each arbitrator's fee, amounting to approximately \$200 per day per arbitrator. The cost of having failed to resolve as many issues as possible earlier in the negotiations process, then, can be quite high.

Once in arbitration, each side must present proposals dealing with each disputed issue; and each proposal must be reasonable and rationally supported by accepted norms and the practices of surrounding school districts. (A teacher union demand for 25 percent salary increases would not be considered reasonable, because it is not in line with increases teachers receive nationally or locally.) The arbitrator or panel of arbitrators then must choose between the two proposals submitted for resolving each issue: *The arbitrator cannot attempt to reach compromise, nor can they superimpose solutions of their own.* They make a simple, direct decision; the accepted proposal then becomes contractually binding on all parties—the school board, teachers, and the local governing body—for the duration of the contract period. Neither veto nor public referendum can void the arbitrated decision or any other

element of the negotiated contract. In short, the points of the legal contract by which both sides must abide are settled once and for all by a neutral third party.

On the surface, the Teacher Negotiation Act is doing exactly what it is intended to do—eliminate teacher strikes in Connecticut's public schools. The state has not experienced a teacher strike since the law's passage in 1979. Its real and sustained success, however, will depend on how the process and the end results in local school systems are perceived by the teachers, administrators, and school board members most involved. This law can be effective only as long as those involved believe it is a just and efficient way to reach a fair settlement.

To find out what both sides of school system negotiating teams think about the binding arbitration law in Connecticut, I sent a questionnaire to board members, district administrators, and teachers who have served on negotiating teams subject to binding arbitration during the first year the law was in effect. An equal number of randomly selected board and teacher union negotiators was asked to evaluate both the process and the results of the law in light of their experience.

Here's what the responses suggest: Board and bargaining unit negotiators think the law effectively accomplishes what it sets out to do. Here are the breakdowns:

- Eighty percent of all respondents say it's a good idea to have contract disputes settled by a disinterested third party. They also say the time restraints mandated do indeed expedite negotiations.

- Sixty-one percent say the last-best-offer aspect of the law is a positive factor.

- More than three-quarters say the finality of the law is important—that decisions negotiated and arbitrated cannot be rendered useless by veto of the government unit or by local referendum.

- In an open response segment of the questionnaire, respondents from both sides note that the process makes careful preparation and planning for reasonable solutions absolutely necessary. Negotiators are required to do their homework within the time allotted if they hope to present truly productive proposals.

To sum, a majority of the negotiating

team members questioned, representing boards and teacher union members equally, says the procedure defined by Connecticut's Teacher Negotiation Act are good ones and agree that the law provides suitable limitations for early contract settlements.

I also asked negotiators to evaluate their district's arbitrated contract. Of the 22 separate issues submitted for arbitration

during the first year, the issues most frequently arbitrated were salary and benefits. The arbitrated "win/loss" on these two issues was almost evenly shared, with board negotiators winning 57 percent of all benefit disputes, and teacher unions winning 68 percent of all salary disputes. Arbitrated far less frequently than monetary issues during the first year of arbitration were education

issues, such as length of school day, and issues dealing with teachers' rights, such as leave policies.

Board board and teacher union negotiators who've been subject to the arbitration process—and who've had the opportunity to live with the results—approve, on the whole, of the contracts developed under binding arbitration. Only 6 percent

(Continued on page 34)

Binding arbitration

(Continued from page 32.)

only that the resultant contracts were decidedly poor; 75 percent characterized their contracts as moderately good or excellent.

At first glance, then, all these responses suggest that Connecticut's unique approach to negotiating teacher contracts not only is eliminating conflict in the public schools but also is perceived as a fair and efficient one by all involved. Appraisals, however, are striking. The responses also reveal a significant snag. School board negotiators, despite their perception of the law as an effective avenue to a fair contract, remain philosophically opposed to the concept of compulsory binding arbitration. When asked to indicate a stand either supporting or opposing compulsory binding arbitration, 75 percent of the board members questioned say they oppose Connecticut's binding arbitration law. They view the use of arbitration as an unlawful violation of their powers as an elected body, and they believe a disinterested arbitrator panel or single outside arbitrator should not be given the authority to make ultimate decisions affecting a community to which they have no retained responsibility. The stand taken by board members isn't unusual. It reflects the organized position regarding compulsory binding arbitration taken by the Connecticut Association of Boards of Education (C.A.B.E.). C.A.B.E. in fact has challenged the constitutionality of Connecticut's Teacher Negotiation Act in court and is awaiting a decision.

More surprising, perhaps: The Connecticut State Federation of Teachers (C.S.F.T.)—the Connecticut Education Association's rival teacher union—has joined forces with C.A.B.E. in voicing regard of the law. C.S.F.T. traditionally has favored a different approach to resolving contract impasses and stands opposed to any system that inhibits the right of teachers to negotiate freely and to strike if need be.

Connecticut's arbitration law seems to be recognized by all those directly involved as an effective piece of legislation producing generally equitable settlements, yet a strong philosophical challenge to its existence has been mounted on two fronts, and the future of this legislative approach to negotiated peace in the classroom will have to be decided in a courtroom. Connecticut's plan must pass the test of constitutionality if it is to survive as an alternative to teacher strikes. □

34



*Midwest Center for
Public Sector Labor Relations*

IMPASSE RESOLUTION IN THE PUBLIC SECTOR: NEW DIRECTIONS

A Practitioner's Guide



SCHOOL OF PUBLIC AND
ENVIRONMENTAL AFFAIRS

INDIANA UNIVERSITY, BLOOMINGTON

MEDIATION-ARBITRATION REDUCES MUNICIPAL STRIKES

The number of municipal employee strikes in Wisconsin has sharply declined since mediation-arbitration techniques were imposed in 1978. The procedure involves many steps leading toward impasse resolution with the object of voluntarily reaching settlement along the way. Its aim is to avoid arbitration. Only mandatory subjects of bargaining can be resolved by this procedure. It has promoted an equalization of wage schedules and contract terms from one municipality to another.

Wisconsin has had a collective bargaining law for the private sector since the 1930s. The Wisconsin Employment Relations Commission (WERC) has operated since the late 1930s under this law. In 1959, Wisconsin adopted its first collective bargaining law for public employees. Currently, there are five separate laws for Wisconsin's public employees.

The method of resolving impasses varies from one group to another. Under the plan pertaining to state employees, impasses are to be resolved by mediation and factfinding if mutually requested by both parties. Under a separate law applying only to the City of Milwaukee police force, impasses are to be resolved by wide-open interest arbitration. The arbitrator can select either of the party's offers or anything in between. Another law pertains only to the City of Milwaukee firefighters. The final step for resolving impasses among these firefighters is factfinding.

All other police and firefighters in the state of Wisconsin not employed by the City of Milwaukee are covered by final offer, total package, interest arbitration. This law has been on the books since 1971.

Strikes Spur Lawmakers

The fifth law covers municipal employees only. It has been in effect since 1959, but there have been many changes in the law over the last 20 years. Several strikes by municipal employees in the early and mid-1970s provided the impetus for legislators to change the law to provide mediation-arbitration as a technique for resolving impasses.

One strike which attracted national attention and emphasized the need for a new mode of impasse resolution involved the Hortonville School District. Negotiations became deadlocked. But mediation of the Hortonville dispute failed to reach a settlement, and the case went to factfinding. The teachers struck and all of them were fired. However, the Wisconsin Supreme Court declared that the teachers had been denied due process and ordered them to be reinstated. The school board appealed the ruling to the U.S. Supreme Court which overturned the State Court's ruling and declared that the teachers had not been denied due process.

Controversy over the Hortonville school strike led to the formation of a legislative study committee which was composed of representatives from the teachers and the school management as well as neutral individuals. After holding statewide hearings on the problem, the committee proposed the prototype of the present mediation-arbitration law.

However, the Wisconsin Legislature did not pass the committee's proposal into law the first time it was introduced in 1975. Public sector strikes continued. Two were school district strikes involving major employees in Wisconsin. One strike lasted approximately seven weeks, and the other continued for 13 weeks. These strikes, along with the Hortonville controversy, spurred legislators to pass the amendments to the municipal employees law providing for mediation-arbitration. Legislators viewed mediation-arbitration as a way to end strikes and give an air of finality to the collective bargaining process. A sunset provision was added which calls for the reinstatement of the old law if the new legislation is not reenacted or amended by October 31, 1981. The old law provided factfinding as the final step of impasse resolution.

Law Includes Public

The 1978 amendments to the municipal employee law require that the parties notify the Commission that they are going to begin negotiations. They also must notify the news media that negotiations are going to begin. The parties must present the initial proposals and the rationale behind these proposals at open public meetings. After these initial meetings in public, it is presumed that all further negotiations will be conducted in private, unless both parties agree otherwise.

If the parties cannot reach agreement after a period of negotiations, the parties or the State Commission initiates mediation. WERC sends one of its staff members or one of the Commissioners to mediate the dispute.

Provides Mediation-Arbitration

If the dispute remains unresolved after mediation, one or both of the parties may petition for mediation-arbitration. In about 80% of the cases there usually has been some effort at mediation before the parties petition for mediation-arbitration.

After the petition is received by the State Commission the same person who mediated the impasse will investigate the situation. This investigator determines if there has been a reasonable period of negotiation between the parties as required by statute. The investigator tries again to mediate the dispute.

Parties Give Final Offers

If negotiations are still deadlocked after a reasonable period of time, each party must submit final offers to the investigator, stipulating which issues are not at an impasse. Each party has the right to read the other party's offer and, afterwards, to change its own offer.

The investigator will continue to accept offers and exchange them in this way as long as at least one party has indicated a willingness to proceed. The party which wants to change its offer submits its change to the other side. If that does not provoke the other side to make a change, the investigation is usually closed and each party is stuck with those offers as final.

Inspires Change

The usual result of such a method, however, is to inspire the parties to continue making offers after the initial exchange. The parties see more progress than they have seen before. Perhaps the parties realize that ultimately an arbitrator will have to deal with total packages and each side wants its package to be the most reasonable.

The investigation is not closed until both parties have seen one another's final offer and decided not to make any more changes. The statute is designed to avoid surprises, with the goal of voluntary settlements. Its aim is to avoid arbitration. In addition, the more each party finds out about the ultimate position that the other party is going to take, the more likely it is that people who are holding back on compromise will be weeded out. It is no longer in one's self interest to hold back because the object of mediation-arbitration is to make one's offer more reasonable than the other party's offer. There is always a possibility that what has been held back would have been the stroke necessary to create a reasonable package.

Either Party May Object

During this process, either party has the option of claiming that a certain proposal is not a mandatory subject of bargaining. Under the Wisconsin statute, only mandatory subjects of bargain-

ing can be submitted to mediation-arbitration, and each party is given the right of claiming that a proposal is permissive instead of mandatory. The challenged party has the opportunity to amend its proposal to make it a mandatory subject or to drop the item altogether.

If the parties disagree over whether the proposal is mandatory or permissive, either may petition the Commission to make a declaratory ruling. On the other hand, no disagreement may arise. If either party raises any objection about the status of the proposals, it is presumed that every issue involved is mandatory.

Under the new Wisconsin law the parties take the following steps: negotiation, mediation, petition for mediation-arbitration, investigation, submitting final offers with a stipulation of issues involved upon, and raising questions over mandatory versus permissive issues, if desired.

Parties Choose Arbitrator

Once the investigation is closed, the investigator reports to the Commission that each party is deadlocked. The Commission certifies the deadlock and provides the parties with a list of five potential arbitrators. The parties alternately strike names until one neutral is left. This person is appointed as mediation-arbitrator, often called a med-arbitrator. The employer must post a notice that a med-arbitrator has been appointed. Moreover, the statute provides the public with the right to petition the Commission for a public hearing before the med-arbitrator begins mediation. The public may only make this demand, however, in about 10% of the cases in Wisconsin.

The law requires that the med-arbitrator mediate. After the Commission certifies that the parties are deadlocked, no final offers can be changed without the consent of both parties. Generally, unless both parties are able to make their positions a little more reasonable, those positions are frozen.

Shift Varies

During this process, everyone in the dispute is aware that the med-arbitrator must ultimately choose one of the final offers if the parties do not reach a mediated settlement. Some arbitrators don't like this because they prefer to fashion their own remedy. Each med-arbitrator has his or her own style. Some med-arbitrators are noncommittal, concerned about possibly prejudicing the case if it goes to arbitration. This type of med-arbitrator will ask the parties if they have any changes to make. If they say no, arbitration begins. Whereas, other med-arbitrators believe that the intent of the statute is to encourage voluntary settlements. These med-arbitrators first try to mediate.

Individuals vary in their techniques. Some med-arbitrators may even offer their own proposal if they feel there is a possibility of settlement. If no one accepts it, one of the final offers will be chosen. The med-arbitrator notifies the parties that a hearing will be held and that each party should be prepared to present evidence on its final offer. The med-arbitrator no longer acts as a mediator. He or she now becomes an arbitrator. And the parties split the costs of this med-arbitrator.

Parties Present Evidence

Each party presents its evidence, usually in the form of briefs. The med-arbitrator makes a decision on which package is more reasonable, using criteria set forth in the statute. The med-arbitrator must take into consideration:

• The lawful authority of the municipal employer,

• The stipulations of the parties,

• The financial ability of the government unit to meet the settlement costs,

• The interest and welfare of the public.

... wages, hours and conditions of employment of other municipal employees performing similar work in the same community or in private employment in the same or other communities.

... the consumer price index.

... overall compensation being received.

... changes in the foregoing during the proceedings, and

... all other factors normally and traditionally taken into consideration by factfinders and arbitrators.

The Wisconsin law is intended to encourage voluntary settlement, and procedures are built in all along the way to force the parties to do this. The arbitrator will generally devote one day to mediation and another day to an arbitration hearing. In many cases, the med-arbitrator will schedule these events on consecutive days. If the med-arbitrator fails at mediation, arbitration will occur on the following day.

Parties Can Stop Process

The filing of a prohibited practice complaint will not interrupt any med-arbitration process or delay the arbitration decision. The only way a party can stop mediation-arbitration is to question the status of a proposal. A party may raise the question whether an issue is mandatory, permissive, or illegal.

The investigation ceases until the Commission makes a decision about whether the issue is mandatory or not. If the subject is deemed mandatory, the med-arbitrator proceeds with the case. If it is ruled permissive, the affected party may change its proposal into a mandatory subject. This may, in turn, provoke the other party to make a change, and the process continues. As stated earlier, the investigation is not closed until either or both parties indicate that they are not going to make any more changes.

Law Penalizes Strikers

Under Wisconsin law, strikes are illegal except in cases where both union and employer withdraw their final offers at the time the arbitration hearing is set. The union may then give a 10-day notice, after which it may legally strike. However, citizens may enjoy the strike if they can show that the strike is harmful to the public health and safety.

The 1978 amended statute sets forth specific penalties for illegal strikes, and for legal strikes which continue after being enjoined. These penalties are far more severe than they were in the previous law. If a strike continues after an injunction, the union automatically loses its fair share and picket rights for an entire year.

Each individual who strikes is penalized at the rate of \$10 per day for being on strike. The union is charged \$2 per day for each member on strike up to a maximum of \$10,000. Moreover, the court may impose additional penalties beyond the ones specified in the statute if the union is found in contempt of court. Prior to the 1978 amendments there was a \$250 limit on contempt fines. Such a limit no longer exists. If either of the parties fails to carry out an arbitration award, it must pay civil liability, attorney's fees, and any other costs that the court decides.

Commission Interprets Law

Since the amendments went into effect in 1978, the Wisconsin Employment Relations Commission has had to issue several decisions interpreting the law. One interesting case involved an

employer who wanted the med-arbitrator to choose from three alternative wage proposals instead of only one final offer. After hearing arguments from both sides, the Commission ordered the employer to make one single final offer as provided in the statute. The employer had argued that offering alternatives would allow greater innovation in negotiations. He claimed that innovative approaches to solutions are not possible under the conservative arbitration process.

In another case, an employer said he would not participate in mediation-arbitration until the union showed its final offer to its membership. The Wisconsin Employment Relations Commission ruled that the union was under no obligation to do this as a condition for mediation-arbitration.

The Commission recently ruled that mediation-arbitration must be used when there are impasses over successor agreements, initial agreements, reopener provisions, and multiple-year agreements with wage reopeners. However, the Commission ruled that mediation-arbitration does not apply to disputes over the interpretation of contract language during a contract period. Rather a grievance arbitrator should decide on such disputes.

Declaratory Rulings Increase

One of the most notable differences in public sector labor relations since the 1978 amendments is an increase in requests for declaratory rulings. Declaratory rulings indicate which subjects of bargaining are mandatory, an important distinction because only impasses over mandatory subjects can be submitted to mediation-arbitration.

In 1977 before the law was amended, there were six declaratory rulings; since 1978 there have been 29 such rulings. Each case may involve decisions on the status of many issues. An extreme example is a case in which a party requested a declaratory ruling on 126 different issues before it would continue to negotiate.

Law Discourages Arbitration

What have been the results of mediation-arbitration in resolving impasses in Wisconsin? From January 1, 1978, to September 28, 1979, WERC has received 517 petitions for mediation-arbitration. Of these, 162 are still pending and 355 have been settled.

Of the 355 settlements, 61% were dismissed prior to certification of impasse; that is, a petition for mediation-arbitration was filed, but one of WERC's investigators was able to resolve the dispute through mediation. Four cases were dismissed after the certification of an impasse but prior to appointment of a med-arbitrator. Forty cases were dismissed after the appointment of a med-arbitrator but prior to an award.

Therefore, an analysis of these 355 settlements shows that in only 93 cases was it necessary to carry out the entire process of mediation-arbitration in order to reach a settlement. And of these 93 awards, 24 were consent or split awards. This means that the parties to the dispute reached an agreement on the contract themselves but wanted it in the form of an award. It also might mean that the parties accepted the med-arbitrator's proposal instead of either one of their own final offers. The remaining 69 awards were decided as follows: 33 for the union and 31 for the employer. Seventy percent of the mediation-arbitration cases have dealt with school employees.

Extensive mediation has been carried out by WERC without any petitioning for mediation-arbitration. There were 230 mediation requests during this same time period which resulted in settlement.

In summary, the Wisconsin Employment Relations Commission has been involved with 747 cases since January 1978. Only 93 required a mediation-arbitration award, about 13%. Twenty-four of those decisions were consent or split decisions. Therefore, the number of awards has been small in relation to the number of bargaining units in the state and to the number of petitions filed.

Med-Arbitration Alters Bargaining

This does not mean, however, that mediation-arbitration with the threat of binding arbitration has had no effect on collective bargaining in the public sector.

One apparent effect of the mediation-arbitration law has been to benefit weak unions and weak employers. Unions that have not had enough power to win certain provisions that may be standard in other contracts, such as a fair share or just cause clause, are winning these provisions now because many employers feel that they will be awarded anyway through arbitration.

Weak employers confronted with a strong union also benefit. Because only mandatory subjects may go to binding arbitration, these employers will not give in on permissive issues since there is a chance to remove these issues from the arbitration process. Thus, the mediation-arbitration procedure provides a balancing of power,

Eliminates Extremes

In the long run, mediation-arbitration also may tend to equalize wage schedules. Extremes do not exist. It appears that one contract will look like all the others after a period of time. Obviously, the people who are on the top would not be compared to the people who are on the bottom during negotiations; the tendency is for people at the bottom to move up. It is difficult for employers to justify that their employees are at the bottom of the wage scale.

Mediation-arbitration also works against unique contracts. If a union has items in its contract that no other union in the state has, it is going to encounter difficulty in trying to retain these items when the employer argues that there is nothing comparable in the state.

Issues Remain the Same

The most common issues reaching mediation-arbitration have not changed. Wages are number one, followed by fair share provisions, and health insurance. The number of items going to arbitration has decreased, however. Approximately three-fourths of the arbitration decisions deal with five or fewer issues. This reduction in issues at impasse may be related to the desire of each party to present a more reasonable final offer than the other side. In coming up with a reasonable package, the more issues there are, the greater the chance of jeopardizing the whole package.

Another result of the newly amended law has been an increase in professional negotiators at the table, especially on the employer's side. Because the law requires many procedural steps and ultimately may result in arbitration, the parties are seeking more professional assistance. To a degree, this reliance on professionals has helped the parties avoid mediation-arbitration. If competent professionals who do their homework are negotiating on both sides of the table, they will have a good idea of the positions which can legitimately be maintained. This makes the parties gravitate towards a realistic position and after going through all the steps of mediation, a settlement is usually reached.

Takes Seven Months

Under the mediation-arbitration provision, it averages about seven months from the time a petition has been filed to the time an arbitration award is made. Unfortunately, this seven-month lag time has had two results. It has caused some parties to settle voluntarily because they dread taking so long to get to arbitration. On the other hand, it has caused other parties to file their petitions for mediation-arbitration prematurely in the hope that by the time they really reach an impasse they will have an investigator all ready to work on their case. Such a reaction may have a chilling effect on the other party which may have been willing to make some progress in negotiations. This desire rapidly disappears once a petition for mediation-arbitration has been filed by the other party. The party

decides instead to develop a position for arbitration, dropping any strategy for a voluntary settlement.

Law Meets Goal

However, one of the primary goals of the mediation-arbitration system in Wisconsin is to eliminate strikes. In the two years since enactment, Wisconsin has had three municipal employee strikes. One lasted only two hours, the time in between mediation sessions. Another strike by a group of six custodians lasted one day. The third strike involves a sewage commission in Milwaukee and has been going for about a month. It is apparent that the new law has met this goal. Strikes have been sharply reduced.

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 19, 1985

Representative Drue Pearce
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

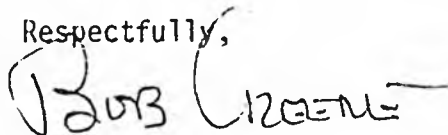
Dear Representative Pearce:

At the Labor and Commerce Committee hearing Monday evening, you asked me why four districts of the state had not concluded collective bargaining agreements with their teachers. I did not know the answer at that time.

This morning I asked my staff to research the question and the information is provided for you here. Hopefully it has some bearing on the discussions of the evening.

Thank you for your sincere interest in the issues before us.

Respectfully,



Robert C. Greene
Executive Director

RCG/sam
encl.

cc: Representative Navarre
Representative Collins
Representative Hanley
Representative Davis
Representative Koponen
Representative Boucher
Gayle Pearce, NEA, Alaska

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 19, 1985

Northwest Arctic-Negotiating History: At the direction of the Board, management went to the table to retrieve management rights that had been eroded in previous contracts. The primary issue was involuntary transfer. Northwest Arctic School District had, through a grievance arbitration, lost the ability to transfer staff most able to meet program needs and were trying to regain that right at the table.

Hard bargaining occurred with the Board and District Administration firm on their intentions to gain language concessions as a quid pro quo for economic increases. Impasse occurred followed by mediation and finally advisory arbitration in late August. The arbitration report, received in late October, split the economic issues between management and the Association but left old contract language in place on the policy issues.

The Board rejected the arbiter's report and the parties went back to the table in December. The Board's position regarding involuntary transfer remained the same and an additional issue was retroactivity of any salary increase. The Association insisted on taking the issues once again to mediation. The Board's position was that a tentative agreement was close if the parties would stay at the table; however, if the Association insisted on the mediation process--with the time delay that it involved--the Board would not agree to make the economic items retroactive to July 1 of the previous year.

The parties went to mediation a second time. Following that a tentative agreement was worked out, with the exception of the effective date of salary increases.

The Association, in violation of the bargaining ground rules, calling for a consensus to be reached and a joint report to go to the Association and the Board, took the tentative agreement to their membership without management's concurrence. Unilaterally the Association added a retroactive date of July 1, 1984 for salary increases and changed the wording of the tentatively agreed upon Involuntary Transfer clause. The Board refused to accept the changes the Association had unilaterally made to the tentative agreement. The parties are still negotiating these final two issues.

Al Weinberg has been the Chief spokesperson for the Board throughout the entire process. There has never been a change in negotiators, nor has Mr. Weinberg even had any miscommunications with the Board. His authority at the table has been absolute and always within the Board's parameters.

During the entire process the provisions of the old contract have been adhered to by the Administration. Salary increments have been granted, leave and all other benefits have continued.

TWO OTHER DISTRICTS HAVE NOT YET SETTLED:

Lower Kuskokwim: The parties went to mediation and arbitration over the primary issue of salaries. The arbitrator's time schedule precluded hearing the case until after Christmas. The arbiter's report was due in early March, but due to his illness has not yet been received.

Lower Yukon: Following mediation and advisory arbitration the parties are back at the table. The district is insisting on stronger management language regarding transfer and reduction in force, and is trying to increase the length of the work year. The Association wants an increase in Association leave time, preparation time, extra duty pay and salary, while the Board is trying to hold the line. The salary increase for last year was seven percent.

RECENTLY SEYTLED:

Yukon-Koyukuk: Reached tentative agreement in late February. Negotiations were held up in this district when the Association insisted that principal-teachers be included in the bargaining unit, although this group had many years ago opted to negotiate separately as part of the Administrator's bargaining unit. The Association filed for a restraining order, which was denied by the court. Following that the parties bargained an agreement without mediation or arbitration.

ASSOCIATION OF ALASKA SCHOOL BOARDS

326 Fourth St., Suite 510 • Juneau, Alaska 99801 • (907) 586-1083

March 20, 1985

17

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch ✓
Juneau, AK 99811

Dear Representative Navarre:

As you have requested, I am providing your committee with proposed language pursuant to H.B. 130 relative to collective bargaining between school boards and their employees.

You have specifically asked for a Management Rights provision. The attached recommended language is a direct derivative of the labor relations statute for all public employees in the state of Iowa. Language changes were necessary only to the extent that your request targets school district employees and the Iowa language targets public employees. I believe there are no substantive changes in my proposed language.

I have also included an Employee Rights section for consideration by the committee which is also derived from Iowa.

The following is language which AASB would propose for H.B. 130:

Insert on page 7, after line 11:

"(c) An employee is entitled to

(1) organize, form, join, or assist an employee organization;

(2) negotiate collectively through representatives of the employees' choosing;

(3) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection if the activity is not prohibited by law;

(4) refuse to join or participate in the activities of employee organizations, including the payment of dues, fees, or assessments or service fees of any type."

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
March 20, 1985
Page two

Insert on page 8, after line 9, a new section that reads:

"* Sec. 13. AS 14.20.610 is amended by adding a new subsection to read:

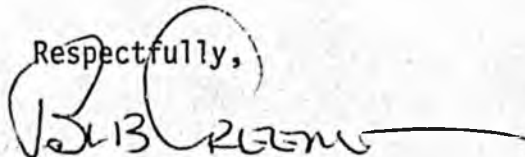
(b) In addition to the powers and duties established by law, a school board has the ~~exclusive~~ power and duty to

- (1) direct the work of its employees;
- (2) hire, promote, demote, transfer, assign, and retain employees in positions within the school district;
- (3) suspend or discharge school district employees for proper cause;
- ~~(4) maintain the efficiency of governmental operations;~~ *educational*
- 4 (5) relieve school district employees from duties because of lack of work or for other legitimate reasons;
- 5 (6) ascertain and implement the methods, means, assignments and personnel by which the school district's operations are to be conducted;
- 6 (7) take actions necessary to carry out the duties of the school district; and
- 7 (8) initiate, prepare, certify, and administer its budget."

The remaining sections of the bill should be renumbered accordingly.

Thank you again for the opportunity to have the concerns of school boards be so well received by you and your committee.

Respectfully,



Robert C. Greene
Executive Director

RCG/sam

insurance rates is legal because the college's paying is for the "benefit" of its employees [Western Iowa Tech. Comm. Coll. v. W.I.T.C.C. Ed. Assn. (Ia. Dist. Ct., Woodbury Cnty.), No. 92926, 5-1-78].

PERB has ruled that reimbursement for educational opportunities is bargainable as wages [Eastern Iowa Comm. Coll. Merged Area IX and Eastern Iowa Comm. Coll. Higher Ed. Assn., PERB, 2-1-78].

Nothing in this section shall diminish the authority and power of the merit employment department, board of regents' merit system, educational radio and television facility board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct, and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

Annotation: Though Civil Service Law for deputy sheriffs could be superseded by bargaining agreement negotiated under

PERB held that wages paid teachers because of increased workloads was a mandatory rather than permissive subject of bargaining [Urbandale Ed. Assn. and Urbandale Comm. Sch. Dist., PERB, 1-18-77].

School district violated PERA by changing its paid leave policy without negotiating with union on a mandatory subject of bargaining [Ames Ed. Assn. and Ames Comm. Sch. Dist., PERB Hearing Officer, 9-2-76].

PERA, civil service procedures for discipline would prevail [OAG No. 77-2-14, 2-23-77].

All retirement systems shall be excluded from the scope of negotiations. [Am. L. 1977, H.F. 634.]

[§11,110] 20.10 Prohibited practices. 1. It shall be a prohibited practice for any public employer, public employee, or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section nine (9) of this Act.

Annotations: Employer's unilateral insistence on open negotiating sessions demonstrates bad faith and is an unfair practice [Burlington Comm. Sch. Dist. v. PERB (Ia. S. Ct., 1978) 268 NW2d 517].

Though PERA doesn't require an employee organization to notify an employer that it has rejected a tentative agreement, PERB said such lack of notification may be a failure to bargain in good faith [City of Dubuque, Iowa and Dubuque Assn. of Prof. Firefighters, Local 353, PERB, 9-8-77].

A second final offer during arbitration constitutes a refusal to negotiate in good faith [Southwestern Comm. Coll. Ed. Assn.

and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

Duty to bargain in good faith requires employer to provide union with information substantiating its inability to grant salary increases [Sergeant Bluff-Luton Ed. Assn. and Sergeant Bluff-Luton Comm. Sch. Dist. and Iowa Assn. of Sch. Bds., PERB Hearing Officer, 7-18-77].

Refusal by school district to grant paid leave to teachers attending delegates meeting of Iowa State Education Association is a prohibited practice designed to discourage union participation [Ames Ed. Assn. and Ames Comm. Sch. Dist., PERB Hearing Officer, 9-2-76].

2. It shall be a prohibited practice for a public employer or his designated representative willfully to:

- a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this Act.

Annotation: Superintendent released survey and memo to teachers outlining consequences of wage increases. PERB found release of survey, along with release of portions of memo, to be co-

ercive and an attempt at individual bargaining [Akron Ed. Assn. and Akron Comm. Sch. Dist., PERB, 7-5-78].

- b. Dominate or interfere in the administration of any employee organization.
- c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- d. Discharge or discriminate against a public employee because he has filed an affidavit, petition, or complaint or given any information or testimony under this Act, or because he has formed, joined, or chosen to be represented by an employee organization.
- e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this Act.
- f. Deny the rights accompanying certification or exclusive recognition granted in this Act.
- g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.

Annotation: A second final offer during arbitration is a refusal to participate in good faith in agreed-upon impasse procedures

[Southwestern Comm. Coll. Ed. Assn. and Southwestern Comm. Coll., PERB Hearing Officer, 9-1-77].

h. Engage in a lockout.

3. It shall be a prohibited practice for public employees or any employee organization or for any person, union, or organization or their agents willfully to:

- a. Interfere with, restrain, coerce, or harass any public employee with respect to any of his rights under this Act or in order to prevent or discourage his exercise of any such right, including, without limitation, all rights under section eight (8) of this Act.
- b. Interfere, restrain, or coerce a public employer with respect to rights granted in this Act or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.
- c. Refuse to bargain collectively with a public employer as required in this Act.
- d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this Act.
- e. Violate section twelve (12) of this Act.
- f. Violate the provisions of chapter seven hundred thirty-six B (736B), sections one (1), two (2) and three (3) of the Code, which are hereby made applicable to public employers, public employees and public employee organizations.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, or persons appointed or employed by the board, including hearing officers for the performance of its functions. The board may petition the district court at the seat of government or of the county wherein any hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules and regulations in accordance with the provisions of chapter seventeen A (17A) of the Code as it may deem necessary to carry out the purposes of this Act.

[§11,107] 20.7 Public employer rights. Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign, and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify, and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

Annotation: Public employer can't unilaterally demand open bargaining sessions [Burlington Comm. Sch. Dist. v. PERB (Ia. S.Ct., 1978) 268 NW2d 517].

[§11,108] 20.8. Public employee rights. Public employees shall have the right to: 1. Organize, or form, join, or assist any employee organization.

2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this Act or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

Annotations: PERA provision protecting "concerted activities for the purpose of collective bargaining or other mutual aid or protection" protects an employee's labor relations conduct, even if no union is involved [AFSCME Iowa Organizing Committee and Madison Cnty. Secondary Roads Dept., PERB Hearing Officer, 9-10-76].

Public hospital erred in discharging employees for attempting to organize others since a clear right exists under PERA to organize [AFSCME and Jackson Cnty. Public Hospital, PERB Hearing Officer, 6-9-76].

[§11,109] 20.9 Scope of negotiations. The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Annotations: Insurance for dependents is a mandatory subject of bargaining. Payment of grievance committee members for processing grievances during worktime is not [Charles City Comm. Sch. Dist. v. PERB (Ia. S. Ct., 1979) 275 NW2d 766].

Clothing or a clothing allowance is not a mandatory subject of bargaining under either wages or supplemental pay [City of Fort Dodge v. PERB and Local 6-502, Oil, Chem. and Atomic Workers Intl. Union, AFL-CIO (Ia. S. Ct., 1979) 275 NW 2d 393].

Union proposal providing for employee's advancement on the salary schedule through completion of college courses in employee's teaching or certified field is a mandatory subject of bargaining because advancement on the scale determines wages. [Charles City Ed. Assn. v. PERB and Charles City Comm. Sch. Dist. (Ia. Dist. Ct., Polk Cnty.) No. CE 10-5683, 3-22-79].

PERA doesn't authorize any bargaining with minority representatives; therefore, "public employers and minority employees' organizations would commit breaches of Iowa law by permitting and requesting dues checkoff for a minority union" [OAG No. 79-3-1, 3-7-79].

Health and welfare insurance for retiring employees and their families is a mandatory subject of bargaining [City of Mason City and Teamsters, Local 828, PERB, 2-13-79].

Unused sick leave pay is a form of teacher compensation which may be paid in a lump sum at retirement [Bettendorf Ed. Assn., et al. v. Bettendorf Comm. Sch. Dist. (Ia. S. Ct., 1978) 262 NW2d 550].

Contract requiring community college to pay 50% of the differential between single and family member health and accident

**KENAI PENINSULA BOROUGH
SCHOOL DISTRICT and Kenai Penin-
sula Borough, Appellants,**

v.

**KENAI PENINSULA EDUCATION
ASSOCIATION, Appellee.**

**ANCHORAGE BOROUGH EDUCATION
ASSOCIATION, Appellant,**

v.

**GREATER ANCHORAGE AREA BOR-
OUGH, ANCHORAGE BOROUGH
SCHOOL DISTRICT, Appellee.**

**MATANUSKA-SUSITNA SCHOOL
DISTRICT, Appellant,**

v.

**MATANUSKA-SUSITNA EDUCATION
ASSOCIATION, Appellee.**

Nos. 2470, 2492 and 2563.

Supreme Court of Alaska.

Dec. 9, 1977.

In two separate actions, teachers' associations sued school district and boroughs to compel collective bargaining in good faith. In third action, school board sought declaratory judgment that certain issues were not bargainable. Appeals were taken from judgments of the Supreme Court, Third Judicial District, Kenai and Anchorage District, James A. Hanson, Victor D. Carlson and C. J. Occhipinti, JJ., ruling in favor of school boards in one action, in favor of teachers' union in another, and in third action, in favor of board on some issues and union on others. The Supreme Court, Connor, J., held that: (1) salaries, fringe benefits, number of hours worked and amount of leave time are negotiable and (2) relief from nonprofessional chores, elementary planning time, paraprofessional tutors, teacher specialists, teacher's aides, class size, pupil-teacher ratio, teacher ombudsman, teacher evaluation of administrators, school calendar, election of instructional materials, use of secondary department

heads, secondary teacher preparation and planning time and teacher representation on school board advisory committees are nonnegotiable.

Affirmed in part, reversed in part.

1. Labor Relations ⇌ 178

Questions concerning public school teachers' salaries, number of hours to be worked and amount of leave time are all so closely connected with economic well-being of individual teacher that they are negotiable and subject to collective bargaining under statutes governing negotiation with certificated employees and legal responsibilities of school board. AS 14.20.550, 14.20.610.

2. Labor Relations ⇌ 178

Following specific items pertaining to public school teachers are, under existing statutory language, nonnegotiable: relief from nonprofessional chores; elementary planning time; paraprofessional tutors; teacher specialists; teacher's aides; class size; pupil-teacher ratio; teacher ombudsman; teacher evaluation of administrators; school calendar; selection of instructional materials; use of secondary department heads; secondary teacher preparation and planning time, and teacher representation on school board advisory committees. AS 14.20.550, 14.20.610.

3. Labor Relations ⇌ 179

As to matters which affect educational policy and are therefore not negotiable, there is implicit in statutes governing negotiation with certificated employees and legal responsibilities of school board intention that school boards meet and confer with union and it is desirable that boards consider teacher proposals on such questions. AS 14.20.550, 14.20.610.

4. Statutes ⇌ 216

Even if it were placed in evidence, reliance upon privately expressed opinion in

letter of a former legislator in construing statutes governing negotiation with certificated employees and legal responsibilities of school boards should be impermissible, and therefore resort to letter as means of legal interpretation was therefore error in action in which collective bargaining requirements for public school teachers was in issue. AS 14.20.550, 14.20.610.

Allen McGrath and John R. Snodgrass, Jr., of Graham & James, Anchorage, for School Districts.

John R. Strachan, Anchorage, for Education Associations.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR, ERWIN and BURKE, Justices.

CONNOR, Justice.

These cases present important questions of labor law and constitutional law concerning the collective bargaining requirements for teachers in the public schools. Two of these cases are before us because the teachers' associations (the unions) have sued school districts and boroughs (the school boards) to compel collective bargaining in good faith under AS 14.20.550. In the third, a school board seeks a declaratory judgment that certain issues are not bargainable. The school boards, while not disputing the unions' right to collective bargaining on a number of employment-related issues, contend that they should not be forced to bargain collectively on various items which they regard as affecting educational policy. Educational policy, the school boards contend, must be determined only by the public through the legislature and, by delegation, through the school boards. We

1. *Anchorage Borough Ed. Ass'n v. GAAB, Anchorage Borough School Dist.*, No. 2492 (hereinafter Anchorage).

2. *Kenai Pen. Borough Sch. Dist. and Kenai Pen. Borough v. Kenai Pen. Ed. Ass'n*, No. 2470 (hereinafter Kenai).

will examine the more specific issues later in this opinion. They include such items as class size and the use of teacher specialists and para-professionals. Of the three trial courts which passed on the matter, one ruled in favor of the school boards,¹ one ruled in favor of the teachers' union,² and one split the various items, ruling for the board on some and the unions on others.³

I. Introduction

To facilitate the understanding of our more detailed legal discussion later in this opinion, we will summarize at the outset the contentions of the parties. The statutes at issue in this litigation are AS 14.20.550 and .610, which provide:

"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. (§ 1 ch 18 SLA 1970; am § 3 ch 71 SLA 1972; am § 21 ch 124 SLA 1975)."

"Sec. 14.20.610. *Legal responsibilities of boards.* Nothing in §§ 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. (§ 1 ch 18 SLA 1970)."

The boards contend, using labor cases from the private sector, that the requirement of collective bargaining in good faith is a term of art in labor law. Unlike a simple "meet and confer" requirement, to negotiate in "good faith" entails a duty to make concessions. Thus, management does

3. *Matanuska-Susitna Sch. Dist. v. Matanuska-Susitna Ed. Ass'n*, No. 2563 (hereinafter Mat-Su).

not have the final decisions on matters subject to good faith collective bargaining, since if management adheres to its determined policies, it violates the law.

The school boards contend that the submission of educational policies to a good faith collective bargaining requirement would remove the final decisions on such matters from the boards, contrary to the intent of the legislature expressed in AS 14.20.610. The boards contend that to require bargaining on questions of educational policy would also contravene the Alaska Constitution, art. VII, § 1, which makes education the exclusive domain of the legislature.⁴ See *Macauley v. Hildebrand*, 491 P.2d 120 (Alaska 1971). Delegation of part of the decision-making power on educational policy to labor unions is unconstitutional, they urge, because the union is a private organization, unaccountable to the public. The union can use the power for its own ends, and is under no duty to foster educational policies which are in the general public interest.

The unions argue that such delegation is perfectly proper, and that there is no delegation of decision-making power inherent in a labor negotiations requirement. They further argue that they represent professional employees, and that their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of

any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

The unions argue that the Alaska teachers' collective bargaining statutes are more comprehensive than those found elsewhere, and hence the scope of bargaining should be interpreted broadly. The school boards assert that the Alaska Constitution as interpreted in *Macauley v. Hildebrand, supra*, is more adamant than provisions in other states in placing education firmly within the legislative prerogative. Therefore, collective bargaining must yield across a wide range of issues affecting educational policy.

II. Scope of the Duty to Bargain

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.⁵ Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining

4. Alaska Constitution, art. VII, § 1 states:

"The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

5. *Fibreboard Paper Products Corp. v. N. L. R. B.*, 379 U.S. 203, 85 S.Ct. 308, 13 L.Ed.2d 233 (1964) (management decision to subcontract

out the work of some employees must be bargained); *International Ladies' Garment Workers Union v. N. L. R. B.*, 150 U.S.App.D.C. 71, 463 F.2d 907 (1972) (decision to relocate the business to another state subject to bargaining); *Royal Typewriter Co.*, 209 N.L.R.B. 1006, 1012 (1974) (decision to close a plant subject to bargaining). But see *General Motors Corp.*, 191 N.L.R.B. 951 (1971), *aff'd sub nom.*, *International Union, United Auto. A. & A. Imp. Wks. v. N. L. R. B.*, 152 U.S.App.D.C. 274, 277, 470 F.2d 422, 425 (1972) (decision to sell part of business not bargainable).

does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.⁶ Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

When we turn to employment in the public sector, and particularly in education, the question of what is properly bargainable is thrown into more doubt. If teachers' unions are permitted to bargain on matters of educational policy, it is conceivable that through successive contracts the autonomy of the school boards could be severely eroded, and the effective control of educational policy shifted from the school boards to the teachers' unions. Such a result could threaten the ability of elective government officials and appointive officers subject to their authority, in this case the school boards and administrators, to perform their functions in the broad public interest.⁷

Recently the United States Supreme Court had occasion to comment upon the differences between collective bargaining in the public and private sectors. In *Abood v. Detroit Board of Education*, 431 U.S. 209, 227-28, 97 S.Ct. 1782, 1795-96, 52 L.Ed.2d 261, 279-80 (1977), the Court, speaking through Mr. Justice Stewart, observed:

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are

often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondingly less concerned that high prices due to costly wage demands will decrease output and hence employment.

The government officials making decisions as the public 'employer' are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority—department managers, budgetary officials, and legislative bodies—are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives, who sit on the other side of the bargaining table. Whether these representatives accede to

effort in some direction to compose his differences with the union"; emphasis in original); *Majure v. N. L. R. B.*, 198 F.2d 735 (5th Cir. 1952). See generally Swerdlow, *Freedom of Contract in Labor Law*, 51 *Tex.L.Rev.* 1 (1972).

7. As one commentator has noted, "what is in the best interest of the students and the community is not always in the best interests of teachers." Rund, *Symposium on Teacher Bargaining: Commentary*, 50 *Ind.L.J.* 344, 350 (1975).

6. *Sign and Pictorial Union Local 1175 v. N. L. R. B.*, 136 U.S.App.D.C. 144, 149, 419 F.2d 726, 731 (D.C.Cir. 1969); *N. L. R. B. v. General Electric Co.*, 418 F.2d 736, 756-62 (2d Cir. 1969), cert. denied, 397 U.S. 965, 90 S.Ct. 995, 25 L.Ed.2d 257 (1970); *N. L. R. B. v. McLane Co.*, 405 F.2d 423, 484 (5th Cir. 1968); *N. L. R. B. v. Reed & Rim Mfg. Co.*, 205 F.2d 131, 134-35 (1st Cir. 1953), cert. denied, 346 U.S. 887, 74 S.Ct. 139, 53 L.Ed. 391 (1953) ("the employer is obliged to make some reasonable

gative" to determine AS 14.20.610, concerns with work-management policy.

The Alaska teacher-statutes are more found elsewhere, gaining should be school boards as inter-lebrand, supra, is visions in other n firmly within Therefore, could across a wide educational policy.

to Bargain

law concerning unions and conclude that the is broad. The sector has all-oes contain, un- l trend has been bargain in good ms with respect r conditions of i to whether the s bargained for es of manage- es hold that for to avoid being bad faith, the asonable effort es. While the tive bargaining

ees must be bar- *Garment Work-* U.S.App.D.C. 71, to relocate the bject to bargain- 09 N.L.R.B. 1006, plant subject to *Motors Corp.*, sub nom., *Inter-* A. & A. Imp. pp.D.C. 274, 277, on to sell part of

a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service."

In a concurring opinion in that case Mr. Justice Powell noted the similarity between a public sector union and a conventional political party:

"The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, state and federal governments, the union's objective is to obtain favorable decisions—and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public sector union is indistinguishable from the traditional political party in this country."

8. The holding of the majority in *Abouli* was that a union shop or agency shop agreement for public employees, requiring all employees in the bargaining unit to make financial contributions to the union, did not violate the first amendment rights of employees who objected to the union. The same rule obtains for unions in the private sector. Although Justice Powell concurred in the majority's decision to remand the case for further proceedings, he disagreed with this constitutional holding. Unlike the majority, he felt that the differences between public and private employment compelled a holding that agency shop or union shop agreements in the public sector are forbidden by the first amendment.

431 U.S. at 256, 97 S.Ct. at 1810, 52 L.Ed.2d at 298.⁸

The legislature was evidently cognizant of this concern when it enacted AS 14.20-.550 and .610, stating two goals which apparently conflict. We must now proceed to interpret what we believe the legislature meant by these provisions.

The school boards initially argue that to make matters of school operation and educational policy subject to collective bargaining amounts to an unconstitutional delegation of governmental power to the unions.

While courts in an earlier era often held laws unconstitutional on the ground that they delegated legislative power to private persons or groups, e. g., *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 80 L.Ed. 1160 (1936), the trend has been to uphold such delegations, even when the power is delegated to a group with an economic interest in the decisions to be made. E. g., *United States v. Rock Royal Cooperative, Inc.*, 307 U.S. 533, 577-78, 59 S.Ct. 993, 83 L.Ed. 1446 (1939) (cooperative marketing program from agricultural products); *Agricultural Prorate Comm'n v. Superior Court*, 5 Cal.2d 550, 55 P.2d 495, 504-06 (Cal.1936) (same); *Potter v. New Jersey Supreme Court*, 403 F.Supp. 1036, 1039-40 (D.N.J. 1975), *aff'd*, 546 F.2d 418 (3d Cir. 1976) (requirement that attorneys have graduated from law schools accredited by the American Bar Association). See generally,

See generally Rehms, Constraints on Local Governments in Public Employee Bargaining, 67 *Mich.L.Rev.* 919 (1969); Shaw and Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 *U.C.L.A.L.Rev.* 867 (1972); Summers, Public Sector Bargaining: Problems of Government Decision-making, 44 *U.Cinn.L.Rev.* 669 (1975); Summers, Public Employee Bargaining: A Political Perspective, 83 *Yale L.J.* 1156 (1974); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 *Yale L.J.* 1107 (1969); Project, Collective Bargaining and Politics in Public Employment, 19 *U.C.L.A.L.Rev.* 887, 1010-51 (1972).

1 K. Davis, Administrative Law Treatise § 2.14 (Supp.1970) (collecting cases). See also 1 *Id.* § 2.15 (1958).

Furthermore, the statute merely requires the school board to negotiate with the union. It does not require the board to accept any particular proposal the union might offer. It does not require, and probably does not permit, the board to delegate to the union the sole power to make any decision. Therefore, cited cases invalidating outright grants of governmental power to private groups, e. g., *Hetherington v. McHale*, 458 Pa. 479, 329 A.2d 250 (1974), and *Bayside Timber Co. v. Bd. of Supervisors*, 20 Cal.App.3d 1, 97 Cal.Rptr. 431 (1971), are not apposite.

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, or both. *Chicago Div. of Ill. Ed. Ass'n v. Board of Ed.*, 76 Ill.App.2d 456, 222 N.E.2d 243, 251 (1966); *Joint School Dist. No. 8 v. Wisc. Emp. Rel. Bd.*, 37 Wis.2d 483, 155 N.W.2d 78, 83 (1967); *State v. City of Laramie*, 437 P.2d 295, 300 (Wyo.1968) (firemen). In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

9. The teachers' unions in the case at bar argue that *Dunellen* was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and *Dunellen* has

Courts in other jurisdictions have considered problems similar to those which we confront here. It is instructive, though not determinative, to look to the case law of other jurisdictions as an aid to interpretation.

The court in *Dunellen Bd. of Education v. Dunellen Ed. Ass'n*, 64 N.J. 17, 311 A.2d 737 (1973), dealt with a conflict between a requirement to bargain about "terms and conditions" of employment (without further definition) and the broad managerial power over schools entrusted to local school boards. The court noted that "terms and conditions" of employment without further definition does not furnish a dispositive guideline. It held that the decision whether to consolidate chairmanships of the social studies department and English department was not a subject of mandatory bargaining. It was a matter predominately of educational policy and thereby fell within the exclusive prerogative of management.⁹

National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed., 212 Kan. 741, 512 P.2d 426 (1973), is closely analogous to the case at bar. There the teachers' association negotiated under a statute which permitted it to "participate in professional negotiation with boards of education . . . for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." The state constitution, like Alaska's, gave the legislature the power to provide for public schools. The negotiations reached an impasse after the board took the position that all matters, whether negotiable under the statute or not, were of a policy nature subject to unilateral change by the board and could not be incorporated into a contract, while the teachers asserted that nearly everything pertaining to school operations was negotiable.

been followed by the courts despite the statutory amendment. See, e. g., *Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n*, 135 N.J.Super. 269, 343 A.2d 133 (1975).

1810, 52 L.Ed.2d

iently cognizant
acted AS 14.20.-
goals which ap-
t now proceed to
the legislature

ly argue that to
eration and edu-
llective bargain-
stitutional delega-
r to the unions.

r era often held
he ground that
ower to private
arter v. Carter
56 S.Ct. 855, 80
nd has been to
even when the
up with an eco-
ons to be made.
Royal Coopera-
78, 59 S.Ct. 993
itive marketing
roducts); *Agri-*
Superior Court,
14-06 (Cal.1936)
ersey Supreme
039-40 (D.N.J.
(3d Cir. 1976)
have graduat-
edited by the
See generally,

straints on Local
oyee Bargaining,
Shaw and Clark,
ween Public and
aining, 19 *U.C.L.*
rs, Public Sector
rment Decision-
9 (1975); Sum-
ning: A Political
(1974); Welling-
ollective Bargain-
3 *Yale L.J.* 1107
aining and Poli-
9 *U.C.L.A.L.Rev.*

On appeal the Kansas Supreme Court was confronted with the same problem that we are: how to frame a test which would delimit those matters which are bargainable from those which are not. The Kansas court held that salaries, vacations, and sick leave are negotiable. In so doing it pointed out that the term "policy" is not helpful, because even salaries are a matter of policy. It drew the following distinction:

"The key, as we see it, is how direct the impact of an issue is on the well-being of the individual teacher, as opposed to its effect on the operation of the school system as a whole." 512 P.2d at 435.

While the *Snawnee Mission* case represents a commendable attempt to balance competing claims, it does not provide a test which is useful in determining the negotiability of specific subjects. In other words, it does not provide any comforting guidance in determining how, in the last analysis, the balance should be weighed between the school boards and the teachers.

Put another way, a matter is more susceptible to bargaining the more it deals with the economic interests of employees and the less it concerns professional goals and methods. Bargaining over the latter topics presents particular problems because there is less likely to be any politically organized interest group other than the union concerned with these issues. The salaries of public employees have a direct financial effect on the taxpayers; on the other hand, a question such as teacher evaluation of administrators is unlikely to have any impact sufficiently direct to be discernible by laymen. Furthermore, it is such an abstract and abstruse subject that it is unlikely that any appreciable portion of the public will either understand it or care greatly about it. In such circumstances, the risk that effective power over the governmental decision will come to rest with the union is significantly greater. Moreover, it is more likely that there will be disagreements among union members on questions of this

nature than on "bread and butter" issues; the risk that minority viewpoints within the union will not be meaningfully represented in the bargaining is a real one. See Summers, *supra*, 83 *Yale L.J.* at 1181-82, 1194-95. But see Wollett, *The Coming Revolution in Public School Management*, 67 *Mich. L.Rev.* 1017 (1969) (arguing that these subjects should be bargainable).

III. Specific Issues

[1] We will now consider the Alaska situation in more detail. At the outset it appears to us that questions concerning salaries, the number of hours to be worked, and amount of leave time are all so closely connected with the economic well-being of the individual teacher that they must be held negotiable under our statutes. The troubling question is what other items are bargainable.

[2] The various trial courts in these cases considered such items as (1) relief from non-professional chores, (2) elementary planning time, (3) para-professional tutors, (4) teacher specialists, (5) teacher's aides, (6) class size, (7) pupil-teacher ratio, (8) a teacher ombudsman, (9) teacher evaluation of administrators, (10) school calendar, (11) selection of instructional materials, (12) the use of secondary department heads, (13) secondary teacher preparation and planning time, and (14) teacher representation on school board advisory committees.

The testimony adduced in the trial courts does not provide us with much enlightenment as to why any of these items should fall on one side of the line or another. Realistically the two areas, i. e., (1) educational policy, and (2) matters pertaining to employment and professional duties, merge into and blend with each other at many points. Logically and semantically it is nearly impossible to assign specific items to one category and not the other. Certain examples may make this point more clearly.

In the *Mel Su* case the teachers have asked for a planning period of 45 minutes "to be taken during the academic portion of the day." Were this merely a request for planning time, it might be considered negotiable. The demand that it be during the academic portion of the day, however, presents an additional complication: whether, as a matter of educational policy, elementary school children should have one teacher with them throughout the day or whether they are old enough to be taught by different people. This presents a basic educational decision. While the amount of paid time available to a teacher for preparation of lesson plans affects the teacher directly, the demand that such time be available "during the academic portion of the day" presents a policy question.

Similarly, the question of class size affects directly the amount of work a teacher must perform. But the determination of optimum class size is quite basic to school policy and management, and potentially has a substantial impact on the school district's personnel expenditures. A number of courts have found this to be clearly non-negotiable. See *National Ed. Ass'n of Shawnee Mission, Inc. v. Board of Ed.*, 512 P.2d 426, 435 (Kan.1973); *West Irondequoit Teachers Ass'n v. Helsby*, 35 N.Y.2d 46, 358 N.Y.S.2d 720, 315 N.E.2d 775, 777-78 (N.Y. App.1974); *School Dist. of Seward Ed. Ass'n v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752, 759 (1972); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387, 403 (Me.1973).

An examination of the other specific items listed above yields equally indefinite answers. We are confronted, then, with a situation in which the legislature has not spoken with clarity and concerning which we possess no expertise. We can only conclude that salaries, fringe benefits, the

10. In the list of proposals submitted in the *Kenai* case, for example, it appears that some 38 of the 47 proposals would come within the

number of hours worked, and the amount of leave time are negotiable.¹⁰ In view of the concerns expressed on pages 419, 420 *supra*, we conclude that the other specific items listed on page 422 are, under the existing statutory language, non-negotiable.

It would be helpful if the legislature, through future enactments, provided more specific guidance on a number of the items which the unions seek to negotiate. Lacking that guidance, however, we cannot confidently say that the legislature intended any of these items to be bargainable. We cannot, therefore, read the statutes expansively as to the scope of what is negotiable.

[3] As to matters which affect educational policy and are, therefore, not negotiable, we believe that there is nevertheless implicit in our statutes the intention that the school boards meet and confer with the unions. It is desirable that the boards consider teacher proposals on such questions. This will encourage teachers to give the boards the benefit of their expertise, and to make their positions known for the board's use in establishing educational policy.

[4] One minor question remains. In the *Kenai* case the trial court, in construing the statutes, relied upon the privately expressed opinion, by means of a letter, of a former legislator. The legislator's opinion was not a matter of public record, subject to judicial notice, nor was it introduced in evidence. Even if it were placed in evidence, reliance upon it would be impermissible under *Alaska Public Employees Ass'n v. State*, 525 P.2d 12, 16 (Alaska 1974). Resort to the letter as a means of legal interpretation was, therefore, error.

AFFIRMED IN PART, REVERSED IN PART.

categories of items we have concluded are negotiable. These items are set forth in the appendix to this opinion.

APPENDIX

LIST OF NEGOTIAELE AND
NON-NEGOTIAELE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores ¹¹
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

11. In the *Kenai* case this item was described in the negotiating document as follows:

"RELIEF FROM NON-PROFESSIONAL
CHORES

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should be utilized to this end, therefore, they agree as follows: Teachers shall not be required to perform the following duties:

A. Non-instructional assignments, including but not limited to, supervising of cafeterias,

23. Maternity Leave
24. Political Leave
25. Duty-Free Lunch
26. Teacher Preparation Periods
27. Monthly Planning Time
28. In-Service Days
29. Discretionary 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 on Contract



sidewalks, bus loading, or unloading, or playgrounds of more than fifteen (15) minutes daily.

B. Collecting money from students.

C. Cumulative record cards and other clerical and/or custodial functions."

These matters seem so closely related to school board policy as to be non-negotiable. We do not pass upon other conceivable non-professional functions. We also do not know what is specifically meant by "custodial" functions, and do not, therefore, pass upon that aspect of this item.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: March 5, 1985
Page 1 of 3

REQUEST
Bill/Resolution No.: CSHB 130
Title: Teacher's Collective Bargaining

FISCAL DETAIL
Agency Affected: Administration
Program Category Affected: Independent Operations

Sponsor: Governor Bill Sheffield
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected: New--Educational Employees Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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 5, 1985

Approved by Commissioner: *Lisa Rudd* Date: *3/5/85*
Agency: Department of Administration

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

COMMITTEE SUBSTITUTE FOR
HOUSE BILL 130
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 5, 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
FISCAL NOTE ANALYSIS

Educational Employees' Collective Bargaining
Prepared by Division of Labor Relations
Department of Administration
March 5, 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.

The Department 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.

Public Testimony
HB-90 #15130 SB-129
Robert Nick, Chairman
Lower Kuskokwim School District

The Lower Kuskokwim School District has always opposed the imposition of binding arbitration as a means of resolving disputes with our teachers and continues to oppose that imposition. We have always conceded only what is necessary in order to retain and obtain the quality of teachers we want for our children's education. Based on the fact that we have experienced no loss of teachers for lack of appropriate salary or other benefits, and based on the fact that we have no shortage of qualified applicants for teaching positions in our district, we see no need for this legislation.

As a member of the board of the Alaska School Board Association who often meets with representatives of other districts around the state, I am not aware of any other district that is experiencing difficulty in this area either. I frankly do not understand why the legislature would consider legislation that could very possibly increase the already huge cost of education in the state and in our bush school districts particularly.

The greatest service you could provide the school districts of Alaska, in my opinion, is a means to facilitate the firing of a teacher that a local board deems unsuitable for further employment. Maybe at some future meeting you will consider an alternative to this problem such as: Upon the unanimous approval of a school board, any teacher can be terminated at the conclusion of any school year. A total vote of dissatisfaction from a school board should certainly indicate a lack of faith in a teacher sufficient to substantiate termination.

Given the falling revenue we are now experiencing in Alaska, I am sure there are many legislators who regret ^{some consequences} ~~the liberality~~ of the collective bargaining policy with state employees. The lesson to be learned from that however, is that it is hard if not impossible to take something back once you have given it away. Please do not put the school districts in a position where they may be forced to give too much...especially when we can never get it back.

DEPT OF ADMINISTRATION
Testimony 2/27/95

Mr. Chairman, my name is Bill Gibbons and I am the Director of Labor Relations for the State. I am here on behalf of the administration to urge the adoption of House Bill, 130.

Prior witnesses have already clearly set forth the various aspects of the Bill, so I will only take a few moments to briefly outline its purpose.

The Legislature has set forth as the policy of the State that the State will recognize the right of public employees to organize and bargain collectively. Yet, at present, the law which authorizes teachers and other certificated employees to bargain - Title 14 - does not provide for finality in the bargaining process. That is, when all efforts in negotiation, and mediation have failed, the teachers are not allowed to strike, nor are they entitled to present their case in compulsory arbitration. Non-certificated educational employees are not provided for at all. This Bill attempts to remedy that situation by providing that in the event of impasse, the parties must resolve their disputes in "last best offer" mediated arbitration. We propose arbitration, because where educational employees are involved, we believe that the consequences of a strike may impose unacceptable burdens on local communities.

The "last best offer" form of arbitration is designed to motivate the parties to state realistic positions and to provide them with an incentive to resolve their differences through bargaining, and thus avoid arbitration.

I recognized that the purposes of this legislation could be achieved by amending the Public Employment Relations Act. For example, (HB 90 adopts that approach for non-certificated educational employees). We would be pleased to consider a Bill that includes educational employees under PERA, if that is your preference.

In summary, this Bill allows educational employees to enjoy the privilege of collective bargaining without intruding upon the autonomy of local school boards.



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

147 S. FRANKLIN #207
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

February 25, 1985

TO: Representative Mike Navarre, Chair
Members, House Labor and Commerce Committee

FROM: Gayle Pierce, President NEA-Alaska

RE: HB 130

After listening to testimony on Monday, February 18th I want to elaborate upon or reinforce some of the points made during the hearing. I do not expect to be available February 25, so I appreciate your consideration of this written testimony.

First, with regard to statutory recognition of non-certificated employees, I want to make three points.

- 1) For most non-certificated employees, those who do currently bargain, including those in Anchorage, Fairbanks, Mat-Su, Kenai and other districts, this bill does not mean these employees would be able to bargain for the first time. The larger districts have bargained with these employees. The difference is that they bargain now because the district has bestowed upon them a gift, a gift that could be taken away just as it was given and these employees are reminded of this prior to and during each bargaining round. When they receive statutory recognition their collective bargaining will be a right, not a gift, and they will at last be free of the constant insecurity that if management should take a disliking to their activity, they will lose access to the bargaining process.
- 2) For those non-certificated employees, in the small school districts who are not currently allowed by their employers to bargain, statutory recognition will provide some equity. It is unconscionable that the only public employees denied access to collective bargaining are those who work in small rural districts who, by district practice, are excluded from any participation in deciding salary and working conditions and are kept in a second class status because there currently is no statutory recognition.
- 3) Statutory recognition for non-certificated employees would establish the legal mandate to bargain in good faith on all terms and conditions of employment. Currently when bargaining does occur it happens out of the goodness of the employer's heart and any "good faith" occurs strictly on the terms of the employer.

The second aspect of the bill I wish to apprise is the provision for binding arbitration. Fred Pomeroy, Superintendent of Kenai Peninsula Schools testified the current law works and no amendment is needed. Anybody who knows anything about negotiations knows that the ideal bargaining situation results in an agreement reached by the parties. It's true that in this State in some districts there is a positive bargaining relationship and the parties are able to conclude an agreement at the table, or with the assistance of a mediator. This is not the case with all districts, however. In some districts the relationship is poor and the effort to conclude an agreement has taken over two years and tremendous energy, time, and money. Currently there are four districts which have not yet settled negotiations for 1984-85 contracts. In Northwest Arctic the Board rejected the arbitrator's report after the Board had been through two professional bargainers and had basically refused to bargain in good faith pushing for advisory arbitration from the onset of negotiations. In Yukon Koyukuk, bargaining was finally settled last week and there has been litigation about questions of who is in the bargaining unit and the district's bad faith, since the commencement of bargaining. Lower Yukon, Lower Kuskokwim and Skagway are the other three districts which have not yet been able to conclude bargaining.

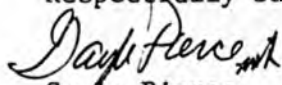
So for these districts and bargaining units which become locked in impasse we need finality. The mechanism we support differs from conventional arbitration. In this bill there is provision for public hearing which subjects the positions of each party to public scrutiny and exerts considerable pressure on each party to bargain and come to arbitration, if come they must, with reasonable positions. The mechanism proposed allows the arbitrator latitude to suggest compromise and indicate judgement about what are or are not reasonable positions and the parties have an opportunity to revise positions in light of public opinion and suggestions by the arbitrator, but in the end, the arbitrator must choose the position of one of the parties. This is a significant difference from conventional arbitration where the arbitrator has authority to write an award.

Finally I want to address the need for an Education Employees Labor Relations Agency. The bargaining relationship between parties is delicate, complex, and sometimes controversial. There are often legitimate questions about bargaining unit definition and employer and employee labor practices. There are also blatant flagrant unfair practices, but currently there is nowhere to turn (except in the most outrageous circumstances, the courts), to bring charges of unfair practices or to seek resolution of honest disagreements. In the paragraph above where I referenced Northwest Arctic and Yukon Koyukuk I made allegations about the behavior of the management of those districts. I believe those allegations to be true, I could substantiate them and convince others of my position and those districts should be compelled to abide by the mandate to bargain in good faith. Those districts though have their side of the story to tell and could perhaps defend their actions. The point is, that until there is a Labor Relations Agency to deal with these questions we are caught in the frustration of feeling victimized by certain practices that significantly interfere with bargaining because we have no recourse available to us; right or wrong, to resolve disputes and get on with bargaining. This need for finality in bargaining has been an issue for years. For ten years grievance arbitration has brought orderly, expeditious and relatively inexpensive resolution of contract disputes. We need to provide that same orderly, expeditious and relatively inexpensive mechanism for finality in negotiations.

Finally, the real point of HB 130 is not the fact of an arbitration award, but the very high probability that the mere presence of the last best offer arbitration requirement will enhance the bilateral negotiations process, increase the probability of a bilateral agreement before the imposition of a determination by the arbitrator, and foster the concept of "win/win" for both parties, students, and the public.

Speaking on behalf of the 7,000 public school teachers in Alaska I urge passage of HB 130.

Respectfully submitted:

A handwritten signature in cursive script that reads "Gayle Pierce".

Gayle Pierce
President

L85:11



Alaska Public
Employees Association **APEA**

State Headquarters: 340 N. Franklin, Juneau, AK 99801 (907) 586-2334

MEMORANDUM

TO: Representative Mike Navarre, Chairman
House Labor and Commerce Committee

FROM: Cherie Shelley *CS*
Executive Director

SUBJECT: HB 90 and HB 130: Collective Bargaining for School Employees

DATE: March 11, 1985

The Alaska Public Employees Association supports the provisions of HB 90 and HB 130 which grant collective bargaining rights to the noncertificated employees of school boards. These employees are the only public employees excluded from collective bargaining.

Noncertificated employees include teachers' aides, secretaries and custodians. They are traditionally the lowest paid public employees in Alaska. They are the only employees in the educational system who absorb the economic backlash when school boards intimate financial problems.

Previous testimony on these bills has revealed a preference for HB 130 by both teachers and noncertificated employees. APEA likewise supports the binding arbitration provision of HB 130. We recognize, however, that HB 130 is the more controversial of the two and may receive considerable opposition from school districts.

APEA urges the committee to act favorable on both bills. Passage will promote better employer-employee relations by affording noncertificated school employees the same collective bargaining rights provided to teachers and other public employees.

CS/kg

Fairbanks Field Office
825-D College Road
Fairbanks, AK 99701
Telephone: (907) 456-5412

Anchorage Field Office
833 Gambell Street, Suite A
Anchorage, AK 99501
Telephone: (907) 274-1688

Juneau Field Office
227 4th Street
Juneau, AK 99801
Telephone: (907) 586-6305

RESOLUTION 84-85-5

A RESOLUTION OPPOSING BINDING ARBITRATION LEGISLATION

WHEREAS, the concept of binding arbitration is currently under consideration in the Alaska Legislature, i.e., HB 130; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration is an unnecessary component of the collective bargaining process; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration has proven to be nonproductive in other states, i.e., Michigan; and

WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration imposes an alien third party on the process of negotiations; and

WHEREAS, binding arbitration erodes the concept of local control in conflict resolution;

NOW THEREFORE BE IT RESOLVED that the Kenai Peninsula Borough School District Board of Education opposes all legislation that mandates binding arbitration as a part of the collective bargaining process.

ADOPTED THIS 4th DAY OF MARCH, 1985.

Jerry Hobart, Acting President
Kenai Peninsula Borough Board of
Education

ATTEST:

Barbara A. Jewell
Notary Public