

HB

150

COMMITTEE REPORT

HOUSE

3/27
HEALTH, EDUCATION
AND SOCIAL SERVICES

(7)

FURTHER: FINANCE

1/25/85

Date: March 27

The Committee on LABOR & COMMERCE has had HB 130

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

under consideration and recommends:

- [] do pass [] do not pass
[] do pass with attached amendments(s)
[x] replace with CS for HB 130 (LRC) [] same title
[] new title
and recommends it do pass
[] AND attaches a "Letter of Intent" [] New Fiscal Note
[] reports it back without recommendation [] Zero Fiscal Note Attached
[] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]
[Signature]
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
[Signature]

CHAIRMAN

HB 130 FILE CONTENTS

February 18, 1985

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- ✓ 2) Overview -- Committee Staff
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- ✓ 7) Current Teacher's Negotiation Law --AS 14.20.510-630
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 - ✓ a) Concept Outline
 - ✓ b) Excerpts: Public Employee Relations Act (AS 23.40.110-180)
(included by reference in AS 14.20.606 of HB 130)
 - ✓ c) NEA -- Position Paper
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- ✓ 9) Proposed Amendments to HB 130 -- by Bob Manners, NEA
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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 ✓
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March 21, 1985 Additions:

- ✓ 13) Teacher Negotiation Act (Conn) -- Supplied by Rep. Koponen
- 14) Amendments offered by Rep. Koponen (2)
- 15) Amendments offered by Rep. Hanley (2)
- ✓ 16) Amendments proposed by Bob Greene, Assoc. of Alaska School Bds.
- ✓ 17) Response of Bob Greene, AASB to Committee request for
background on 4 school districts which had not concluded
collective bargaining agreements with their teachers.

To: Mike
From: Roger

March 11, 1985 Monday

HB 130:

You asked for a copy of the Kenai decision: its in your updated file contents for March 11, 1985. You also asked for a copy of the Senate bill from last year dealing with this issue. That's SB 78 by Kertulla, which died in House Labor and Commerce last year, but not before it had been extensively re-written as CSHB 78 (HESS) am--that too is in your file, along with a fiscal note and a sectional analysis and position statement by Senate HESS.

You also asked for me to check in to just what kind of arbitration for teachers is contained in Act 312 for the laws of Michigan, to see if there is last best offer, binding arb or what. Bob Cooksey, head of NEA in Bob Marner's absence, is checking on this and is calling Michigan on it today. He will be at the meeting this afternoon and can provide us then verbally with what he has found out on this point. However, there is a lot of detail on ACT 312 that is covered in the February 14 memo from the Sitka School District. This material indicates that ACT 312 is mandatory binding arbitration, and indicates that this tends to destroy the collective bargaining process and voluntary binding arbitration. Most of the excesses and problems they had were with fire and police, rather than teachers; and the guy concludes by saying that a better alternate solution is to have a controlled strike!! (p. 16). There is nothing however that gets into last best offer that I can tell.

There are also some additional statements in the updated file that include statements by people giving testimony to the Committee, including Bill Gibbons. Finally, there is a revised FN and position statement and fiscal analysis from the Dept. of Administration on the problems they are having with the bill that led them to propose a CS, which is already in everyone's files.

I found out via the grapevine over the weekend that Bob Green, who is the sort of spokesman for the School Boards, and who spoke to us the last time about things like the Kenai decision, has already decided that the school boards and administration can't do anything to stop these bills from passing through the House, so their strategy appears to be that they will try to work on the Senate to stop it or at least revise it at that end.

I have asked certain people to be available to the Committee to answer questions if needed: Bob Bacolas from the Dept. of Labor will be here, as will Bill Gibbons from the Dept. of Administration. Also present will be Bob Cooksey of the NEA, and we have on call if we need them to appear on short notice (5 minutes) the drafters of the two bills: (HB 130 by John Rubini in the Attorney General's office, and Theresa Cramer on HB 90 in the Legislative Counsel offices).

To: Mike
From: Roger

February 15, 1985

HB 130 and HB 90: Collective Bargaining agreements of educational employees.

Bob Manners will be there to testify, and he indicated that he will also have a couple of local teachers present to testify, since tomorrow is a state and federal holiday, and so the teachers and school kids have a day off. I didn't realize when we set the date for the teleconference that it was a holiday, so there will probably not be a great deal of statewide input, but the other side of that is that it gives both the school administrators and the teachers an equal opportunity to testify.

This bill passes on to the HESS committee, so Niilo will probably have a second teleconference there in any case to cover both bills, and it will be held from 4:30-6:00, so that both teachers and administrators will have additional opportunity to provide input. Niilo indicated that he would like to see both bills go as far as Rules in the House for right now.

HB 130 is the more comprehensive, and would include HB 90; he has no argument with that, but if HB 130 gets hung up in the Senate this year, at least we could push HB 90 out right away to the Senate side, since it deals with the janitors and other non-certificated public school employees that really do need immediate attention as a separate sub-group.

Steve Hole, liason for the Dept. of Education, said he will not be here at all to testify, as it would put him in the awkward position of having to support the Governor's Bills against the wishes of his own State Board of Education that he is responsible to. (Historically, this Board has always operated with a great deal of autonomy, until Sheffield canned the whole lot of them a couple of years back, and the Commissioner of Education is the only Commissioner elected rather than appointed, if I recall).

To: Mike
From: Roger

February 24, 85

Notes to HB 130 & HB 90 Files:

1) Regarding phone conversation with Rebecca Burch, legislative liason, Dept. of Administration:

Rebecca called this afternoon about 1:30 to tell us about a complication on HB 130 and HB 90. They are not trying to stall the bills, and do support them, but they have a problem.

Apparently, there is a Division of Labor Relations in the Dept. of Administration, whose function is to deal with union agreements and grievance proceedings when there is a falling out.

However, there is also a Labor Relations Agency in the Dept. of Administration, which is not really an agency but a Board, with 3 lay members who meet occasionally to work on cases and arbitration. They are a local extension of the National Labor Relations Board, and deal with both state and non-state employees, holding hearings, settling cases, etc. They do not have a special Dept. of Admin. staff person assigned to them, but they do have a budget of approximately \$100,000. Steve Halfing is the head of the 3-man "agency," and they do have the half time services of an attorney with whom they contract from the Attorney General's office.

AT this point things got a little confusing. Rebecca told me that rather than draw on the services of the Dept. of Administration, this Agency has been having back-up research work done for them through the Dept. of Labor's staff, and the currently law allows them to do that. But, it seems that the Dept. of Administration was not really aware of just how much work this Labor Relations Agency was doing or that they were having a lot of support work done through the Dept. of Labor.

The problem is that HB 130 would stop the Labor Relations Agency from drawing on the services of the Dept. of Labor for research and logistical support, at least in regards to collective bargaining for teachers, so that means that the Dept. of Administration would have to assign staff and back-up for this unit from now on. We could just amend the bill to keep the status quo, but the Dept. of Administration wants to take over this support function, which they should have been doing all along, but have been negligent in doing.

They have been drawing up a new fiscal note and position paper, but will not be ready with it by the hearings Monday, as they are still working out the wrinkles with the Dept. of Labor, and the lawyer from the Dept. of Law, complicated by the fact that Steve Halfing, the Chairman of the Agency, is out of town until Monday. So, they would like to have the committee hold off on passing the bill out Monday if that is their intent, so they can submit a revised fiscal note and position paper.

Apparently, this bill was around all last year and got raked over the coals, but no one caught this major oversight. Wierd, huh? And these guys work full time all year around, year in and year out and didnt even catch it til now. Makes one feel that our occasional goofs are forgiveable after all.

However, when I talked to Eileen Plate, legislative liason from the Dept. of Labor about this later in the day, she told me a slightly different version of this whole problem. According to her, the DOA erred in giving only a \$37,200 fiscal note in HB 130 for these services, when the Dept. of Labor was estimating a cost of some 248,500 in a FN for HB 90 to do the same thing. This is part of the reason and the complication behind youre request to Bob Bacolas in Labor that he get a backup justification for the DOL FN for HB 130. Apparently, the DOA as a result is going to submit a revised FN for both bills, because they do want to maintain responsibility and jurisidciton for the activities of their agency either way; so that would probalby be DOL under HB 90 would go back to an FN of zero. IN any case, they are still working all this out, so the bill will have to be held over, most likely.

2) There are also a whole group of amendments to HB 130 that have been proposed by the NEA and Bob Manners that need to be considered.

3) Niilo is also talking about submitting some amendments to HB 90 to make it conform more completely with the Senate companion bill for this that is being sponsored by Bill Ray.

4) Alternately, John Johnson, a member of the school board at Petersbrug in the teleconference proposed placing the issue on the ballot for the public to vote on, and make it read so that each local community can decide for themsleves whether to follow the thrust and intent of HB 130 or HB 90.

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

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 130

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
7 bargaining agreements; and providing for an effective
8 date."

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
11 to read:

12 Sec. 14.20.540. DECLARATION OF POLICY. The legislature finds
13 that public school employees are entitled to participate in formulat-
14 ing decisions that pertain to their employment and to the fulfillment
15 of their professional duties. Effective and responsive administration
16 of public schools is most readily obtained through the negotiation of
17 labor agreements that incorporate both managerial and employee per-
18 spectives. The legislature further finds that providing for harmoni-
19 ous and cooperative relations between school boards and employee orga-
20 nizations will promote public education in the state. Accordingly,
21 the legislature declares that it is in the best interests of the state
22 to guarantee educational employees the opportunity to form employee
23 organizations and to negotiate with respect to the terms of their
24 employment.

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

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

*W. L. A. about 2:00 p.m.
5/1/85
wrote a binding
cost incurred*

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

2 (a) Negotiations between the [CERTIFICATED] employees of the
3 regional educational attendance areas and the respective regional
4 school boards must [SHALL] be conducted by one team representing all
5 the [CERTIFICATED] employees[, ONE TEAM REPRESENTING ALL THE CERTIFI-
6 CATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGOTI-
7 ATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team repre-
8 senting all the participating regional school boards. If administra-
9 tive personnel or noncertificated employees have joined together to
10 negotiate independently as provided in AS 14.20.560(f), a team repre-
11 senting the independent employee organizations shall participate in
12 the negotiations.

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

14 Sec. 14.20.560. NEGOTIATING UNIT. (a) The educational employ-
15 ees labor relations agency shall, in order to assure to employees the
16 fullest freedom in exercising the rights provided under AS 14.20.-
17 540 -- 14.20.610, decide in each case the unit appropriate for the
18 purposes of negotiation, based on such factors as community of inter-
19 est, wages, hours, and other working conditions of the employees in-
20 volved, the history of negotiating, and the desires of the employees.
21 Negotiating units must be as large as is reasonable; unnecessary
22 fragmenting of the units must be avoided.

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

1 whether, or by which organization, the employees desire to be repre-
2 sented, and shall certify the results of the election. This section
3 does not prohibit the waiving of hearings by stipulation for the
4 purpose of a consent election or voluntary certification in conformity
5 with the regulations of the educational employees labor relations
6 agency, or an election in a negotiating unit agreed upon by the
7 parties. The educational employees labor relations agency shall
8 determine who is eligible to vote in an election and shall adopt
9 regulations governing the election. In an election in which none of
10 the choices on the ballot receives a majority of the votes cast, a
11 runoff election must be conducted. The ballot in the runoff election
12 must provide for selection between the two choices receiving the
13 largest and the second largest number of valid votes cast in the
14 election. If an organization receives the majority of the votes cast
15 in the election, it must be certified by the educational employees
16 labor relations agency as the exclusive representative of all the
17 employees in the negotiating unit.

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

21 (d) This section does not prohibit recognition of an organiza-
22 tion as the exclusive representative upon mutual consent of the
23 parties.

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

1 elapsed since the execution of the agreement or the last timely renew-
2 al, whichever was later.

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

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

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

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

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

23 (a) Upon [THE] written request for mediation by an employee bar-
24 gaining agency or a school board, and upon certification by the re-
25 questing party that the parties cannot agree on an independent private
26 mediator and that good faith negotiations have terminated in an im-
27 passe, the following procedure must be followed [OCCURS]:

28 (1) Within seven days after [OF] the certification, the
29 requesting party shall ask the United States Federal Mediation and

1 Conciliation Service to serve as the agency to resolve the dispute.
2 The requesting party shall notify the educational employees labor
3 relations agency that the parties have requested a mediator. *what if requesting party is this*

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

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

13 (4) Each party to the dispute may select a team [OF NOT
14 MORE THAN FIVE PERSONS] to present the evidence, thinking, and posi-
15 tion of the group they represent[,] to the mediator. *why record*

→ 16 * Sec. 7. AS 14.20.580 is repealed and reenacted to read:

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

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

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

1 are unable to agree on a procedure for the selection of an arbitrator,
2 the educational employees labor relations agency shall direct the
3 parties to use the services of and comply with the procedures of the
4 United States Federal Mediation and Conciliation Service or the Ameri-
5 can Arbitration Association in the selection of an arbitrator. [An
6 arbitrator selected under this subsection must be a resident of this
7 state.]

8 (b) In last-best-offer *item by item* 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) The arbitrator shall, without modification, adopt the last
20 best offer *item by item* of one of the parties, and shall issue a final and binding
21 decision not more than 10 days after the parties have presented their
22 last best offers.

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (f) The
28 educational employees labor relations agency shall perform the func-
29 tions described in AS 23.40.120 -- 23.40.180 to carry out the

1 provisions of AS 14.20.540 -- 14.20.610.

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

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

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

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

12 * Sec. 14. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).

INTRODUCTION OF BILLS (House)

HB 127, (cont'd)

Liability of a notary, or the sureties on the notary's bond, for misconduct or neglect is described in greater detail than before. AS 44.50.160. This amended section also defines the liability of a notary's employer to the notary or the public, where the employer is responsible for misconduct in the performance of a notarial act. Finally, class A misdemeanor penalties of a \$5,000 fine, imprisonment for up to a year, or both, are provided for knowing violations of AS 44.50, impersonation of a notary; theft or destruction of a notary's seal, journal, or official records; and solicitation or coercion of a notary to commit official misconduct. New AS 44.50.165.

The current notary public statutes were enacted in 1960 and have not been amended since that time. The changes proposed by this bill would provide greater protection for the public and greater guidance to notaries. I urge your prompt and favorable consideration of this much-needed bill.

Mental Health
Trust Lands
(conveyance) HOUSE BILL NO. 128, by Reps. Pignalberi, Gruenberg, Boucher, Jenkins, Koponen and Taylor. Adds a new section to the Alaska Lands Act (AS 38.05) providing the state may not convey or otherwise dispose of land owned in fee by the state that was received from the federal government under section 202 of the Alaska Mental Health Enabling Act of 1956. Provides Act takes effect immediately.

Introduced January 25 and referred to Resources, Judiciary, then Finance.

Compensation
of Legislators
(commission) HOUSE BILL NO. 129, by Reps. Pignalberi, Phillips and Jenkins. Sets up the Commission on Legislative Compensation (see HB 107, this report, very similar). Compensation of legislators would be established by the commission. The commission is composed of five members appointed jointly by the House Speaker and Senate President, and shall include the same make-up as HB 107 calls for. Also prohibits member from being employed by the state and from holding legislative elective office (HB 107 prohibits holding any elected office). Remainder of bill identical to sections of HB 107 dealing with commission. Sections of HB 107 relating to per diem and salary level of legislators are not included in this bill. Takes effect immediately.

Introduced January 25 and referred to State Affairs, Judiciary, Finance.

Collective
Bargaining
(school
employees) HOUSE BILL NO. 130, by the Rules Committee by Request of the Governor. Relates to educational employees' collective bargaining (see accompanying letter). Takes effect immediately.

Introduced January 25 and referred to Labor & Commerce, Health, Education & Social Services, then Finance.

In his message transmitting the bill, Governor Sheffield stated:

INTRODUCTION OF BILLS (House)

HB 130, (cont'd)

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

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

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

Once employees exercise their privilege to form employee organizations, sec. 2 of the bill would require school boards to engage in collective bargaining with respect to the terms of employment. If the parties are not able to reach agreement, sec. 6 requires the parties to use the services of a mediator in an attempt to informally resolve the bargaining impasse. If mediation is unsuccessful, the parties must observe a 10-day cooling-off period (sec. 7).

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

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

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

Appropriation
(special)
(Anch. school
district)

HOUSE BILL NO. 131, by Reps. Cotten, Boucher, Clocksin, Collins, Furnace, Gruenberg, Hanley, Jenkins, Martin, Pearce, Pettyjohn, Phillips, Pignalberi, Fourchot, Rieger, & Szymanski. Makes a special appropriation in the amount of \$87,429,370 for

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Committee Staff - Roger Poppe

DATE: February 18, 1985

SUBJECT: Overview, HB 130

On Monday, February 18, 1985 at 1:15-2:45 in Room 102 of the Capitol Building, the House L & C Committee will hear HB 130: "An Act relating to educational employees' collective bargaining agreements," which will be teleconferenced statewide.

Last year, this issue was presented in SB 78 by Kertulla. It went through numerous revisions and passed out of the Senate on a vote of 15 ayes and 4 nays on March 27, 1984. However, the bill died in House Labor and Commerce Committee. A companion bill to this legislation, HB 502 by Cato, also died in House Labor and Commerce. This year, there is no companion legislation in the Senate to HB 130; but HB 90 is topically related, although it focuses on just one of the HB 130 groups.

The bill would allow all public school employees to join an employee's organization, to engage in collective bargaining, mediation, and binding arbitration as an alternative to strikes. A comprehensive collective bargaining process for all public school employees is thus spelled out for the first time, and a new Educational Employees' Labor Relations Agency is established to oversee the process.

The Governor's office also considers it important to extend collective bargaining rights to include non-certificated educational employees (such as janitors, cooks, secretaries, etc.) who have been overlooked in previous legislation, though his transmittal letter suggests that rather than using this bill, the same effect could be obtained by amending the Public Employment Relations Act (which is the route taken by HB 90 by Koponen). Certificated public school employees, as well as most other public employees, already enjoy the rights this bill proposes (though not in such detailed form).

The school administrators, including local superintendents and school boards and the state Board of Education, actively opposed this bill last year. This year, rather than publicly oppose the Governor's support for this issue, the Department of Education and the State Board of Education are apparently taking no official position at this time.

Fiscal impact on the Departments is negligible; there is a zero fiscal note for the Dept. of Education; and there is a fiscal note of \$37,200 from the Dept. of Adminis. in FY86 for setting up and conducting a proposed new Educational Employees' Labor Relations Agency.

The National Educational Association supports the bill, but has several proposed amendments, which are outlined in a letter to chairman Navarre dated February 4, which is found in your packet.

B

SECTION ANALYSIS

House Bill 130

By Rules Committee By Request of the Governor
Amends AS 14.20.550 - 610.

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: Amends AS 14.20.550 to include all school district employees under the negotiations requirement.

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 the Educational Employees Labor Relations Agency with administrative responsibility for determination on questions pertaining to the negotiations unit, its composition, and representation elections.

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: Continued Impasse: Repeals and reenacts AS 14.20.580 to provide 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.

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: 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 11: Adds a new section, AS 14.20.605, establishing an Educational Employees Labor Relation Agency which is responsible for the administration of the law. The Agency is created in the Department of Administration by the addition of two gubernatorial appointees to the current Labor Relations Agency.

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

Section 13: Provides grandperson protection to current recognized negotiating units and collective bargaining agreements in existence on the effective date of the Act.

Section 14: Effective date clause: immediate.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 1985

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

Dear Representative Grussendorf:

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in cursive script, reading "Bill Sheffield".

Bill Sheffield
Governor

REQUEST

Bill/Resolution No.:

Title: Teachers' Collective Bargaining

Sponsor: Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Administration

Program Category Affected:

Independent Operations

BRU, Program or Subprogram(s) Affected:

Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	6.0	3.8	3.8	3.8	3.8
300 CONTRACTUAL	0	30.4	19.0	19.0	19.0	19.0
400 SUPPLIES	0	.8	.5	.5	.5	.5
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	37.2	23.3	23.3	23.3	23.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	37.2	23.3	23.3	23.3	23.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Bill Gibbons

Division: Labor Relations

Phone: 465-4403

Date: January 24, 1985

Approved by Commissioner: Lisa Rudd

Agency: Department of Administration

Date: 1/24/85

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

5/8D1/0124-01

Rev. 7/1/84

Total FY86 Travel Increase \$6.0

300 Contractual: Funded during FY85 at 75.9. Increase of
.40 = \$30.4

400 Commodities: Funded during FY85 at 2.0. Increase of
.40 = \$.8

Total FY86 Increase \$37.2

2. Subsequent years FY87-90

200 Travel:

Three existing members: $\$9.1 \times .25 = \$2.3$

Two new members: $\$6.1 \times .25 = \$1.5$

Total FY87-90 Travel Increase \$3.8/year

300 Contractual: $\$75.9 \times .25 = \$19.0/\text{year}$

400 Commodities: $\$2.0 \times .25 = \$.5/\text{year}$

Total FY87-90 Increase \$23.3/year

Analysis

- A. Assumptions: Since this bill will make the three member State Labor Relations Agency (LRA) serve as the majority of the new, five member Educational Employees Labor Relations Agency (EELRA), it will add to the LRA's workload. Our experience with implementation of the Public Employment Relations Act leads us to believe that the workload increase will be most pronounced during the first year of operation under the new law, as bargaining units are set up and representation elections conducted. Subsequent years' workloads will be permanently higher than present, since a larger client group will permanently be served, but the lasting impact on workload will be significantly less than the initial impact. We have assumed a 40% workload increase (above present) for the first year; subsequent years' workloads are assumed to be 25% higher than the present.

While serving as the EELRA, travel and per diem costs will be proportionately higher, since five members will be participating instead of the present three and more frequent travel can be anticipated.

- B. Program Summary: Present Labor Relations Agency services include bargaining unit determination; conducting representation elections, investigation and conciliation of complaints, holding representation and unfair labor practice hearings, and issuing orders and decisions. A larger client group - educational employees, their representatives, and school boards - will receive these services. No new positions will be required; none presently are authorized. Since office and legal services are contracted for, there will be a significant increase in contractual services. Travel and per diem will also increase with the size and workload of the Agency.

- C. Computations: I. First year FY 86

200 Travel: Funded @9.1 for FY85. This is for three members (3.00 ea.) with an assumed workload of 1.00. If workload is increased to 1.40 and five members participate in the new case load, the increase in travel funding requirements will be:

Three existing members: $\$9.1 \times .40 = \$3.6$

Two new members: $\$6.1 \times .40 = 2.4$

REQUEST

Bill/Resolution No.: HB 130
 Title: educational employees
collective bargaining
 Sponsor: Governor
 Requestor: Governor
 Date of Request: 1-22-85

FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

The bill has no fiscal impact on this department.

Prepared By: Steve Hole

Division: Commissioner's Office

Phone: 465-2800

Date: 1-23-85

Approved by Commissioner: Harold Reynolds, Jr.

Agency: Education

Date: 1-23-85

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

**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

Sponsor: Governor Bill Sheffield

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Administration

Program Category Affected:

Independent Operations

BRU, Program or Subprogram(s) Affected:

New--Educational Employees Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

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	113.3
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, Jr.* Director

Division: Labor Relations

Phone: 465-4404

Date: March 5, 1985

Approved by Commissioner: Lisa Rudd

Agency: Department of Administration

Date: *3/12/85*

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.

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 126), 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 *Renfroe v. Green*, Sup. Ct. Op. No. 2233 (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

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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. 4715), 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 governor 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).

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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

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§ 14.20.620

EDUCATION

§ 14.20.630

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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,



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House Bill 130

RE: Educational Employees Collective Bargaining
Amends AS 14.20.550 - 610

NEA-ALASKA

CONCEPT OUTLINE

- * Provides all school district employees the right to organize and negotiate.
- * Establishes an Educational Employees Labor Relations Agency to administer the law.
- * Continues to utilize mediation through the Federal Mediation and Conciliation Service.
- * Provides for final offer arbitration on the issues not resolved in mediation. The arbitrator shall have authority to mediate an agreement before making a final decision.
- * Provides a public hearing before selection of a final offer by the arbitrator.
- * Provides for the selection of the arbitrator and for the costs of arbitration to be shared by the parties.
- * Defines and prohibits unfair labor practices.

LCS:57



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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

B2:42

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.

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 139,352), 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 the employee group compared with those of similar groups, and 6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

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, 78 Connecticut teacher contracts were open 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 33 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 78 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 unsmooth.

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 hindering 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 easy 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 strike 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 teacher 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 initial system's teacher contract negotiations then are keyed to this date (for 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 unsettled 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 *best and best offer* each side is willing to make. Not only are both sides under legal mandate to make them, 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 arbitrators 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 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. The 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 procedures defined by Connecticut's Teacher Negotiation Act are good ones and agree that the law provides definite incentives for early contract settlements.

I also asked negotiators to evaluate their district's arbitrated contracts. Of the 32 separate issues submitted for arbitration

during the first year, the issues most frequently arbitrated were salary and benefits. The arbitrated "victories" on these two issues were almost evenly shared, with board negotiators winning 57 percent of all salary 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.

Both 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)

say that the resulting contracts were drastically poor; 73 percent characterize 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 strikes in the public schools but also is perceived as a fair and equitable alternative by all involved. Appearances, however, are deceiving. 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 as which they have no outside 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 seeking repeal of the law. C.S.F.T., traditionally has favored a different approach to winning contract concessions 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 outcomes, yet a strong philosophical challenge to its existence has been mounted on two fronts, and the future of this legislative approach to negotiations passed 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. □

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Bernadette Marczyk is principal of Ridgefield High School in Ridgefield, Conn.



*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 (VERC) 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 employers 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 subject 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 neither 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 agreed 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 has only made 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 final.

Strike 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:

1. The lawful authority of the municipal employer,

2. The stipulations of the parties,

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

4. 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 enjoin 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 checkoff 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: 35 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 those 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 go to binding arbitration, these employers will not give in on permissive issues since there is a process 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 so that 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.

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 = 1596)

37. Should teachers have the right to strike?

YES.....	49.1%
NO.....	45.6%
DON'T KNOW.....	5.2%

(n = 1589)

an nea
publication
for
support
of
state and local
association
negotiators

Collective Bargaining Quarterly

Vol. VII, No. 1 April 1984

STATE BARGAINING LAWS FOR EDUCATIONAL EMPLOYEES: K-12, HIGHER EDUCATION, AND K-G SUPPORT PERSONNEL

- Statutes, case law, Attorney's General Opinions plus other significant statutes and cases are brought together for a birds-eye view of the bargaining climate within and between states.
 - From a national perspective, education employees acquired improved bargaining rights—three new laws, a plethora of changes enhancing statutes, scores of favorable judicial decisions.
 - An examination of the statutes and their content, however, reveals a patchwork system providing uneven and unequal coverage among educational employees within a state and diverse treatment of education employees from one state to another. This underscores why the NEA is continuing to seek federally guaranteed collective bargaining rights.
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NEA COLLECTIVE BARGAINING

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STATE BARGAINING LAWS FOR EDUCATIONAL EMPLOYEES: K-12, HIGHER ED, AND K-G SUPPORT PERSONNEL

INTRODUCTION

Have you ever been overwhelmed by the legal aspects of certain collective bargaining issues? This issue of the *Collective Bargaining Quarterly* was prepared to help you see that you are usually not alone whatever the problem may be. For this issue, we compiled and examined the bargaining statutes in each state (some states have four), selected certain provisions for attention, provided annotations about their significance, and asked an appropriate person in each of our state affiliates to review this work for accuracy of content before publishing these profiles.

Several issues have been chosen for special treatment, including:

- Union security issues such as exclusive recognition, and whether dues check-off or agency shop is permitted
- Impasse procedures covering mediation, fact finding, and arbitration
- Duty to bargain
- Right to strike

The bargaining laws in each state are summarized in a standard format. After you have looked at the format for your state you should be able to turn to the profile of another state and see at a glance how it differs or mirrors your state's statute. These profiles, however, cannot replace the state statutes for completeness or for

precise expression of content. It can however help the user get to the statutory language expeditiously.

The *Collective Bargaining Quarterly* of December 1981 contained a similar compilation of state bargaining statutes. Those who remember that issue will note several changes. Special effort has been made to include K-12 education support personnel and faculty and support personnel in higher education. Thus, this volume is a more comprehensive set of profiles than NEA has provided heretofore.

As a matter of historical interest, it should be noted that in 1983 Ohio and Illinois enacted new collective bargaining statutes and that Delaware enacted a wholesale revision of its statute. In addition, many states have changed the scope of bargaining since 1981, either broadening or narrowing the issues subject to the process.

Joe Falzon deserves the credit for initially compiling these state collective bargaining profiles. Percy Walcott assisted him with the technical aspects of the task, while Asif Zaheer provided the indispensable clerical support.

The cooperation obtained from the persons in our state affiliates who took the time to help us understand and present the profile of each state is greatly appreciated. The Research Services Division bears responsibility, however, for the contents of this issue and hopes that it proves useful to all who read it.

STATUTORY OVERVIEW BY STATE K-12 TEACHER BARGAINING

BARGAINING RIGHTS

Duty to Bargain:

AK, CA, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, ME, MD, MA, MI, MN, MT, NB, NV, NH, NJ, NY, ND, OH, OK, OR, PA, RI, SD, TN, VT, WA, WI

Meet and Confer:

AL

No Statute:

AZ, AR, CO, GA, KY, LA, MS, MO, NM, SC, UT, WV, WY

Prohibited:

NC, TX, VA

ADMINISTRATING AGENCY

CA, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, ME, MA, MI, MN, MT, NB, NV, NH, NJ, NY, OH, OR, PA, RI, SD, WA, WI

UNIT DETERMINATION

Criteria Listed:

CA, DE, DC, FL, IL, IN, IA, KS, ME, MA, MI, MN, MT, NB, NV, NH, NJ, NY, ND, OH, OR, PA, SD, WA, WI

Statute Specifies:

AK, CT, HI, MD, RI, TN, VT

RECOGNITION

Elect/A:

DE, HI, IA, NH, TN

Voluntary/Election:

AK, CA, CT, DC, FL, ID, IL, IN, KS, ME, MD, MA, MI, MN, MT, NB, NV, NJ, NY, ND, OH, OK, OR, PA, RI, SD, VT, WA, WI

MANAGEMENT RIGHTS

Listed:

AL, CA, DE, DC, FL, HI, ID, IL, IN, IA, MN, MT, NV, NH, OH, PA, TN

UNION SECURITY

Dues Deduction:

AL, CA, CT, DE, DC, FL, HI, IL, IN, IA, KS, MD, MA, MI, MN, MT, NV, NJ, NY, ND, OH, OR, PA, RI, TN, WA, WI

Agency Shop:

(Mandatory) CT, HI, NY, RI

(Permitted) CA, DC, IL, MA, MI, MN, MT, NJ, OH, OR, WA, WI

(Prohibited) ME

Union Shop:

(Permitted) OR

(Prohibited) WA

IMPASSE PROCEDURES

Mediation:

AK, CA, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, ME, MA, MI, MN, MT, NB, NV, NH, NJ, NY, ND, OH, OR, PA, RI, SD, TN, VT, WA, WI

Factfinding:

CA, DE, DC, FL, HI, ID, IL, IN, IA, KS, ME, MD, MA, MI, MT, NB, NV, NH, NJ, NY, ND, OH, OK, OR, PA, TN, VT, WA, WI

Interest Arbitration:

(Mandatory, conventional) DC, HI, MA, MN, NB, NY, RI

(Voluntary, conventional) IL, ME, MT, NH, NV, NJ, OH, OR, PA

(Mandatory, final offer, package) WI

(Mandatory, final offer, issue) CT, IA

(Advisory only) AK

Award Criteria:

DE, DC, FL, CA, IN, IA, NV, WI

STRIKE POLICY

Limited Rights:

HI, IL, MN, OH, OR, PA, WI

Penalties:

FL, IN, IA, MD, MA, MN, NB, NV, NH, NY, ND, OK, SD, TN

STATUTORY OVERVIEW BY STATE HIGHER EDUCATION BARGAINING

BARGAINING RIGHTS

Duty to Bargain:

AK, CA, CT, DE, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NB, NH, NJ, NY, OH, OR, PA, RI, SD, VT

Meet and Confer:

CA, WA

No Statute:

AL, AZ, AR, CO, GA, IL, IN, KY, LA, MD, MS, MO, NV, NM, ND, OK, SC, TN, UT, WV, WI, WY

Prohibited:

NC, TX, VA

ADMINISTRATING AGENCY

AK, CA, CT, DE, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NB, NH, NJ, NY, OH, OR, PA, RI, SD, VT, WA

UNIT DETERMINATION

Criteria Listed:

AK, CA, CT, DE, DC, FL, IL, IA, KS, ME, MA, MI, MN, MT, NB, NH, NJ, NY, OH, OR, PA, SD, VT

Statute Specifies:

HI, ME, RI

RECOGNITION

Elect/An:

DE, HI, IA, NH, VT, WA

Voluntary/Election:

AK, CA, CT, DC, FL, IL, KS, ME, MA, MI, MN, MT, NB, NJ, NY, OH, OR, PA, RI, SD

MANAGEMENT RIGHTS

Listed:

AK, CA, DC, FL, HI, IL, IA, KS, MN, MT, NH, OH, PA, VT

UNION SECURITY

Dues Deduction:

AK, CA, CT, DE, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NJ, NY, OH, OR, PA, RI

Agency Shop:

(Mandatory) CT, HI, NY, RI

(Permitted) AK, DC, IL, ME, MA, MI, MN, MT, NJ, OH, OR

(Prohibited) VT

Union Shop:

(Permitted) AK, OR

(Prohibited) ME, VT

IMPASSE PROCEDURES

Mediation:

AK, CA, CT, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NB, NH, NJ, NY, OH, OR, PA, SD, VT, WA

Factfinding:

CA, CT, DC, FL, HI, IL, IA, KS, ME, MA, MI, MT, NB, NH, NJ, NY, OH, OR, PA, RI, VT, WA

Interest Arbitration:

(Mandatory, conventional) AK, DC, HI, MA, MN, NB, NY, RI

(Voluntary, conventional) IL, ME, MT, NH, OH, OR, PA

(Mandatory, final offer, package)

(Mandatory, final offer, issue) IA

(Advisory only) DE

Award Criteria:

DC, FL, IA, ME, RI, VT

STRIKE POLICY

Limited Rights:

AK, HI, IL, MN, OH, OR, PA

Penalties:

AK, FL, IA, MN, NB, NH, NY, PA, SD

STATUTORY OVERVIEW BY STATE EDUCATION SUPPORT PERSONNEL BARGAINING

BARGAINING RIGHTS

Duty to Bargain:

CA, CT, DE, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NB, NV, NH, NJ, NY, OH, OK, OR, PA, RI, SD, VT, WA, WI

Meet and Confer: MD, MO

No Statute:

AL, AK, AZ, AR, CO, GA, ID, IN, KY, LA, MS, NM, ND, SC, TN, UT, WV, WY

Prohibited:

NC, TX, VA

ADMINISTRATING AGENCY

CA, CT, DC, DE, FL, HI, IL, IA, KS, ME, MA, MI, MN, MO, MT, NB, NV, NH, NJ, NY, OH, OR, PA, RI, SD, VT, WA, WI

UNIT DETERMINATION

Criteria Listed:

CA, CT, DE, FL, IL, IA, ME, MA, MD, MI, MN, MO, MT, NB, NV, NH, NJ, NY, OH, OR, PA, SD, VT, WA, WI

Statute Specifies:

HI, ND, OK

RECOGNITION

Election:

DE, HI, IA, NH, RI

Voluntary/Election:

CA, CT, DC, FL, IL, KS, ME, MD, MA, MI, MN, MO, MT, NB, NV, NJ, NY, OH, OK, OR, PA, SD, VT, WA, WI

MANAGEMENT RIGHTS

Listed:

CA, DC, FL, HI, IL, IA, KS, MN, MT, NV, NH, OH, PA, VT

UNION SECURITY

Dues Deduction:

CA, CT, DE, DC, FL, HI, IL, IA, KS, MD, MA, MI, MN, MT, NV, NJ, NY, OH, OR, PA, VT, WA, WI

Agency Shop:

(Mandatory) HI, NY

(Permitted) CA, DC, IL, MA, MI, MN, MT, NJ, OH,

OR, VT, WA, WI

(Prohibited) ME

Union Shop:

(Permitted) OR

(Prohibited) WA

IMPASSE PROCEDURES

Mediation:

CA, CT, DC, FL, HI, IL, IA, KS, ME, MA, MI, MN, MT, NB, NV, NH, NJ, NY, OH, OR, PA, SD, VT, WI

Factfinding:

CA, CT, DC, FL, HI, IL, IA, KS, ME, MA, MI, MT, NB, NV, NH, NJ, NY, OH, OK, OR, PA, RI, VT, WI

Interest Arbitration:

(Mandatory, conventional) HI, MA, MN, NB, NY, RI

(Voluntary, conventional) IL, ME, MT, NV, NH, OH,

OR, PA, VT

(Mandatory, final offer, package) WI

(Mandatory, final offer, issue) CT, IA

(Advisory only) DE

Award Criteria:

CA, CT, DC, FL, IA, NV, RI, VT, WA, WI

STRIKE POLICY

Limited Rights:

HI, IL, MN, OH, OR, PA, VT, WI

Penalties:

FL, IA, MD, MA, MN, NB, NV, NH, NY, OK, PA, SD, WA, WI

ALABAMA
(K-12, CC: M/C)

Statute:

Code of Alabama, Title 16, Sections 8-10, 11-18, 22-6, as enacted by Acts 1023, 1022, 655, Ls. 1973

Coverage:

Certified employees in any school district, county or city

Exclusions:

No Specific Provision

Administrating Agency:

County or City Board of Education

Unit Determination:

No Specific Provision

Unit Determination Criteria:

No Specific Provision

Recognition:

No Specific Provision

Bargaining Rights:

Consultation

Scope of Bargaining:

Rules and regulations about the operation and management of schools, tax sheltered annuities, membership dues deduction, and group insurance premiums

Management Rights:

Board of education shall determine policy and prescribe rules and regulations for the operation and management of the schools

Employee Rights:

No Specific Provision

Grievance Procedure:

No Specific Provision

Union Security:

Dues deduction mandatory

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

No Specific Provision

Strike Policy:

No Specific Provision

CASE LAW:

BARGAINING RIGHTS

- Cities cannot make binding contracts or be forced into negotiations. *Nichols v. Bolding*, 83 LRRM 2561 (1973)
- Public employers cannot bargain with unions without express constitutional or statutory authority. *International Union of Operating Engineers, Local 321 v. Water Works Board of the City of Birmingham*, 276 Ala. 462, 163 So. 2d 619 (1964)

STRIKES

- Public employee strikes are illegal. *O.A.G.*, 6/18/57
- Striking public employees may be discharged. *United Steel Workers of America, et al v. Univ. of Alabama*, 599 F. 2d 56 (5th Cir. 1979)

NOTES:

- Alabama has a right to work law. *Code of Alabama*, Title 25, Section 7-34 (1975)
- Alabama has a firefighters bargaining statute. *Code of Alabama*, Title 11, Section 43-143 (1975)

ALASKA
(K-12: M)

Statute:

Alaska Statutes, Section 14.20.0550 to 14.20.610, Chapter 20, Title 14, as enacted by Ch. 18, L. 1970; as amended by Chs. 43, 71, Ls. 1971; as last amended by Chs. 124, 201, Ls. 1975

Coverage:

Certified employees of cities, boroughs or state-owned schools

Exclusions:

Superintendent of schools

Administrating Agency:

Local school boards

Unit Determination:

No Specific Provision

Unit Determination Criteria:

- All K-12 certified personnel
- Principals and assistant principals may negotiate independently if they so choose

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- Agreement reduced to writing

Scope of Bargaining:

Matters pertaining to employment and fulfillment of professional duties

Management Rights:

Legal rights of school boards

Employee Rights:

No Specific Provision

Grievance Procedure:

- Grievance procedure mandatory culminating in final and binding arbitration
- Procedure must include method for selection of arbitrator

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:**MEDIATION**

- Parties may select a mediator or parties may petition FMCS to provide a mediator
- Each party shall select a team of not more than five persons to present evidence and position of the group to the mediator
- Terms agreed to shall be reduced to writing and made public
- Each party has ten days to accept or reject the report

ARBITRATION

If the report is rejected, governor may appoint an arbitrator who upon reviewing the issues will make advisory recommendations

Strike Policy:

No Specific Provision

NOTES:

- Negotiations may be held in executive session by mutual agreement
- Final agreement must be made public
- Contract duration may not exceed three years

ALASKA (HE: M)

Statute:

Alaska Statutes, Section 23.40.00 to 23.40.260, Title 23, as enacted by Ch. 113, L. 1972; as amended by Ch. 85, L. 1976; Ch. 62, L. 1977; as last amended by Ch. 148, L. 1975

Coverage:

State and local employees unless local legislature rejects application of the Act by local ordinance or resolution

Exclusions:

Teachers and noncertified employees of a school district; elected or appointed officials

Administrating Agency:

- Alaska Labor Relations Agency (ALRA)
- Department of Labor, Personnel Board (DOL-PB)

Unit Determination:

ALRA or DOL-PB

Unit Determination Criteria:

- Community of interest
- Wages, hours and working conditions
- History of collective bargaining
- Desire of employees
- Avoid over fragmentation

Recognition:

Exclusive, voluntary or election

Bargaining Rights:

- Duty to bargain
- Agreement reduced to writing
- Duration not to exceed three years

Scope of bargaining:

Wages, hours, other terms and conditions of employment

Management Rights:

- Merit system
- General policies describing functions and purpose of employer

Employee Rights:

- To organize, form, join or assist a union
- Engage in concerted activities and bargain collectively

Grievance Procedure:

Grievance procedure culminating in binding arbitration is mandatory

Union Security:

- Dues deduction mandatory

- Union or agency shop permitted
- Contribution to a mutually agreeable non-religious organization permitted for bona fide religious objection

Unfair Labor Practices:

UNION

- Restrain or coerce employees or employer's representative
- Refusal to bargain in good faith

MANAGEMENT

- Interfere with, restrain or coerce employees
- Dominate unions
- Discriminate on account of union membership or testimony
- Refusal to bargain in good faith

Impasse Procedure:

MEDIATION

Mediation at request of either party or at initiative of administering agency

ARBITRATION

- Arbitration is mandatory for police, fire, jail, prison, correctional and hospital personnel, or if a strike is enjoined
- Arbitration is voluntary non-essential employees (including teachers) after mediation

Strike Policy:

- Strike is prohibited for police, fire, jail, prison, correction and hospital employees
- All other public employees may strike unless strike is a threat to public health, safety and welfare
- Strike may be enjoined at any time

ARIZONA

Arizona does not have a collective bargaining statute for public employees

CASE LAW:

UNION SECURITY

Dues checkoff may be granted in teacher contracts. *Edwards v. Alahambra Elementary School*, 488 P. 2d 501 [1971]

BARGAINING RIGHTS

- School boards may enter into collective bargaining with teacher organizations when it means meeting and consulting only, but the decision to bargain is at the discretion of the board. *Board of Education v. Scottsdale Education Ass'n*, 17 Ariz. 504, 498 P. 2d 578 [1972]
- State board of regents has no duty to bargain since statute only authorizes the board to administer employment, not to recognize or bargain with a union. *CWA v. Arizona Board of Regents*, 4 P. 2d 472 [1972]
- Before a contract becomes effective, it must be implemented by a city ordinance. *Tucson Police and Fire Fighters Ass'n v. City of Tucson*, 574 P. 2d 850 [1977]
- Exclusive representation prohibited for public em-

ployees; public employers may meet and confer with employees on wages, terms of employment, and working conditions but cannot be compelled to do so; merit system takes precedence over other agreements. *O.A.G.*, 74-11 [R-24], 5/20/74

STRIKES

Teachers union was preliminarily enjoined from striking or picketing when immediate and irreparable loss would have been suffered by the district. *Kitchell v. Scottsdale Education Ass'n*, Ariz. Super. Ct. No. C 246789, 2 PBC (CCH) para. 20,137 [1971]

NOTES:

- Arizona has a right-to-work law which applies to the state and its agencies. [Arizona Constitution, Article XXV]
- City of Phoenix has a comprehensive ordinance providing for collective bargaining for its public employees. The ordinance prohibits strikes; provides for automatic termination of striking employees; rehired striking employees receive a 5% salary reduction and may not receive a raise for 18 months; and prohibits binding arbitration

ARKANSAS

Arkansas does not have a collective bargaining statute for public employees

**CASE LAW:
BARGAINING**

- Public employers are not required to bargain. *City of Fort Smith v. Arkansas State Council No. 38, AFSCME*, 433 S.W. 2d 153 [1968]
- Public employers may bargain. *O.A.G.*, 9/25/68
- Negotiating sessions between school boards and teacher organization may be held in closed meetings. *O.A.G.*, #79-169, 12/13/79

UNION MEMBERSHIP

Public employees have the right to join unions. *O.A.G.*, 9/25/68

STRIKES

Strikes by public employees are illegal. *Patts v. Hay*, 318 S.W. 2d 826 [1958]

NOTES:

- Arkansas has a right-to-work statute that applies to public employees
- Discrimination on account of union membership is prohibited

**CALIFORNIA
(HE, ESP: M/C)**

Statute:

California Code, Division 4 of Title 1, Section 3512 to 3524, as enacted by Ch. 1159, L. 1977; as amended by Chs. 371, 776, Ls. 1978; Chs. 98, 1072, Ls. 1979; Ch. 1008, L. 1979; Ch. 230, L. 1981; Chs. 1081, 1270, 1572, Ls. 1982; as last amended by Ch. 323, L. 1983

Coverage:

All support staff employees of the state (in the state university and college system) and teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction

Exclusions:

- Managerial and confidential employees
- Employees of the Department of Personnel Administration; Legislative Counsel Bureau; PERB; State Personnel Board; and State Conciliation Service

Administrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

- Community of interest among employees
- Perform functionally related services or work toward a common goal
- History of employee representation
- Common skills, job duties, working conditions or similar educational or training requirements
- Effect of the proposed unit on the meet and confer relationship
- Efficient operation of the agency
- Effect of overfragmentation

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Meet and confer
- Agreement may be reduced to writing

Scope of Bargaining:

Wages, hours and other terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To form, join, or participate in unions or refrain from so doing

Grievance Procedure:

Grievance procedure is negotiable

Union Security:

- Dues deduction is mandatory
- Fair share and/or maintenance of membership is negotiable

Unfair Labor Practices:

UNION

- Cause or attempt to cause an employer to commit an unfair labor practice
- Interfere with, restrain, coerce or discriminate against an employee for exercise of rights guaranteed under this Act
- Refuse to engage in the meet and confer process
- Refuse to participate in the mediation process

MANAGEMENT

- Interfere with, restrain, coerce or discriminate against an employee in the exercise of rights guaranteed by this Act
- Deny to an employee organization rights guaranteed by this Act
- Refuse to engage in the meet and confer process
- Dominate or interfere with the formation or administration of an employee organization
- Encourage employees to join a particular employee organization

- Refuse to participate in the mediation process

Inpassé Procedure:

MEDIATION

- At request of either party
- Mediator must be mutually selected
- Costs of mediation shared equally

Strike Policy:

No Specific Provision

CALIFORNIA (K-12, ESP, CC; M)

Statute:

California Code Annotated, Section 3540 to 3549.3, Chapter 10.7, Division 4 of Title 1, as enacted by Ch. 961, L. 1975; as amended by SB 1471, L. 1976; Chs. 185, 606, 632, 1084, 1159, 1072, Ls. 1979; Chs. 666, 816, 949, 1088, Ls. 1980; Ch. 160, L. 1981; Ch. 100, L. 1982; as last amended by Ch. 498, L. 1983

Coverage:

All certified public school and community college employees; support personnel; and supervisory employees who must be in a separate bargaining unit

Exclusions:

Elected, appointed, managerial and confidential employees

Administrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

- Community of interest
- Established practices including extent to which employees belong to the employee organization
- Effect of size of unit on efficient operation of the district
- Separate units of all classroom teachers, support personnel and supervisory personnel
- Substitute and summer school teachers may be included in teachers unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain in good faith
- Agreement reduced to writing
- Duration not to exceed three years

Scope of Bargaining:

- The scope of bargaining shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. 'Terms and conditions of employment' mean health and welfare benefits, leaves, transfer and reassignment policies, safety conditions of employment, class size, evaluations, organizational security and grievance procedures
- Also within the scope of bargaining are: discipline and suspension procedures, teacher layoffs, and merit pay schedules. Failure to reach mutual agreement on these topics requires the parties to utilize provisions contained within the education code
- Consultation only on policies relating to: definition of educational objective; curriculum and course content; and textbook selection

Management Rights:

All matters not specifically enumerated as within the scope of bargaining are reserved to the public employer, except nothing shall restrict the public employer from consulting with an employer organization

Employee Rights:

- To form, join and participate in unions
- To refrain from joining unions
- To present grievances

Grievance Procedure:

- Grievance procedure culminating in final and binding arbitration is negotiable
- If no provision for arbitration, parties may submit dispute to PERB for final and binding resolution

Union Security:

- Dues deduction mandatory
- Agency shop and/or maintenance of membership permitted

Unfair Labor Practices:**UNION**

- Attempt to cause employer to commit an unfair labor practice
- Threaten, discriminate, interfere with, restrain or coerce employees
- Refuse to meet or negotiate in good faith
- Refuse to participate in impasse resolution procedure

MANAGEMENT

- Deny guaranteed union rights under this Act
- Threaten, discriminate against, interfere with, restrain or coerce employees
- Refuse to meet or negotiate in good faith
- Refuse to participate in impasse resolution procedure
- Dominate or interfere with administration of union or contribute financially to support of a union

Impasse Procedure:**MEDIATION**

- Parties may petition PERB for mediator at Board expense
- Parties may select a mediator at own expense

FACTFINDING

- After mediation, a tripartite factfinding panel may be requested
- Panel must issue a report within 30 days, report public after 10 days

- Cost shared by parties

FACTFINDING AWARD CRITERIA

- Any applicable Federal/State laws
- Stipulations of the parties
- Ability to pay
- Welfare and interest of the public
- Comparisons with employees in "comparable" districts performing similar work
- Cost of living
- Present compensation
- Other relevant factors

Strike Policy:

No Specific Provision

CASE LAW:**STRIKES**

Strikes by public school employees are prohibited in the absence of legislative authority. *Pasadena Unified School District v. Pasadena Federation of Teachers*, AFT Local 1050, Ct. App. 2nd Dist., Div. 3, No. 49576, [1978]

NOTES:

Initial bargaining proposals must be presented at a public meeting and ten days time allowed prior to first session for public consideration and input on issues. New proposals must be made public within 24 hours of issuance

CALIFORNIA

(HE: M/C)

Statute:

California Code Annotated, Section 3560 to 3599, Chapter 12, Division 4 of Title 1, as enacted by Chs. 744, 1219, Ls. 1978; as amended by Ch. 230, L. 1981; by Chs. 1095, 1276, Ls. 1982; as last amended by Chs. 135, 143, Ls. 1983

Coverage:

- Higher education faculty at the University of California, Hastings College of Law and California State university system
- Non-teaching professional and support staff
- Students whose employment is not related to their course of study

Exclusions:

Managerial and confidential employees

Administrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

- Community of interest
- Internal and occupational factors
- The effect the unit will have on the meet and confer relationship
- Effect of the unit on operations of the employer
- Avoidance of over-fragmentation and proliferation of units

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Meet and confer
- Written memorandum to legislature for any items requiring funding

Scope of Bargaining:

Wages, hours of employment and other terms and conditions of employment

Management Rights:

- Fees which are not a condition of employment

- Admission and degree requirements of students
- Determine content and supervision of courses and research programs
- Appointment, tenure and promotion of members of the academic senate
- Grievance procedure for senate
- Merits, necessity or organization of service, activity or program established by statute

Employee Rights:

- To form, join and participate in unions
- Present grievances
- Refrain from union participation

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

Dues deduction mandatory

Unfair Labor Practices:

UNION

- Interfere with, restrain or coerce employees
- Refuse to meet and confer or participate in impasse procedure
- Fail to represent all employees fairly
- Cause employer to commit a ULP
- Cause employer to pay for services not rendered
- Charge excessive service fee

MANAGEMENT

- Interfere with, restrain or coerce employees

- Deny employees statutory rights
- Refuse to meet and confer or participate in impasse procedure or support a union in any way
- Dominate or interfere with administration of a union or to contribute financially to a union

Impasse Procedure:

MEDIATION

- Parties may petition PERB for mediator at PERB expense
- Parties may select a mediator at own expense

FACTFINDING

- Commences by declaration of mediator
- Tripartite panel may lie convened after 15 days of mediation
- Report issued within 30 days, made public after 10 days
- Cost shared equally by parties

Strike Policy:

No Specific Provision

CASE LAW:

STRIKES

Strikes by public employees are prohibited in absence of a statute permitting strikes. *San Diego v. AFSCME Local 127*, 87 Cal. Rptr., 258 (Ca.) 3d 308 [1970]

NOTES:

Initial bargaining proposal must be made at a public meeting

COLORADO

Colorado does not have a collective bargaining statute for public employees

CASE LAW:

RIGHT TO BARGAIN

• School boards may enter into bargaining agreements without specific legislative authority if the agreement does not conflict with existing law. *Littleton Educ. Ass'n v. Arapahoe County School District #6 et al.*, 553 P. 2d 793 [1976]

• Public employers cannot be forced to arbitrate disputes over contract terms as the decision making authority rests with the elected representatives not arbitrators. *Greeley Police Union v. City Council of Greeley*, 553 P. 2d 790 [1976]

NOTES:

State employees may file grievances under a statute establishing a grievance procedure. *Colorado Revised Statutes*, Section 24.50:101 (1973)

**CONNECTICUT
(State Employees)
(HE, CC: M)**

Statute:

Connecticut General Statutes, Title 5, Section 5-270 to 5-280, as enacted by PA 566, L. 1975; as amended by PA 435, L. 1976; PAs 22, 614, Ls. 1977; PA 111, L. 1978; PA 621, L. 1979, PA 483, L. 1980; PAs 218, 454, Ls. 1982; as last amended by PA 318, L. 1983

Coverage:

All employees of the state, including community college and higher education faculty, nonteaching professionals and support staff

Exclusions:

Elected or appointed, board and commission members, part-time and confidential employees

Administrating Agency:

State Board of Labor Relations (SBLR)

Unit Determination:

SBLR

Unit Determination Criteria:

- Community of interest
- Effects of overfragmentation
- Separate units of professionals and nonprofessionals unless a majority of professionals vote for inclusion
 - State-wide bargaining units where possible
 - Separate units for public institutions of higher education including state technical colleges and vocational schools. Non-teaching professionals may be included in a faculty unit if both groups vote for inclusion

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce any agreement to writing

Scope of Bargaining:

Wages, hours and other conditions of employment

Management Rights:

- Establish, conduct and grade merit examinations
- Create merit lists, and rank and appoint candidates from merit list

Employee Rights:

- To organize, join, form or assist unions
- Engage in concerted activity
- Bargain collectively
- Present grievances

Grievance Procedure:

- No Specific Provision

- Parties may request State Board of Mediation and Arbitration to resolve disputes over interpretation and application of agreement

- Parties may choose alternative tribunal

Union Security:

- Dues deduction mandatory
- Agency fee mandatory as a condition of continued employment

Unfair Labor Practices:**UNION**

- Restrain or coerce employees in the exercise of their statutory rights
- Restrain or coerce employer's selection of a representative for the purpose of bargaining or grievance adjustment
- Refuse to bargain in good faith
- Violate SBLR rules regarding conduct of representation elections
- Refuse to reduce agreement to writing and sign such agreement

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their statutory rights, including lockout
- Dominate unions
- Discriminate on account of union membership or testimony
- Refuse to bargain in good faith
- Refuse to reduce to writing or sign agreement
- Violate SBLR rules regarding conduct of representation elections

Impasse Procedure:**MEDIATION**

At request of either party, State Board of Mediation and Arbitration (SBMA) may provide a mediator

FACTFINDING

- At request of either party, or SBMA may initiate if a dispute exists or if either party is not bargaining in good faith
- Single factfinder
- Report issued in 30 days
- Cost are shared equally
- If ULP is charged and proven, offender pays all cost

Strike Policy:

Prohibited

NOTES:

SBLR may impose penalties on union or employer if the Board determines that a prohibited practice has been committed requiring affirmative action

CONNECTICUT (ESP: M)

Statute:

Connecticut General Statutes, Title 7, Section 7-467 to 7-478, as enacted by PA 159, L. 1965; as amended by PAs 214, 491, 708, Ls. 1967; PAs 174, L. 1969; PA 532, L. 1971; PAs 35, 81, 173, 189, 570, Ls. 1975; PA 117, L. 1977; PA 375, L. 1978; PA 313, L. 1979; PA 29, L. 1981; PA 37, 212, Ls. 1982; as last amended by PAs 86, 503, L. 1983

Coverage:

Municipal employees including school district support personnel

Exclusions:

Elected officials, administrators, board and commission members, certified teachers, part-time and seasonal employees and department heads

Administering Agency:

- State Board of Labor Relations (SBLR)
- State Board of Mediation and Arbitration (SBMA)

Unit Determination:

SBLR

Unit Determination Criteria:

- Community of interest
- No unit shall include both supervisory and nonsupervisory employees except police and fire units
- Professionals must vote for inclusion in a nonprofessional unit
- Single unit of uniformed and investigatory personnel of fire and police departments

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Wages, hours, other conditions of employment

Management Rights:

Merit system, conduct and grading of exams, rating of candidates, lists and appointments

Employee Rights:

- To organize, form, join or assist unions
- Bargain collectively
- Engage in other concerted activities
- Present grievances

Grievance Procedure:

- SBMA may provide arbitrator at request of both parties

- Use of other arbitration tribunals allowed

Union Security:

Dues deduction is negotiable

Unfair Labor Practices:**UNION**

- Restrain or coerce employees in the exercise of their statutory rights
- Restrain or coerce employers in the exercise of their rights to select a bargaining representative or in the adjustment of grievances
- Refuse to comply with a grievance award
- Refuse to bargain in good faith

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their statutory rights
- Dominate unions
- Discriminate or discharge employees for exercising statutory rights
- Refuse to bargain in good faith
- Refuse to discuss grievances
- Refuse to comply with a grievance arbitration award

Impasse Procedure:**MEDIATION**

At request of either party or SBMA appoints after 50 days from start of negotiations

FACTFINDING

- If impasse continues SBMA appoints a factfinder who issues a report within 30 days of appointment
- The factfinder and employee organization shall appear within 40 days before the legislative body to discuss the report
- If after 20 days from last meeting with factfinder either party does not accept or reject the report, it becomes final and binding
- Factfinder may mediate dispute
- Costs shared equally

ARBITRATION

- If impasse exists SBMA will initiate arbitration
- Tripartite panel
- The decision of the arbitrator is final and binding
- Costs shared equally
- Final offer, issue by issue basis

ARBITRATION AWARD CRITERIA

- Working conditions prevailing in the labor market
- Ability to pay
- Interest and welfare of employees

Strike Policy:

Prohibited

NOTES:

- SBLR may impose penalties on union or employer if the Board determines that a prohibited practice has been committed which may require a remedy, or more affirmative action than a cease and desist order
- Contract must be submitted to legislative body 14 days after agreement is reached

- Contract must be approved by appropriate legislative body; if rejected, it is returned to the parties for further bargaining. Funding must be provided after approval. Federal approval must be obtained when indicated
- Terms of the agreement prevail over town charters, special act, ordinances, rules, regulations, statutes

CONNECTICUT (K-12: M)

Statute:

Connecticut General Statutes, Section 10-153a to 10-153, L. 1958; as amended by PA 752, L. 1967; PA 811, L. 1969; PA 385, L. 1973; PA 403, L. 1976; PAs 235, 614, Ls. 1977; PAs 84, 218, 280, 303, Ls. 1978; PAs 405, 422, 504, Ls. 1979; PAs 192, 483, Ls. 1980; PAs 225, 472, Ls. 1982; as last amended by PAs 29, 72, 308, 342, 359, Ls. 1983

Coverage:

Teachers and other certified professional employees

Exclusions:

Superintendent and assistant superintendent; certified professional employees who act for the board or are responsible to the board for personnel relations/negotiations/budget; temporary substitutes and all non-certified employees

Administrating Agency:

- State Board of Labor Relations (SBLR)
- State Commissioner of Education

Unit Determination:

- Local board of education
- State Commissioner of Education

Unit Determination Criteria:

- Employer wide units of teachers and administrators
- Percentage of time spent on assigned duties
- Certification

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- Agreement must be reduced to writing

Scope of Bargaining:

Salaries and other conditions of employment about which either party wishes to negotiate

Management Rights:

No Specific Provision

Employee Rights:

To form, join or assist or refuse to form, join or assist any organization for professional or economic improvement

Grievance Procedure:

- Must be bargained
- No specific provision for final and binding arbitration

Union Security:

- Dues deduction mandatory
- Service fee equal to dues as condition of employment

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees in exercise of rights under this statute or employer in the selection of its agents
- Discriminate for or against an employee for filing a complaint under this Act
- Refuse to negotiate in good faith
- Refuse to participate in mediation or arbitration
- Solicit or advocate student support for union activities

MANAGEMENT

- Interfere with, restrain, or coerce certified professional employees in exercise of rights under this Act
- Dominate or interfere with formation, existence or administration of a union
- Discharge or discriminate against an employee for filing a complaint under this Act
- Refuse to negotiate in good faith
- Refuse to participate in mediation or arbitration

Impasse Procedure:**MEDIATION**

- Commences 110 days prior to budget submission date
- Parties select mediator or one is assigned by Commissioner of Education

ARBITRATION

- Arbitration commences four days after conclusion of unsuccessful mediation
- Only disputed issues submitted to arbitrators for a final and binding decision

- Items submitted in form of last best offers
- Final and binding, issue by issue
- Decision rendered within 20 days from close of hearing
 - Tripartite panel-selection of neutral representing public interest by mutual agreement or assigned by Commissioner of Education
 - Limited judicial review

Strike Policy:
Prohibited

CASE LAW:
STATUTORY COVERAGE

Summer school teachers are covered within the meaning of the Teachers Negotiations Act. *Connecticut State Board v. Board of Educ.*, 160 LRRM 3065 [1979]

UNION SECURITY

Agency shop appearing in contracts that require the amendment permitting service fees are legal and do not contravene public policy. *Dowaliby v. AFT Local 1018*, 109 LRRM 3015 [1980]

CONTRACT, BINDING EFFECT

A negotiated agreement is binding on the board when a signed copy is filed with the town clerk and the contract is not rejected by the town within 30 days from date of filing. *Education Ass'n v. Town of Madison*, 97 LRRM 2631 [1978]

SCOPE OF BARGAINING

Board of Education is required to bargain over the following mandatory subjects: class size, teacher load, and binding arbitration of grievances. But length of school day and calendar as they relate to hours of employment are excepted from bargaining under the Act. Further the Board may determine whether there shall be extracurricular activities but must negotiate over assignments and compensation levels. *West Hartford Educ. Ass'n v. DeCourcy*, 80 LRRM 2422 [1972]

NOTES:

- Negotiations commence 180 days prior to budget submission date
- Member of regional or town board of finance shall sit on the employer negotiating team to provide fiscal information
- Commissioner of Education may recommend non-binding settlement during impasse process

DELAWARE
(HE, ESP: M)

Statute:

Delaware Code, Title 19, Section 1301 to 1312 as enacted by SB 660, L. 1970; as amended by HB 2, L. 1973

Coverage:

All public employees

Exclusions:

Professionals, elected or appointed officials

Administrating Agency:

Department of Labor (DOL)

Unit Determination:

DOL

Unit Determination Criteria:

- Duties skills and working conditions
- History of bargaining
- Extent of organization
- Employee desires

Recognition:

Exclusive, by election

Bargaining Rights:

Duty to bargain

Scope of Bargaining:

- Wages, salaries, hours, vacations, sick leave, grievance procedure and other terms and conditions of employment
- Classified employees cannot bargain on wages and salaries

Management Rights:

No Specific Provision

Employee Rights:

- Organize and select bargaining representative
- Present grievances

Grievance Procedure:

- Grievance procedure is negotiable
- No provision for binding arbitration

Union Security:

Dues deduction is negotiable

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

Any matter, except salaries or wages, may be submitted to an arbitrator or Department of Labor for resolution

Strike Policy:

Prohibited

DELAWARE (K-12; M)

Statute:

Delaware Code, Title 14, Chapter 40, Section 4001 to 4019, L. 1969; as amended by HB 557, L. 1982

Coverage:

Certified school employees

Exclusions:

Administrators

Administrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

- Similarity of duties, skills and working conditions
- History and extent of employee organization
- Recommendations of the parties involved

Effect of over-fragmentation on efficient administration

- Other factors as the Board deems appropriate

Recognition:

Exclusive, election only

Bargaining Rights:

Duty to bargain and to reduce any agreement to writing

Scope of Bargaining:

Matters concerning or related to wages, salaries, hours, grievance procedures, and working conditions

Management Rights:

Not required to bargain on matters of inherent managerial policy, including but not limited to such areas of discretion, or policy as the functions and programs of the public school employer, its standards of services, overall budget, use of technology, organizational structure, curriculum, discipline and the selection and direction of personnel

Employee Rights:

- Be represented by their exclusive representative without discrimination
- Organize, form, join or assist an employee organization
- Negotiate collectively
- Grieve through representatives of their own choosing
- Engage in concerted activities for the purpose of collective bargaining

Grievance Procedure:

- Grievance procedure is negotiable
- No specific provision for final and binding arbitration

Union Security:

Dues deduction mandatory

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees in exer-

cise of rights under this Act

- Advocate student support for employee organization activities
- Refuse to bargain in good faith
- Refuse to comply with any provision of this Act or with rules and regulations of PERB
- Refuse to reduce to writing and sign an agreement
- Distribute organizational literature during working hours in areas where work is being performed
- Hinder or prevent by threats, intimidation, force or coercion the pursuit of work or interfere with egress or entrance to the work site

MANAGEMENT

- Interfere with, coerce or restrain an employee for exercising rights under this Act
- Dominate, interfere with or assist in the formation, existence or administration of a union
- Discriminate in regard to hiring, tenure or other terms and conditions of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against an employee who has filed a complaint under this Act
- Refuse to bargain in good faith
- Refuse to comply with any provision of this Act or rules and regulations of PERB
- Refuse to reduce an agreement to writing
- Refuse to disclose public records

Impasse Procedure:**MEDIATION**

- Shall begin on 90th day after start of negotiations
- Mediator to be obtained from PERB at no cost to parties

FACTFINDING

- The factfinder shall make nonbinding recommendations
- May be initiated at any time by mutual agreement

FACTFINDING AWARD CRITERIA

- Interests and welfare of the public
- Comparisons with employees performing similar tasks
- Current overall compensation including benefits and continuity and stability of employment
- Increases in the average weekly wages earned in the private sector within the state as computed by the Department of Labor
- Stipulation of the parties
- Lawful authority of the public school employer
- Financial ability of the public school employer to meet the costs of any proposed settlement based on existing revenues
- Other factors normally taken into consideration in the determination of wages, hours and conditions of employment

Strike Policy:

Prohibited

**WASHINGTON, D.C.
(K-12, ESP, HE: M)**

Statute:

District of Columbia Code Annotated, Title I, Chapter 6, Section 1-601.1 to 1-637.2, L. 1981

Coverage:

All employees of District of Columbia government

Exclusions:

Judges and nonjudicial employees of the court system

Administrative Agency:

- Public Employee Relations Board (PERB)
- Office of Employee Appeals (OEA)

Unit Determination:

PERB

Unit Determination Criteria:

Community of interest to mean and include skills, working conditions, common supervision, physical location, distinctiveness of functions performed, and the existence of an integrated work process

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours and any other compensation matters and any matter not proscribed by this Title

Management Rights:

- Direct employees of the agency
- Hire, promote, transfer, assign, and retain employees and to suspend, demote, discharge or take other disciplinary action for cause
- Relieve employees of duties for lack of work or other legitimate reasons
- Maintain efficiency of operations
- Determine mission of the agency, budget, organization, number of employees, work, technology or security
- Take whatever action is necessary to carry out the mission of the agency

Employee Rights:

- Form, join and assist a labor organization or to refrain from so doing
- Engage in collective bargaining through a designated representative

- Be protected in the exercise of rights guaranteed under this Title

Grievance Procedure:

- Grievance procedure culminating in final and binding arbitration is negotiable
- If a procedure is not bargained, management may issue procedure

Union Security:

- Dues deduction mandatory
- Agency shop bargainable

Unfair Labor Practices:

UNION

- Interfere with, restrain or coerce employees or the employer in exercise of rights under this Title
- Attempt to or cause an employer to discriminate in violation of this Title
- Refuse to bargain in good faith
- Engage in or condone a strike or any form of unauthorized work stoppage
- Engage in a strike or slowdown or form of coercion to force recognition of a labor organization

MANAGEMENT

- Refuse to bargain in good faith
- Interfere with, restrain, or coerce employees in the exercise of rights guaranteed under this Title
- Dominate, interfere with, or assist in formation, existence of a union or contribute to its financial support
- Discriminate in regard to hiring or tenure or employment to encourage or discourage union membership
- Discharge or discriminate against employees for exercising rights guaranteed under this Title

Impasse Procedure:

At request of either party or upon PERB initiative, parties may engage at any time in: Mediation; Factfinding; Advisory arbitration; Request for injunction; Binding arbitration

ARBITRATION AWARD CRITERIA

- Existing laws, rules and regulations which bear on any item in dispute
- Ability to pay and/or comply with award
- Protect and maintain public health, safety and welfare
- Need to maintain personnel policies that are reasonable and consistent with the objectives of this Title

Strike Policy:

Prohibited as an unfair labor practice

FLORIDA (K-12, ESP, HE: M)

Statute:

Florida Statutes Annotated, Section 447.201 to 447.609, Part II of Chapter 447, as enacted by Ch. 74-100, L. 1974; as amended by Chs. 39, 214, 269, Ls. 1976; Ch. 343, L. 1977; Chs. 7, 85, 89, 95, 100, 164, 222, 295, 400, Ls. 1980; as last amended by Ch. 367, L. 1980

Coverage:

All public employees including K-12 certified teachers; higher education faculty, non-teaching professionals and all K-G support personnel

Exclusions:

Elected, appointed, confidential, managerial, school administrators, employees of the state legislature, criminals and inmates confined to institutions, and those who act as employer negotiating representatives

Administering Agency:

Public Employment Relations Commission (PERC)

Unit Determination:

PERC

Unit Determination Criteria:

- Efficient administration of government
- Number of employee organizations with whom a government must negotiate
- Compatibility of unit with the responsibility of the employees and employer to represent the public
- Authority of the employer to agree or effectively recommend action
- Organizational structure of the employer
- Statutory authority of an employer to administer a classification and pay plan
- Separation of professionals from nonprofessionals unless both vote for a single unit
- Community of interest including manner in which wages and other terms and conditions of employment are determined
- Manner in which job and salary classifications are determined
- Interdependence of jobs and interchange of employees
- Desires of employees
- History of bargaining
- Avoiding over-fragmentation
- Avoid possible conflicts of interest

Recognition:

Exclusive, by election or voluntary

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration of contract is not to exceed three years

Scope of Bargaining:

Wages, hours, terms and conditions of employment, and grievance procedure

Management Rights:

- Determine purpose of each constituent agency
- Set standards of service
- Exercise discretion and control over organization and operation
- Direct employees
- Discipline for proper cause
- Relieve employees from duty for lack of work or for legitimate reason

Employee Rights:

- To form, join and participate in unions
- Be represented by a union in negotiations and grievances
- Present grievances
- Engage in concerted activities or refrain from so doing

Grievance Procedure:

- Grievance procedure culminating in final and binding arbitration is mandatory
- No requirement to process non-member grievances
- Career service employees have access to civil service appeal procedure
- Arbitrator cannot add to, subtract from, modify or alter terms of an agreement

Union Security:

Dues deduction mandatory

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees
- Cause or attempt to cause an employer to commit an ULP
- Refuse to bargain in good faith
- Solicit union support from students
- Discriminate because an employee gives testimony or files a complaint under this Act
- Participate, instigate or support in a positive manner a strike against a public employer

MANAGEMENT

- Interfere with, restrain, or coerce employees
- Discriminate in regard to hiring, tenure or other condition of employment to encourage or discourage union membership
- Refuse to bargain in good faith
- Dominate, interfere with or assist in the formation, existence or the financial support of a union

- Refuse to sign an agreement
- Refuse to discuss grievances
- Discharge or discriminate against an employee for filing charges or complaints under this Act

Impasse Procedure:**MEDIATION**

Parties jointly may appoint or request a mediator from PERC

SPECIAL MASTER HEARING

- If no mediator is appointed, PERC may appoint a special master
- Either party may request that PERC appoint a special master to resolve unsettled issues
- Mediation can be conducted at any time
- Recommendations must be issued 15 days from close of hearing
- If report is rejected in whole or part, chief executive officer shall take before the legislative body of the governmental entity his report, the special master's report and the employee organization's report. The legislative body shall review all recommendations and reasons for rejecting the special master's report and take appropriate action on disputed items

SPECIAL MASTER AWARD CRITERIA

- Comparison of wages and salaries prevailing in the locality
- Comparison of income with other public employees
- Interest and welfare of the public
- Availability of funds
- Peculiarities of the employment classification with other employee groups with respect to hazards, physical and educational qualifications, job training and skills, retirement plans, sick leave, job security

Strike Policy:

- Prohibited
- Injunctions may be issued against strikes

- Union may be penalized up to \$5,000 per day and union officers \$50-100 per day for contempt of court
- PERC may fine union \$20,000 per day
- Employer may receive damages
- Union may lose certification and dues deduction privileges
- Employee subject to dismissal or probation

CASE LAW:**SUNSHINE BARGAINING**

Public body may meet in executive session to instruct or consult with its labor representatives. Labor representatives may meet in closed session with union representatives in preliminary contract negotiations. *C.A.G.*, #073-200, 6/4/73

SCOPE OF BARGAINING

- A city can negotiate payment of dependent medical coverage since "matters included in a collectively bargained agreement can be all encompassing and may in fact touch on every element of the relationship when authorized by law." *O.A.G.*, #077-72, 7/15/77
- A maintenance of standards provision does not validate an expenditure of public funds as Part II, Ch. 447 does not confer authority "to expend funds in a manner unauthorized by law." *O.A.G.*, #078-76, 5/16/78

NOTES:

- Florida has a right to work law applicable to all public employees [Florida Constitution, Declaration of Rights, Section 6]
- Florida has an open meeting law requiring that negotiations be open to the public. *Florida Statutes Annotated* Section 286.011
- Student representation is permitted as observers in higher education negotiations
- If a legislative body does not appropriate sufficient funds to implement a contract, the contract must operate with a lesser appropriation
- Contract provisions contrary to law are not effective until the law is amended

GEORGIA

Georgia does not have a statute authorizing public employee collective bargaining

**CASE LAW:
BARGAINING**

Collectively bargained contracts between school boards and unions are an illegal delegation of power and therefore void in absence of legislative authority. *Chatham Association of Educators v. Board of Public Education for the City of Savannah and the County of Chatham*, 23 Ga. 806 [1974]

NOTES:

- Georgia has a right to work statute. *Georgia Code*, Chapter 54, Section 54-9
- State has a firefighters bargaining statute. *Georgia Code*, Chapter 54, Section 54-1301
- No employee holding a position by appointment or employment in the state government or any agency, authority, board, commission or public institution may promote, encourage or participate in a strike. *Georgia Code*, Chapter 89-13, Sections 1301 and 1304 and Chapter 89-99, Section 89-9917

HAWAII (K-12, ESP, HE: M)

Statute:

Hawaii Revised Statutes, Chapter 89, Section 89-1 to 89-21 as enacted by Act 171, L. 1976, as amended by SB 1173, L. 1971; Act 212, L. 1971; Act 36, L. 1973; Acts 13, 41, Ls. 1976; Act 191, L. 1977; Act 108, L. 1978; Act 252, L. 1980; Act 180, L. 1981; as last amended by Acts 100, 102, Ls. 1982

Coverage:

All employees of any public employer including K-12 teachers, higher education faculty, nonteaching professionals and K-G support personnel

Exclusions:

Elected, appointed officials, members of boards, commissions, top level managerial, administrative and confidential personnel, part-time and temporary employees, students, and employees of the governor and legislative branch, and inmates, patients of state institutions

Administering Agency:

Hawaii Public Employment Relations Board, (HPERB)

Unit Determination:

Statute

Unit Determination Criteria:

Thirteen statewide units are defined by statute

Recognition:

Exclusive, by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

- Wages, hours and other terms and conditions of employment are mandatory subjects of bargaining
- Matters affecting employee relations are subject to consultation

Management Rights:

- Classification and reclassification systems
- Health fund, retirement, salary ranges, number of increments and longevity steps
- Matters inconsistent with merit system or management discipline and control
- Matters inconsistent with the principle of equal pay for equal work
- Hire, promote, transfer, assign or retain employees in positions
- Determine qualifications and standards of work
- Suspend, demote, discharge or take other disciplinary action for proper cause
- Relieve an employee from duties because of lack of work or other legitimate reason

- Maintain efficiency of government operations
- Take necessary actions to carry out the mission of the employer

Employee Rights:

- To organize, form, join, assist a union or refrain from so doing
- Engage in lawful concerted activity

Grievance Procedure:

- Grievance procedure culminating in final and binding arbitration is negotiable
- Absent a procedure disputes may be submitted to HPERB

Union Security:

- Dues deduction mandatory
- Agency shop mandatory

Unfair Labor Practices:

UNION

- Interfere with, restrain or coerce employees
- Refuse to bargain in good faith
- Refuse to participate in impasse procedure
- Refuse to comply with this Statute
- Violate terms of an agreement

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their statutory rights
- Dominate, interfere with or assist in formation or existence of an employee organization
- Discriminate in hiring, tenure or conditions of employment to encourage or discourage union membership
- Refuse to bargain in good faith
- Refuse to participate in impasse procedure in good faith
- Refuse to comply with this Statute
- Violate the terms of a collective bargaining agreement

Impasse Procedure:

Parties may establish their own procedure terminating with binding arbitration

MEDIATION

At request of either party, or HPERB may initiate mediation within 3 days from date of impasse

FACTFINDING

- HPERB may initiate factfinding within 15 days from date of impasse
- Report issued within ten days
- If unresolved after five additional days or 30 days from impasse, dispute is submitted to binding arbitration

Strike Policy:

Permitted if following conditions are met:

- Impasse procedure is followed to conclusion
- Impasse is not submitted to arbitration
- Sixty days have elapsed since factfinding report
- Ten days notice of intent to strike is given
- Employees are part of the same bargaining unit
- Any danger to public health or safety has been removed

CASE LAW:**IMPASSE**

- The HPERB can only declare on impasse after it has

determined that the party declaring an impasse has bargained in good faith. *Board of Educ. v Hawaii PERB*, 88 LRRM 2543 [1974]

- Cost items subject to appropriation. *O.A.G.*, #72-10, 4/4/72
- Act takes precedence over all conflicting statutes, rules and local ordinances. *O.A.G.*, #73-6, 6/4/73

NOTES:

- The employer for negotiation purposes is the governor
- Mutually agreed to contribution to a non-religious organization permitted for bona fide religious objection to service fee

IDAHO (K-12: M)

Statute:

Idaho Code, Chapter 103, Section 33-1271 to 33-1276, L. 1971; as amended by SB 1279, L. 1977

Coverage:

Certified employees of school districts (K-12)

Exclusions:

Superintendents, supervisors and principals may be excluded from the unit by mutual agreement

Administrating Agency:

- State Superintendent of Public Institution
- Local Board of Education

Unit Determination:

No Specific Provision

Unit Determination Criteria:

No Specific Provision

Recognition:

Exclusive, designated or by election

Bargaining Rights:

Duty to bargain

Scope of Bargaining:

Matters and conditions as agreed upon by the parties

Management Rights:

To take necessary actions in cases of emergency, as defined by State Board of Education

Employee Rights:

No Specific Provision

Grievance Procedure:

No Specific Provision

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:**MEDIATION**

- At request of either party
- Procedures to be determined by parties
- Compensation of the neutral is responsibility of the parties

FACTFINDING

- At request of either party if mediation fails
- If parties cannot agree on factfinder, Superintendent of Public Instruction appoints
- Report issued in 30 days

Strike Policy:

No Specific Provision

CASE LAW:**RIGHT TO STRIKE**

Public school teachers are not inferentially granted strike rights absent express prohibition. *School District #351 v. Oneida Education Ass'n*, 98 Idaho 486, 567 P 2d 830 [1977]

NOTES:

- Accurate records of negotiation sessions to be kept and made available for public inspection
- Joint ratification of settlement at open meeting required
- State has a fire fighters statute. *Idaho Code*, Chapter 138

ILLINOIS (K-12, ESP, HE, M)

Statute:

Public Act 83-104

Coverage:

All certified K-12 teachers, higher education faculty, non-teaching professionals and support personnel of a school district, public community college district, state college/university or state agency whose major function is providing education services

Exclusions:

Supervisors, managerial, confidential, short-term employees, students, part-time employees, elected and appointed officials

Administering Agency:

Illinois Educational Labor Relations Board (IELRB)

Unit Determination:

IELRB

Unit Determination Criteria:

- Community of interest, including skills, functions, degree of functional integration
- Interchangeability and contact among employees, common supervisors, wages, hours and other working conditions
- Desires of employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Wages, hours and terms and conditions of employment as well as the impact thereof and any matters bargained over prior to effective date of this Act

Management Rights:

Not required to bargain over areas of inherent managerial policy such as areas of discretion or policy as the functions of the employer, standards of service, overall budget, organizational structure, selection and direction of employees

Employee Rights:

- Organize, form, join or assist employee organizations or refrain from so doing
- Bargain collectively and engage in concerted activities
- Present grievances

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Agency shop/fair share fee permitted

Unfair Labor Practices:**UNION**

- Interfere with, coerce or restrain employees in the exercise of their rights guaranteed under this Act
- Restrain or coerce an employer in selection of representatives
- Refuse to bargain collectively
- Refuse to reduce to writing or sign an agreement
- Refuse to comply with provisions of a binding arbitration award
- Violate any rules and regulations promulgated by the IELRB

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of rights guaranteed under this Act
- Dominate or interfere with the formation, existence or administration of a union
- Discriminate in hiring, tenure or any term or condition of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against employees for exercising their rights under this Act
- Refuse to bargain collectively or reduce to writing and sign an agreement
- Violate rules and regulations of IELRB
- Refuse to comply with provisions of a binding arbitration award

Impasse Procedure:**MEDIATION**

- If no agreement within 90 days of the start of a school year, parties must notify IELRB of status of negotiations
- If no agreement within 45 days either party may petition IELRB for mediation or mediation may be initiated by IELRB
- Mediator may engage in factfinding and render a written report with recommendations
- Costs to be shared by parties

ARBITRATION

Final and binding arbitration is at the discretion of the parties

Strike Policy:

Strikes are permitted if following conditions are met:

- Employees are represented by an exclusive bargaining representative
- Mediation is unsuccessful
- Five days have elapsed since notice of intent is issued to employer, regional superintendent and IELRB

- The collective bargaining agreement has expired
- The parties have not mutually submitted the unresolved issues to arbitration
- Employer may initiate judicial relief if strike is or has become a clear and present danger to the health or safety of the public
- Defense against such relief can be evidence of an un-

fair labor practice or lack of "clean hands by the educational employer"

NOTES:

- Contribution to mutually agreeable non-religious organization is permitted for bona fide religious objection to fair share fee

INDIANA (K-12: ...)

Statute:

Indiana Code, Title 20, Article 7.5, Section 14, L. 1973; as amended by SB 255, L. 1973; SB 12, L. 1974; as last amended by PL 6, L. 1978

Coverage:

Certified K-12 employees

Exclusions:

Supervisors, confidential, security, non-certified and part-time employees

Administrating Agency:

Indiana Education Employment Relations Board (IEERB)

Unit Determination:

IEERB

Unit Determination Criteria:

- Efficient administration of school operations
- Community of interest
- Avoid over fragmentation
- Recommendations of the parties

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

• Salaries, wages, hours and salary and wage related fringe benefits

• "(S)hall discuss and may...bargain collectively" on curriculum development and revision; textbooks, teaching methods; selection, assignment and promotion of personnel; student discipline, expulsion, or supervision; pupil-teacher ratio; class size, budget appropriations and other conditions of employment

Management Rights:

- Direct work
- Establish policy
- Suspend or discharge employees
- Maintain efficient operation of schools

- Relieve employees due to lack of work
- Take actions necessary to carry out mission of school
- Hire, promote, demote, transfer, assign or retain employees

Employee Rights:

- Form, prevent or assist unions or refrain from so doing
- Bargain collectively
- Engage in collective activities

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

Dues deduction mandatory

Unfair Labor Practices:

UNION

- Interfere with, restrain or coerce employees or employer's representatives
- Cause a school employer to discriminate or commit a ULP
- Refuse to bargain
- Fail or refuse to comply with this Act

MANAGEMENT

- Interfere with, restrain or coerce employees
- Dominate, interfere with, assist in formation of or give financial assistance to an employee organization
- Discriminate in hiring, tenure or term and condition of employment to encourage or discourage union membership
- Discharge or discriminate because employee filed a complaint under this Act
- Refuse to comply with this Act
- Refuse to bargain or discuss in good faith

Impasse Procedure:

MEDIATION

- At request of either party
- IEERB appoints if no agreement within 75 days of budget submission date
- No cost to parties

FACTFINDING

- At request of either party
- Report made public after 10 days
- Factfinder may mediate
- Mediation can be bypassed
- No cost to either party

FACTFINDING AWARD CRITERIA

- Past agreement
- Comparison of wages with other employee groups performing similar work in private or public sector
- Public interest

- Financial impact on the employer

Strike Policy:

- Prohibited
- Union loses dues deduction for one year
- Employees may not be paid for strike days

NOTES:

- Strike days do not have to be made up
- Contracts may not include provisions in conflict with benefits established by federal or state law
- Contracts providing for deficit financing are void

IOWA
(K-12, ESP, HE: M)

Statute:

Code of Iowa, Chapter 20, Section 20.1 to 20.28, as enacted by SF 531, L.1974; as amended by HF 634, L. 1977; as last amended by Ch. 1037, L. 1978

Coverage:

All public employees of the state, school boards, commissions, agencies and departments

Exclusions:

Elected officials, commission/board members, employer representatives; supervisors including principals and assistant principals, part-time student employees, temporary employees, judges and employees of judges and courts, national guard, patients or inmates of state or local institutions; and employees of the State Department of Justice and the Commission for the Blind

Adminstrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

- Efficient administration
- Community of interest
- History and extent of employee organization
- Geographical location
- Recommendation of the parties
- Professionals in separate unit unless majority vote for a mixed unit

Recognition:

Exclusive, by election

Bargaining Rights:

Duty to bargain and to reduce an agreement to writing

Scope of Bargaining:

- Wages, hours, vacations, insurance, holidays, leaves, shift differentials, overtime, supplemental pay, seniority, transfer procedures, job classification, health and safety, evaluation, staff reduction, inservice training, and other mutually agreed upon matters
- Merit system and retirement excluded from bargaining

Management Rights:

- Direct work of employees
- Hire, promote, demote, transfer, assign, and retain employees
- Maintain efficiency
- Relieve employees from duty due to lack of work
- Determine means to implement operations
- Prepare budget
- Exercise all power granted by law

Employee Rights:

- Organize, form, join or assist unions or refrain from so doing
- Negotiate collectively or engage in other concerted activities
- Meet and adjust individual complaints with employer

Grievance Procedure:

- Grievance procedure mandatory
- May negotiate final binding arbitration

Union Security:

Dues deduction permitted

Unfair Labor Practices:**UNION**

- Refuse to bargain in good faith
- Interfere with, restrain or coerce employees or an employer's representative

- Refuse to participate in impasse procedures in good faith
- Engage in a strike
- Engage in picketing preventing entrance or egress to a facility
- Picketing in support of a job action against a public employer

MANAGEMENT

- Refuse to negotiate in good faith
- Interfere with, restrain or coerce employees
- Dominate or interfere in the administration of an employee organization
- Discriminate in hiring, tenure or conditions of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against an employee for filing or petitioning under this Act
- Deny a union its rights
- Refuse to participate in statutory impasse procedures
- Lockout employees

Impasse Procedure:

Parties must make an effort to agree upon an impasse procedure. If the parties cannot agree the following procedure shall be used

MEDIATION

Mediator is appointed by PERB at request of either party 120 days prior to budget submission date

FACTFINDING

- Factfinder appointed by PERB ten days after mediator is appointed
- Report is due in 15 days
- Report is made public if there is no agreement after ten days

ARBITRATION

- At request of either party
- Tripartite panel or single arbitrator
- Final offer or factfinders report on an issue by issue basis
- Arbitrator may not mediate
- Award is due within 15 days or budget certification date, whichever comes first
- Costs shared equally by parties
- Hearings must be open to the public

ARBITRATION AWARD CRITERIA

- Post bargaining history leading up to an agreement
- Comparisons with other public employees doing similar work
- Consideration of factors peculiar to area or job
- Interest and welfare of the public
- Ability to pay
- Effect of award on standard of service
- Employer's power to levy taxes or appropriate funds to finance award
- Other relevant factors

Strike Policy:

- Prohibited
- Strike may be enjoined
- Employee subject to a daily fine of up to \$500 and/or 6 months in jail
- Employee ineligible for reemployment for one year
- Union loses certification for one year
- Union subject to \$10,000 fine

CASE LAW:

FUNDING

While the state legislature is not legally bound to appropriate funds to support an agreement, the legislature does have an equitable obligation to ensure funding. *O.A.G.*, #81-3-21, 3/21/81

SCOPE OF BARGAINING

• Post education credit hours to advance a teacher along the salary schedule is a permissive subject of bargaining as the nature of credit hours relates to qualifications. The determination of what courses shall qualify is a management prerogative. *Charles City Education Ass'n v. PERB*, 109 LRRM 2249 [1980]

• Medical and health insurance payments for both employees and dependents is a mandatory subject of bargaining. Dependent coverage is a benefit contemplated under the Act. Investigation and processing of grievances during worktime is not a mandatory subject of bargaining. Such activities do not fall under the definition of "grievance procedure" as contemplated under the Act and therefore constitute a violation of the employer's right to direct employees. *Charles City School District v. PERB*, 100 LRRM 3163 [1979] affirming in part and reversing in part 98 LRRM 2696

• The terms "wages" and "supplemental pay" have a restrictive and narrow application under the Act. Therefore daily clothing allowances are not mandatory subjects of bargaining as initially determined by PERB. *City of Fort Dodge v. PERB*, 100 LRRM 3218 [1979] affirming 97 LRRM 2856

• Negotiation of transfer and staff reduction procedure provisions also include negotiation of substantive criteria. *Saydel Educ. Ass'n v. Iowa PERB*, 333 N.W. 2d 486 [1983]

PERB DECISIONS: REVIEW

Although Sec. 20.11(5) of the Act provides for a 10 day limitation to appeal a PERB decision a party may utilize the Administrative Procedures Act which allows 30 days to appeal a PERB decision. *Jackson County Public Hospital v. PERB*, 102 LRRM 2857 [1979]

GRIEVANCES

A public employer is under no obligation to adjust an individual grievance without employee organization intervention. *O.A.G.*, #80.6.16, 6/24/80

UNION SECURITY

• Payroll deductions of dues cannot be used for political contributions by the employee organization PAC. *O.A.G.*,

#78-1-8, 1/1/78

• An employer is only bound, under the Act, to deduct the dues of the exclusive representative certified by the PERB. Therefore parties to an agreement may negotiate a provision that prohibits dues deduction for a minority organization. *O.A.G.*, No. 79-3-1, 3/7/79

OPEN MEETING LAW

Teacher negotiating sessions are exempt by reference (Sec. 20.17[3]) from the state's opening meeting law. The public's right to know is protected (Sec. 20.17[4]) as the final agreement must be made public. *Burlington School District v. PERB*, 99 LRRM 2394 [1978] affirming 96 LRRM 2571

JUDICIAL REVIEW: ENFORCEABILITY

The authority of the court to review is limited to ascertaining whether the issue in dispute is one that the parties agreed to arbitrate and whether the award draws its essence from the contracted binding arbitration provision. *Sergeant Bluff-Luton Educ. Ass'n v. School District 103* LRRM 2247 [1979]

IMPASSE PROCEDURE

• The state legislature may delegate authority to provide for binding arbitration of impasse items provided sufficient safeguards are present as found in Sec. 20.22(9).

Therefore the provision for binding arbitration of impasse is constitutional. *O.A.G.*, No. 75-9-6, 9/4/75

• Before an employer-employee organization advance a dispute through the statutory impasse procedure the prior step(s) must be completed. *O.A.G.*, No. 75-11-16, 11/1/75

• The Act neither requires parties to a labor dispute to seek a mediator through PERB nor authorizes PERB to interfere with an independently established impasse resolution procedure. *O.A.G.*, No. 78-1-10, 1/16/78

• The term "impasse item" as used in the Act refers to a category of negotiable items identified in the Act upon which the parties disagree and which the parties must submit a final offer to "an arbitrator on a subject category basis." *West Des Moines Educ. Ass'n v. PERB*, 98 LRRM 2375 [1978]

NOTES:

• Any expression of views, arguments or opinion, written or oral or in any visual form is not an unfair labor practice "if such expression contains no threat of reprisal or force or promise of benefit"

• Contracts and arbitration decisions are not to be inconsistent with statutory limitations on public employer funds

• Iowa has a right to work statute. *Iowa Code*, Section 736 A.3

KANSAS (K-12, CC: M)

Statute:

Kansas Statutes Annotated, Chapter 284, Section 72.5411 to 72.5437, as enacted by HB 1647, L. 1970; as amended by HB 3099, L. 1976; Ch. 248, L. 1977; as last amended by Ch. 220, L. 1980

Coverage:

All K-12, community college, special education cooperatives, and vocational-technical school teachers

Exclusions:

- Administrators of a school district for which an administrator's certificate is required
- Administrator of a community college or vocational technical schools who serves in a supervisory capacity

Administrating Agency:

Secretary of Human Resources (SHR)

Unit Determination:

SHR

Unit Determination Criteria:

- Community of interest
- Desire of employees and/or established practice, in-

cluding extent of organization

- All classroom teachers must be included in a teacher unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce to writing in form of a master contract or supplemental individual contract

Scope of Bargaining:

Terms and conditions of professional service are defined as: salaries, wages, hours and amounts of work, vacation, holiday, sick and other leave, holidays, retirement, insurance benefits, wearing apparel, overtime, jury duty, grievance procedure, discipline, resignations, termination of contracts, supplemental pay, extended/sabbatical leave, nonrenewal, re-employment of professional employees, terms and form of individual contract, probationary period, evaluation procedures, certain union privileges including but not limited to voluntary dues deduction, use of facilities, access to information and other mutually agreed upon matters

Management Rights:

- Statutory and state constitutional rights exempted
- School year is not negotiable

Employee Rights:

- Form, join or assist unions
- Participate in negotiations
- Refrain from any concerted activities

Grievance Procedure:

- Grievance procedure must be negotiated
- Binding arbitration permitted

Union Security:

Dues checkoff is negotiable

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees
- Interfere with employer's rights or selection of his representatives
- Refuse to bargain in good faith
- Refuse to participate in impasse procedure in good faith
- Engage in strikes or picketing

MANAGEMENT

- Interfere with, restrain or coerce employees
- Dominate, interfere with or assist in the formation of any union
- Discriminate in regard to hiring, tenure, or condition of employment to encourage or discourage union membership
- Discharge or discriminate against an employee for petitioning or filing complaints under this Act
- Refuse to negotiate
- Deny an employee organization its rights under this Act
- Refuse to participate in dispute resolution procedures
- Engage in a lockout

Impasse Procedure:

- Parties shall petition SHR to determine if an impasse exists
- SHR initiates mediation and factfinding
- Factfinding report nonbinding
- All costs are shared by parties
- Board of education has final decision

Strike Policy:

Prohibited

CASE LAW:**BARGAINING RIGHTS**

Act requires a Board to negotiate in good faith on terms and conditions of employment and reduce agreement to writing. Act does not permit an employer to meet and confer with individuals

"Terms and conditions of professional service" under the Act relate to matters that directly impact an individual

teacher's well-being as opposed to affecting the operation of schools. *NEA v. Shawnee Mission Board of Educ.*, 84 LRRM 2223 [1973]

UNION RIGHTS

The right of a union to sue or be sued or file a complaint is inferred from the grant made to professional employees to participate in professional negotiations via representatives of their choosing. *In District Teachers Ass'n v. Board of Educ.*, 90 LRRM 2652 [1975]

EXPIRATION OF AGREEMENT: STATUS OF BENEFITS: SUPPLEMENTAL CONTRACTS

- Where agreement is not reached on a re-opened contract, teachers may work the second year of said contract either under a board issued individual contract or under the continuing contract provisions of the Act which provides for automatic renewal of a teachers contract unless notified to the contrary. Under the Act teachers move along on the salary schedule even if salaries are an item of dispute. *NEA-Wichita v. Board of Education*, 101 LRRM 2602 [1979]

- Where parties fail to reach agreement on a new contract, a teacher electing to continue employment under the Act's continuing contract provision can have terms and conditions of the previous years contract incorporated in the new individual contract issued by the board. The board also has the right to incorporate new unnegotiated items and the board may condition acceptance of the new individual contract on acceptance of a supplemental contract as under this condition teachers are guaranteed at least the basic terms of the prior agreement under which they worked. *Riley County Educ. Ass'n v. School District*, 101 LRRM 2607 [1979]

- Teachers are not entitled to receive salary increases under an expired contract as to hold otherwise "would permit teachers to receive increases year after year under an expired agreement." *NEA-Goodland v. Board of Educ.* USD 352, 101 LRRM 2773 [1979]

UNION SECURITY

Teachers may be paid for time spent away from teaching duties for negotiations or for attendance at conventions, workshops and seminars which are determined as related to professional service and if mutually agreed between the board and the representative. *O.A.G.*, #77-213, 6/28/77

SCOPE OF BARGAINING

- Class size and student discipline are not mandatory subjects of bargaining. *NEA-Topeka v. USD 501*, 101 LRRM 261, [1979]

- Reproduction of agreement, payroll deduction, preparation time and number of faculty meetings are negotiable. Access to financial information is a matter of right and therefore not negotiable. Extension of rights and privileges to a minority association is not negotiable as the subject of exclusivity is pre-empted by statute. *NEA-Kansas City v. School District*, 105 LRRM 2772 [1980]

IMPASSE PROCEDURE

- Secretary of Human Resources is the appropriate agency to initiate and participate in the mediation process, not the state board of education whose basic mission is to equalize and promote quality education. *NEA-Fort Scott v. Board of Educ.* USD 234, 101 LRRM 2827 [1979]

- Professional employees are not barred from making proposals or positions to a board of education. Such proposals (or listening to) do not constitute negotiations.

O.A.G. #81-185, 8/11/81

SENIORITY RIGHTS: LAYOFF BINDING EFFECT OF CONTRACT

Upon ratifying a contract containing a RIF provision requiring seniority based layoff, a community college could not ignore seniority on the grounds that it has the absolute right to terminate and therefore not bound by the contract. *Bratright v. Board of Trustees*, 101 LRRM 2295 [1979]

**KANSAS
(HE: M)****Statute:**

Kansas Statutes Annotated, Chapter 264, Section 75-4321 to 754337, as enacted by SB 333, L. 1971; as amended by SB 509, L. 1972; HB 1531, L. 1973; SB 673, L. 1974; Ch. 370, L. 1976; SB 99, L. 1977; Ch. 150, L. 1980; as last amended by Ch. 345, L. 1981

Coverage:

All public employees employed by state agencies including postsecondary professional and support staff

Exclusions:

Supervisors; teachers (K-12); elected officials; managerial and confidential employees

Adminstrating Agency:

- Public Employee Relations Board (PERB)
- Secretary of Human Resources (SHR)

Unit Determination:

PERB

Unit Determination Criteria:

- Efficient administration of the agency
- Community of interest
- History and extent of organization
- Geographical location
- Effects of over fragmentation
- Recommendations of parties
- Separate units of professionals from non-professionals unless professionals vote for inclusion
- Separate units for uniformed and protective services

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Salaries, wages, hours of work, vacations, sick and injury leave, holidays, retirement, insurances, prepaid legal services, wearing apparel, premium pay, shift differential, jury duty and grievance procedure

Management Rights:

- Any subjects preempted by federal or state statute or municipal ordinance
- Civil services and merit system rules and regulations
- Direct employees
- Hire, fire, promote, demote, transfer or assign and retain employees
 - Suspend or discharge for cause
 - Maintain efficiency of agency
 - Relieve employees of duties for lack of work or other legitimate reason

Employee Rights:

Form, join, and participate in unions or refrain from so doing

Grievance Procedure:

- Grievance procedure is negotiable
- Binding arbitration is permitted

Union Security:

Dues deduction is permitted

Unfair Labor Practices:**UNION**

- Interfere with, restrain, or coerce employees
- Interfere with employer's rights or selection of his representatives
- Refuse to meet and confer in good faith
- Avoid participation in impasse procedure
- Strike
- Endorse candidates for office or make political contributions

MANAGEMENT

- Interfere with, restrain or coerce employees
- Dominate, assist or interfere with the formation of a union
- Discharge or discriminate against employees for exercising rights guaranteed under this Act
- Refuse to meet and confer in good faith
- Deny rights accompanying certification
- Deliberately avoid designated impasse procedure
- Institute a lockout

Impasse Procedure:

Parties may agree to an impasse procedure. If none is agreed upon, the following procedure is prescribed:

MEDIATION

- Either party requests or PERB appoints a mediator
- Mediator obtained from SHR
- SHR bears cost of mediation

FACTFINDING

- After 7 days of mediation, a factfinder is appointed by SHR at PERB request
- Report due 21 days from appointment and made public after 14 days
- Costs borne by SHR
- If no resolution after 40 days or 14 days after budget submission date, local governing body may take a tion

considering the factfinder's report in its decision

- State or its agencies excluded from this provision

Strike Policy:

Prohibited

CASE LAW:**SCOPE OF BARGAINING**

Mandatory subjects of bargaining defined. The primary employer identified as Board of Regents. *Kansas Board of Regents v. Pittsburg State University Chapter, Kansas-NEA*, 233 Kan 801, 667 P. 2d 306 [1983]

NOTES:

- Contract duration may not exceed 3 years
- Kansas has a right to work statute applicable to public employees

KENTUCKY

Kentucky does not have a statute granting collective bargaining rights to teachers

CASE LAW:**BARGAINING RIGHTS:**

- Board of Trustees of the University of Kentucky may but is not required to contractually commit itself to a salary schedule, employee retirement plan, work schedule and other conditions of employment with authorized representatives (including unions) of group of employees. *Board of Trustees of the University of Kentucky v. AFSCME*, 571 SW 2d 616 [1978]
- A county board of education has no authority to enter into an agreement recognizing one organization designated as bargaining agent by one group of employees as the exclusive representative of all employees. *Fayette County Board of Education v. Hardy*, 626 SW 2d 217 [1980]
- Public school teachers have no legal authority to engage in collective bargaining. *O.A.G.*, 75-126, 1/27/75
- The question of collective bargaining between a teachers' organization and a board of education is for the legislature to decide and cannot be submitted to a referendum vote of the citizens in the school district. *O.A.G.*, 75-126, 1/27/75

dum vote of the citizens in the school district. *O.A.G.*, 75-126, 1/27/75

- The Governor of Kentucky has no authority to extend negotiation rights to public school teachers by Executive Order. *O.A.G.*, 75-126, 1/27/75

STRIKES

- Strikes are prohibited. *Jefferson County Teachers Ass'n v. Board of Education*, 463 SW 2d 627 [1971]
- Public school teachers do not have a right to strike. *O.A.G.*, 75-126, 1/27/75

OPEN MEETING

Collective bargaining sessions may be closed, but public labor policy meetings must be open to the public. *O.A.G.*, 75-456, 1/76

NOTES:

- Firefighters Bargaining, *Kentucky Revised Statutes*, Chapter 345, Section 345.010-345.130
- Policemen Bargaining, *Kentucky Revised Statutes*, Chapter 78, Section 1-3

LOUISIANA

Statute:

Louisiana does not have a statute granting collective bargaining rights to public employees

**CASE LAW:
BARGAINING**

- Teachers and other public employees may engage in collective bargaining with their employers. *O.A.G.*, #74-413, 4/4/74
- Negotiated agreements may not violate any law and the subject matter must be in an area which the employer is lawfully authorized to negotiate. *Zbosen v. Dept. of Highways*, La. 19 Jud. Dist. Ct., #163,480 [1973]
- State law neither requires nor prohibits collective bargaining with municipal employee unions. *Beauboeuf v. Delgado College*, 303 F. Supp. 841 aff'd---F. 2d 470 (5 Cir. 1970)

- An agreement between a city and fire fighters unions may be enforced in court. *New Orleans Firefighters Ass'n v. City of New Orleans*, 204 So. 2d 690 (4th Cir. 1967)

RECOGNITION

In the absence of statute, union recognition by a state agency is not a question of law but an administrative policy decision. *Opinion of Special Counsel to Atty. Gen.* 4/3/72

NOTES:

- Dues deduction permitted for all public employees
- State has a right to work law
- State requires parishes and local school boards to provide teachers with a grievance procedure. *Louisiana Statutes Annotated*, Title 17, Section 100.4 (A-E)

MAINE
(K-12, ESP: M)**Statute:**

Maine Revised Statutes Annotated, Title 26, Chapter 9-A, Section 961 to 974, as enacted by Ch. 424, L. 1969; as amended by Ch. 578, L. 1970; Ch. 609, L. 1972; Ch. 620, L. 1972; Chs. 458, 533, 610, 617, Ls. 1973; Ch. 788, L. 1974; Chs. 9, 361, 564, 623, Ls. 1975; Chs. 697, 717, 776, Ls. 1976; Chs. 479, 553, Ls. 1977; Chs. 674, 696, Ls. 1978; Chs. 501, 199, 125, Ls. 1979; as last amended by Chs. 137, 524, Ls. 1981

Coverage:

Any municipal or political subdivision employee, K-12 level, professional and support

Exclusions:

Elected, appointed, confidential, superintendent, 6-month probationary, temporary, seasonal and on-call employees

Administrating Agency:

- Maine Labor Relations Board (MLRB)
- MLRB administers Maine Board of Arbitration and Conciliation, and Panel of Mediators

Unit Determination:

MLRB

Unit Determination Criteria:

- Insuring employees fullest freedom
- Supervisors excluded from units that include nonsupervisory employees
- Community of interest
- Professionals must vote for inclusion in nonprofessional units

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

- Wages, hours, working conditions and grievance arbitration
- Meet and confer on matters of educational policy

Management Rights:

Merit system appointments and promotions

Employee Rights:

To form, join and participate in a labor organization or exercise any other right under this Act

Grievance Procedure:

Grievance procedure culminating in binding arbitration is bargainable

Union Security:

- No specific provision
- Dues deduction permitted by inference

Unfair Labor Practices:**UNION**

- Restrain, coerce or interfere with employees in exercise of rights under this Act, or a public employer in selection of his representative
- Refuse to bargain
- Engage in a work stoppage, slowdown, strike or blacklisting of a public employer

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights under this Act
- Discriminate in hiring, tenure or condition of employment to encourage or discourage union membership
- Dominate or interfere with the formation of a union
- Discharge or discriminate against an employee for filing a complaint or testifying under this Act
- Refuse to bargain
- Blacklist an employee or organization

Impasse Procedure:**MEDIATION**

- Either party requests or MLRB or Executive Director initiates
- Costs shared equally

FACTFINDING

- At request of either party, MLRB appoints 3-member panel
- Parties may agree to an acceptable factfinding procedure
- Mediator may not be factfinder
- Report publicized after 30 days
- Factfinding may be waived by joint request
- Costs shared equally

ARBITRATION

- If dispute is unresolved 45 days from issuance of factfinding report, parties may mutually agree to arbitration or petition MLRB for arbitration
- Tripartite panel

- Mediators/factfinders cannot be arbitrators
- Advisory award on monetary items, binding award on all other items
- Cost shared equally

Strike Policy:

Prohibited

CASE LAW:**UNION SECURITY**

Agency shop is illegal. *Churchill v. Teachers Association*, 97 LRRM 2162 [1977]

BARGAINING: LACK OF GOOD FAITH

Lack of good faith bargaining is demonstrated by a school district that delayed raising an issue until after the expiration of the agreement and conclusion of factfinding. *Caribou School Dept. v. Teachers Ass'n*, 102 LRRM 2387 [1979]

SCOPE OF BARGAINING

Mandatory and permissive subjects of bargaining are defined. State law is not unconstitutional owing to lack of arbitral standards. Arbitration is a proper and intended delegation of authority in limited nonpolicy areas. *City of Biddeford v. Biddeford Teachers Ass'n*, 304, A. 2d 387 [1973]

NOTES:

Neither party may publicize initial written proposal until ten days after proposal has been submitted

MAINE
(HE: M)

Statute:

Maine Revised Statutes Annotated, Title 26, Chapter 12, Section 1021 to 1035, as enacted by Ch. 603, L. 1975; as amended by Chs. 671, 697, 717, Ls. 1976; Ch. 581, L. 1977; Ch. 641, L. 1978; Chs. 561, 125, Ls. 1979; as last amended by Chs. 127, 153, Ls. 1983

Coverage:

Employees of the University of Maine, Maine Maritime Academy, vocational-technical institute and schools for practical nursing

Exclusions:

Appointed officials, Vice President, Dean, Director, or member of Chancellor's or Superintendent's staff; confidential employees working on collective bargaining; probationary employees; classified employees of vo-tech and nursing schools

Administrating Agency:

Maine Labor Relations Board (MLRB)

Unit Determination:

Statute

UNIVERSITY OF MAINE

- Faculty
- Professional and administrative staff
- Clerical, office, laboratory and technical
- Service and maintenance
- Supervisory
- Police

MAINE MARITIME ACADEMY

- Faculty
- Administrative staff
- Classified employees

VOCATIONAL - TECHNICAL AND PRACTICAL NURSING SCHOOL(S)

- Faculty and instructors
- Administrative staff

Unit Determination Criteria:

In event of a dispute the community of interest and work tasks are considered

MLRB may create additional units using the following criteria:

- Community of interest
- Legislative intent to avoid over fragmentation
- Intent to provide employees with their full rights under the law

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Wages, hours, working conditions and grievance arbitration

Management Rights:

No Specific Provision

Employee Rights:

To join, form or participate in unions or in exercise of any other right under this Act

Grievance Procedure:

Grievance procedure culminating in binding arbitration is bargainable

Union Security:

- Dues checkoff is negotiable
- Service fees permitted
- Closed shop prohibited

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees in the exercise of their rights under this Act or interfere with the selection of employer representatives
- Refuse to bargain
- Engage in a work stoppage, slowdown or strike
- Blacklist an employer to prevent him from filling vacancies

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights under this Act

- Discriminate in hiring, tenure or condition of employment to encourage or discourage union membership
- Dominate or interfere with the formation, existence or administration of an employee organization
- Discharge or discriminate against an employee for signing or filing a petition or complaint under this Act
- Refusing to bargain
- Blacklist an employee or organization in order to deny employment

Impasse Procedure:**MEDIATION**

- At request of either party or MLRB initiation
- State pays for first 3 days, thereafter shared equally

FACTFINDING

- Request of either party
- MLRB assigned panel
- Mediator may not be factfinder
- Report issued within 30 days after conclusion of hearing
- Costs shared equally

ARBITRATION

- Either or both parties may request
- Single or tripartite panel
- Award due within 60 days
- Award advisory only on financial items
- Cost shared equally

ARBITRATION AWARD CRITERIA

- Interest and welfare of students and public
- Ability to pay
- Comparison with other private or public sector employees performing similar work
- Overall compensation
- Other factors normally considered
- Need for qualified employees
- Conditions of employment in similar occupations
- Need to maintain appropriate relationships between occupations
- Need to establish fair and reasonable conditions in relation to job qualifications and responsibilities

Strike Policy:

Prohibited

NOTES:

Panel of students may meet and confer with parties prior to bargaining and at reasonable times during negotiations with university bargaining team

MARYLAND
(ESP: MC)

Statute:

Maryland Annotated Code, Article 77, Section 160A, as enacted by Chapter 719, L. 1974; as last amended by Ch. 799, L. 1975

Coverage:

Noncertified employees of public schools

Exclusions:

- Managerial, confidential, appointed and those involved in labor relations
- Employees of Carroll, Frederick, Howard, Somerset, Wicomico, and Worcester counties

Administrating Agency:

- Local school board
- State Department of Education

Unit Determination:

State Department of Education

Unit Determination Criteria:

- Joint deliberation of the parties
- No more than 3 units in a county unless more than three existed prior to enactment of this Chapter
- No mixed unit of supervisors and non-supervisory employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Salaries, wages, hours, and other working conditions

Management Rights:

No Specific Provision

Employee Rights:

Form, join and participate in an employee organization or refrain from so doing

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

Dues deduction is permitted

Unfair Labor Practices:

MANAGEMENT

Interfere with, intimidate, restrain, coerce or discriminate against employees

Impasse Procedure:

- Upon mutual request of parties and a determination by state superintendent that an impasse exists, assistance is provided to resolve the dispute
- All costs are shared equally

Strike Policy:

- Prohibited
- Penalties include loss of recognition for 2 years and loss of dues deduction for one year

MARYLAND
(K-12: M)

Statute:

Maryland Annotated Code, Article 77, Section. 160 as enacted by Ch. 405, L. 1969; as amended by Ch. 630, L. 1972; as last amended by Ch. 713, L. 1978

Coverage:

Certified employees of public schools, including persons of equivalent status in Baltimore City and substitutes in Montgomery County

Exclusions:

Superintendents and those designated as employer negotiators

Administrating Agency:

- Local school boards
- State Department of Education

Unit Determination:

Jointly by the parties

Unit Determination Criteria:

- No more than 2 units in a county or Baltimore City, unless more than 2 units existed prior to enactment of this Chapter
- All teachers must be in one unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Wages, salaries, hours and other working conditions, excluding tenure

Management Rights:

No Specific Provision

Employee Rights:

To form, join and participate in unions or refrain from so doing

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

Dues checkoff is permitted

Unfair Labor Practices:**MANAGEMENT**

To interfere with, intimidate, restrain, coerce, or discriminate against employees

Impasse Procedure:

- At request of either party, state superintendent determines that impasse exists
- State Department of Education provides assistance at

request of both parties

- At request of either party a tripartite panel may be named to resolve differences and issue an advisory report

Strike Policy:

- Prohibited
- Penalties: Loss of dues checkoff for one year and recognition for 2 years

CASE LAW:**STRIKE PENALTIES**

Strike penalties are mandatory. *O.A.G.*, 8/15/74

NOTES:

- Maryland has a statute prescribing a grievance procedure for state employees. *Maryland Annotated Code*, Chapter 727, Section 52
- Montgomery County Board of Educ. is permitted to negotiate an agency fee. *Maryland Annotated Code*, Section 6-407
- Prince George's County has a provision for an impartial agency. *Prince George's Ordinance and Resolutions*, Chapter 13-A

MASSACHUSETTS (K-12, ESP, HE: M)

Statute:

Massachusetts General Laws Annotated, Chapter 150E, Section 1 to 15, as enacted by SB 1929, L. 1973; as amended by Chs. 354, 526, 589, Ls. 1974; Chs. 591, 689, Ls. 1975; Chs. 278, 347, 753, 788, 903, 937, Ls. 1977; Ch. 562, L. 1978; Ch. 594, L. 1979; as last amended by Chs. 351, 484, Ls. 1981

Coverage:

All state, county and municipal employees including K-12 teachers, higher education faculty, nonteaching professional and K-G support personnel

Exclusions:

Elected, appointed officials; members of boards/commissions; managerial and confidential employees; employer representatives; militia or national guard; employees of State Departments of Secretary, Treasurer, Auditor, Attorney General

Administrating Agency:

Massachusetts Labor Relations Commissions (MLRC)
Massachusetts Board of Conciliation and Arbitration (MBCA)

Unit Determination:

MLRC in cases of dispute

Unit Determination Criteria:

- Community of interest
- Efficiency of operation
- Rights of employees to effective representation
- Professionals in separate units unless they vote for mixed unit
- Appropriate protective units are employees below rank of: Chief (fire); sergeant (state police); captain (metropolitan police)

Recognition:

Exclusive, voluntary, or by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Maximum three year duration

Scope of Bargaining:

Wages, hours, standards of productivity and performance, and other terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

- To organize, form, join or assist unions
- Engage in lawful concerted activities
- Present grievances
- Refrain from engaging in concerted activities or joining unions

Grievance Procedure:

Grievance procedure culminating in binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Agency shop permitted, by unit vote
- Service fee equal to member dues

Unfair Labor Practice**UNION**

- Interfere with, restrain or coerce employees or employer's representative
- Refuse to bargain in good faith
- Refuse to participate in impasse procedure in good faith

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights under this Act
- Dominate, interfere with, or assist in the formation, existence of a union
- Discriminate or discharge an employee for petitioning, complaining or testifying under this Act

Impasse Procedure:**MEDIATION**

- Either party may request MBCA to supply mediator or may name own mediator
- Written report

FACTFINDING

- After 20 days either party may request MBCA for factfinder or may name own factfinder
- Factfinder may mediate
- Report due in 30 days, made public 10 days after issuance

ARBITRATION

May proceed to mutually agreed to binding arbitration and waive factfinding

Strike Policy:

- Prohibited
- Strike penalties include loss of salary, no make-up days, discipline or discharge

CASE LAW:**STRIKES**

Strikes are prohibited and enjoined. Union may be fined for an illegal strike. *Mass. Labor Relations Comm. v. Boston Teachers Union, Local 66 et. al.*, 97 LRRM 2507 [1978]

SCOPE OF MLRC AUTHORITY

An order of MLRC reinstating a college professor discharged for alleged union activities did not go outside scope of MLRC authority. *Mass. Board of Comm. Colleges v. MLRC*, 102 LRRM 2428 [1979]

DUTY TO BARGAIN

A school district violated its duty to bargain by unilaterally adopting salary increases before an impasse existed. *Vocational School District v. Mass. Labor Relations Commission*, 102 LRRM 2211 [1979]

NOTES:

- If a contract does not contain a grievance procedure with an arbitration clause, MLRC may order arbitration at request of either party
- Union must establish a rebate procedure to return that portion of fee not germane to services as bargaining agent
- Firemen and police are covered by a separate arbitration act. *Massachusetts General Laws Annotated*, Chapter 107B, Section 4A
- The statutes in effect which mandate dues deduction for public employees are:
City of Boston and Suffolk County (Ch. 335, L. 1969)
Certain county and municipal employees (Ch. 180, Sec. 176, L. 1970)
All county state and municipal employees (Ch. 180, Sec. 171, L. 1981)

MICHIGAN
(K-12; ESP; HE: M)

Statute:

Michigan Compiled Laws Annotated, Section 423-201 to 423-216, as enacted by Act 336, L. 1947; as amended by HB 2953, L. 1965; Act 25, L. 1973; Acts 18, 19, Ls. 1976; Act 266, L. 1977; as last amended by Act 441, L. 1978

Coverage:

State, municipal and local employees including K-12 teachers, higher education faculty, nonteaching profes-

sionals and K-G support personnel

Exclusions:

All state civil services employees

Administering Agency:

Michigan Employment Relations Commission (MERC)

Unit Determination:

MERC

Unit Determination Criteria:

- History of bargaining
- Avoid over fragmentation
- One person units permitted provided union represents other employees in similar craft or occupation

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain, and to reduce an agreement to writing upon request of either party

Scope of Bargaining:

Wages, hours and other terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

- To organize, form, join or assist unions
- Engage in lawful concerted activities
- Present grievances

Grievance Procedure:

Grievance procedure culminating in binding arbitration is negotia

Union Security:

- Dues deduction is bargainable
- Service fees are bargainable

Unfair Labor Practices:**UNION**

- Restrain or coerce employees or employer's representative
- Cause or attempt to cause an employer to commit an unfair labor practice
- Refuse to bargain

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights
- Refuse to bargain
- Initiate, create, dominate, contribute to or interfere with the formation or administration of a union
- Discriminate to encourage or discourage membership in a labor organization
- Discriminate because an employee testifies or institutes proceedings under this Act

Impasse Procedure:**MEDIATION**

Either party may request a MERC appointed mediator 30 days prior to expiration of an agreement

FACTFINDING

- Either party may request or MERC may initiate factfinding
- Tripartite panel or single neutral
- Hearing within 20 days, report within 10 days from close of hearing
- Costs shared equally

Strike Policy:

Prohibited

CASE LAW:**APPROPRIATE UNIT**

Regents of the University of Michigan are public employers. Interns, residents and post graduate fellows are public employees. *Regents of Univ. of Michigan v. Michigan Employment Relations Comm.*, 82 LRRM 2909 [1973]

STUDENT PARTICIPATION: NEGOTIATIONS

Though students have an interest in negotiations between a university and its employees and they may form any lawful association, a university is not required to bargain with a student union and said union has no right to intervene in negotiations. *O.A.G.*, #5022, 8/12/76

STRIKE RIGHTS

Striking teachers were properly discharged without a hearing as required by the Tenure Act (MCLA 38.71). Teachers may be reinstated if MERC determines the board committed a ULP or that re-instatement will effectuate the policies of the Act. *Rockwell v. Board of Educ.*, 89 LRRM 2017 [1975]

AGENCY FEE

Agency shop fee for nonmembers may not include a fee for political contributions, non-bargaining activities or strike funds. *Garden City School District v. Garden City Educ. Ass'n, MEA and NEA, and Paul E. and Lore M. Chamberlin*, Mich. Employment Relations Comm., Case Nos. C765-344, CU65-45 and CU65-46, 10/19/78

NOTES:

State has Police and Fire binding arbitration statute. *Michigan Compiled Laws Annotated*, Section 423.231 to 423.246

MINNESOTA (K-12, ESP, HE: M)

Statute:

Minnesota Statutes Annotated, Chapter 33, Section 179.61 to 179.77, as enacted by SB 4, L. 1971; as amended by Ch. 635, L. 1973; Chs. 114, 127, 128, 246, 247, L. 1974; Ch. 102, L. 1976; Chs. 119, 206, 284, Ls. 1977; Chs. 619, 776, 789, Ls. 1978; Chs. 183, 332, Ls. 1979; SF 2085, L. 1980; Ch. 70, L. 1981; Chs. 459, 568, 588, Ls. 1982; Chs. 332, 364, Ls. 1983

Coverage:

All public employees, including K-12 teachers, higher education faculty, nonteaching professionals and K-G support personnel

Exclusions:

Elected officials, election officers, national guard; emergency, part-time, temporary or seasonal employees, employees of charitable hospitals; Bureau of Mediation staff, supervisory or confidential employees, principals and assistant principals

Administering Agency:

Bureau of Mediation Services (BMS)
Minnesota Public Employment Relations Board (MPERB)

Unit Determination:

BMS may appeal to MPERB

Unit Determination Criteria:

- Essential and non-essential employees may not be in the same unit
- One unit of all employees under the same appointing authority
 - Relevant administration
 - Supervisory levels of authority and geographic location
 - History and extent of organization
 - Wishes of the parties

Recognition:

Exclusive, by election or verified majority upon joint petition

Bargaining Rights:

- Duty to bargain
- Need to confer on policy
- Reduce agreement to writing
- Two year contract duration beginning July 1 of odd years

Scope of Bargaining:

- Terms and conditions of employment
- Hours, compensation, fringe benefits excluding pensions
- Personnel policies
- Grievance procedure

- Teachers may meet and confer on items not specified in the scope of bargaining

Management Rights:

- Policy, budget, technology, organizational structure and selection of personnel
- Inherent managerial policy

Employee Rights:

To form, join or assist unions or to refrain from so doing

Grievance Procedure:

Grievance procedure culminating in binding arbitration is mandatory

Union Security:

- Dues deduction is mandatory
- Agency shop/fair share fee permitted to a maximum 85% of dues

Unfair Labor Practice:**UNION**

- Restrain or coerce employees or employers representative
- Refuse to bargain in good faith
- Violate rules and regulations of BMS
- Refuse to comply with an arbitration award
- Call a jurisdictional strike
- Restrain or coerce any person in order to: prevent employees from providing service; refuse to handle goods; recognize a noncertified union; force an employer to cease dealing with another person
 - Damage property or endanger others while on strike
 - Engage in an unlawful strike
 - Force an employer to assign work
 - Attempt to or cause an employer to pay for unperformed services
 - Picket for an unlawful purpose
 - Picket in a manner which renders an employer's facilities inaccessible
 - Refuse to comply with or violate orders of BMS or MPERB

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their rights under this Act
- Dominate or interfere with the formation, existence or administration of an employee organization or contribute to its support
 - Discriminate in hiring or tenure to encourage or discourage union membership
 - Discharge or discriminate against an employee for petitioning, filing or giving testimony under this Act
 - Refuse to bargain in good faith
 - Refuse to comply with a negotiated grievance procedure

- Blacklist individuals for exercising their rights under this Act
- Violate any rules and regulations of BMS
- Refuse to comply with an arbitration award
- Refuse to provide the union with budget information

Impasse Procedure:**MEDIATION**

Either party may petition BMS for mediation or other procedure BMS deems necessary

ARBITRATION

- If dispute certified by BMS, conventional, binding arbitration is permitted
- Arbitration is mandatory for essential employees
- Arbitration for nonessential (K-G) is permitted, but may be rejected by employer or employee union
- Costs shared equally

Strike Policy:

- Strikes prohibited for all essential (protective services) employees
- K-G personnel may strike if: agreement has expired; mandatory mediation and impasse timelines have expired; written notice is served
- Strike penalties for employees include dismissal, loss of pay, probation
- Strike penalties for union include loss of representative status, dues deduction, and loss of certification for 2 years
- Remedies include injunctive relief, monetary damages

CASE LAW:**SYMPATHY STRIKES**

A sympathetic strike by city employees in support of a lawful strike is not permitted by MERA. The only unit permitted to strike is the one involved in the impasse.

General Drivers Local 120 v. City of St. Paul, 99 LRRM 2899 [1978]

FAIR SHARE

Fair share provision of the Act does not violate the due process clause of the U.S. or state constitutions. *Robbinsdale Educ. Ass'n v. Teachers, Local 872*, 92 LRRM 2417 [1976] reversing 90 LRRM 2702; affirmed by *Threlkeld v. Robbinsdale Educ. Ass'n*, 110 LRRM 3067 [1982].

DUES CHECKOFF

A public employer may not demand that dues checkoff be negotiated but is required to grant checkoff [Sec. 179.65(5)] once requested, and if no exclusive representative is present the employer is required to check off to each employee for the organization of his/her choice. *O.A.G. #270-D*, 9/28/73

NEGOTIABILITY: MANAGEMENT RIGHTS

- Because terms and conditions of employment and inherent management policy may overlap a public employer may voluntarily negotiate over these matters. *AFSCME Council 96 v. St. Louis County*, 106 LRRM 2635 [1980]
- Though a transfer is a managerial decision and not bargainable, whether or not the transfer conforms to negotiated transfer criteria is a proper subject of arbitration. *Minneapolis Teachers Federation v. School Dist.*, 96 LRRM 2706 [1977]

NOTES:

- Arbitration awards must be incorporated into contract
- All local ordinances, resolutions or municipal charters that restrict a public employer's ability to negotiate a binding contract are superceded
- There are 16 statewide units for state and university employees including community college, K-12 institutional teachers, and state university
- University of Minnesota has 12 statewide units

MISSISSIPPI

Mississippi does not have a collective bargaining statute for public employees

NOTES:

State has a right to work law.

MISSOURI (ESP:M/C)

Statute:

Vernon's Annotated Missouri Statutes, Section 105.500 to 105.540, as enacted by HB 166, L. 1967; as amended by SB 36, L. 1969

Coverage:

Employees of the state and its political subdivisions, including K-G support staff

Exclusions:

Police, sheriffs, highway patrol, national guard, K-12 teachers and higher education faculty and nonteaching professionals

Administrating Agency:

State Board of Mediation (SBM)

Unit Determination:

SBM, appealable to county circuit court

Unit Determination Criteria:

- Community of interest
- Supervisors excluded from unit

Recognition:

Exclusive, designated or selected by majority of employees in unit

Bargaining Rights:

- Meet and confer
- Any agreement must be reduced to writing

Scope of Bargaining:

Proposals relating to salaries and other conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

- To form and join unions
- Present proposals through representatives

Grievance Procedure:

No Specific Provision

Union Security:

Prohibited

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

No Specific Provision

Strike Policy:

Prohibited

CASE LAW:**RIGHT TO ORGANIZE and BARGAIN**

• Bargaining law is constitutional. Employees may form or join unions. *State ex rel Missey v. City of Cahool*, 70 LRRM 3394 [1957]

• Bargaining law does not infringe on a university's right to govern. Employees may join unions and petition for redress of grievances. *Curators of the Univ. v. Local 45*, 88 LRRM 3039 [1975] affirming 88 LRRM 3038

• Police may join or form unions but may not bargain collectively. *Vorbuk v. McNeal*, 91 LRRM 2788 [1976] affirmed S. Ct. 3160 92 LRRM 2861

• Negotiated agreements between a teachers association and board of education which does not bind the board to accept any agreement(s) is valid. Negotiations are not prohibited because the contracting teachers association is not a "labor organization" within the meaning of the Act. *Richard E. Peters v. Board of Educ. of Reorganized School #5*, 87 LRRM 2097 [1974]

• Teachers may join unions and present nonbinding proposals. *O.A.G.*, #276, 12/28/68

MONTANA (K-12, ESP, HE: M)

Statute:

Montana Code Annotated, Title 39, Chapter 31, Section 39-31-101 to 39-31-409, as enacted by Ch. 441, L. 1973; as amended by Ch. 244, HB 1032, Ls. 1974; Chs. 18, 35, 36, 97, 117, 136, 384, Ls. 1975; Ch. 57, L. 1977; HBs 212, 249, SB 208, Ls. 1979; as last amended Chs. 95, 211, 213, Ls. 1983

Coverage:

All public employees including K-12 teachers, higher edu-

cation faculty, nonteaching professionals, and K-G support personnel

Exclusions:

Elected, appointed, supervisory, managerial employees; school district clerks, administrators, nurses and engineers

Administrating Agency:

Board of Personnel Appeals (BPA)

Unit Determination:
BPA

Unit Determination Criteria:

- Community of interest
- Wages, hours, benefits and working conditions
- History of bargaining
- Common supervision and personnel policies
- Extent of integration and interchange of work functions
- Desires of employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and to reduce an agreement to writing

Scope of Bargaining:

Wages, hours, fringe benefits and other conditions of employment

Management Rights:

- Direct employees
- Hire, promote, transfer, assign and retain employees
- Relieve employees due to lack of work or funds or when continuation of work would be inefficient
- Maintain efficiency of government operations
- Determine methods, means, job classification and personnel for operation of the agency
- Take necessary actions in case of emergency
- Establish process by which work is performed

Employee Rights:

- Organize, form, join or assist unions
- Bargain collectively through chosen representatives
- Engage in concerted activities

Grievance Procedure:

Grievance procedure culminating final and binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Agency shop permitted

Unfair Labor Practices:

UNION

- Restrain or coerce employees in exercises of their rights or an employer in selection of his representative
- Refuse to bargain in good faith
- Use agency shop fees for political activity

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights under this Act
- Refuse to bargain in good faith
- Dominate or interfere with or assist in formation of a labor union
- Discriminate to encourage or discourage membership

in a union

- Discharge or discriminate on account of union membership or for giving testimony under this Act

Impasse Procedure:

MEDIATION

- At request of either party after a reasonable period of time or upon expiration of agreement
- Costs paid by BPA

FACTFINDING

- At request of either party or BPA initiated upon expiration of agreement or 30 days after certification of impasse
- Report issued within 20 days of appointment
- Report made public after 15 days
- Factfinder may mediate
- Costs shared equally by parties and BPA

ARBITRATION

Permitted if agreed upon by the parties

Strike Policy:

No Specific Provision

CASE LAW:

RIGHT TO STRIKE

Right to engage in concerted activities gives employees a right to strike by inference. *State of Montana, Dept. of Highways v. Public Employees Craft Council of Montana* 529 P 2d 785; 88 LRRM 2012 [1974]

OPEN MEETING LAW

A meeting is subject to closure if the demand for individual privacy clearly exceeds the merits of public disclosure. *O.A.G., #170, 11/27/78*

NEGOTIABILITY

- Severance pay based on years of service is deferred compensation and is a reasonable form and manner of compensation. *O.A.G., #113, 2/8/78*
- Statutory benefits cannot be negotiated away. *O.A.G., #20, 5/23/79*

UNFAIR LABOR PRACTICES

• Failure to provide a dismissal hearing as provided in a contract and failure to provide sufficient notice to allow for preparation of a defense is a ULP under this Act. *City of Livingston v. AFSCME Council 9*, 100 LRRM 2528 [1977]

• School board committed a ULP when it informed striking teachers that they must sign individual contract and return to work on a specified date. *Billings Board of Trustees v. Montana*, 103 LRRM 2285 [1979]

• Refusal to arbitrate whether contractual procedures are required before terminating a nontenured teacher were followed is an unfair labor practice. *Savage Public Schools v. Savage Education Ass'n*, 647 P. 2d 833 [1988]

• Reliance by a board of trustees on a "tainted" evaluation presented to the trustees by the school principal con-

stitutes an act of discrimination. The motivation for discharge was determined to be for engaging in union activities. *Board of Trustees v. State of Montana*, 103 LRRM 3090, 604 P.2d 770 [1979]

FAILURE TO REPRESENT

- A union's failure to represent is not an unfair labor practice. The Act does not provide for an exclusive remedy. *Ford v. University of Montana*, 102 LRRM 2927, 598 P.2d 604 [1979]

- Where a union's breach of its duty to represent is a ULP, administrative remedies afforded employees by BPA are not abrogated because the issue is also under jurisdiction of the state court. *Teamsters Local 45 v. Montana*, 635 P.2d 1310 [1981]

NOTES:

- The Act does not limit the appropriating authority of any legislative body
- Persons who wish to serve as neutrals must undergo a BPA special education course
- University student representatives may meet and confer with both parties prior to negotiations. They may caucus and advise management
- State has a bargaining law for nurses in health care facilities (Title 39, Ch. 32)
- State has a firefighters arbitration act (Title 39, Ch. 34)
- State has a highway employees grievance procedure (Sec. 2-18-1001); a public employees grievance procedure and a state employees grievance procedure

NEBRASKA (K-12; ESP, HE:M)

Statute:

Revised Statutes of Nebraska, Public and Utility Employees Act, Section 48-801 to 48-838, as enacted by Ch. 178, L. 1947; as amended by LB 15, L. 1969; LB 1228, L. 1972; LB 819, L. 1974; LB 40, L. 1977; LB 444, L. 1979; and as last amended by LBs 188, 204, Ls. 1981

Coverage:

All state employees and political subdivisions and public utilities; including K-12 teachers and support personnel in Class I, II & VI school districts and higher education faculty, nonteaching professionals and support personnel

Exclusions:

No Specific Provision

Administering Agency:

Commission of Industrial Relations (CIR)

Unit Determination:

CIR

Unit Determination Criteria:

- All police and fire below rank of chief in one unit
- Established bargaining units and employer policies
- Largest possible unit of not less than departmental size

Recognition:

Exclusive, election or voluntary

Bargaining Rights:

Duty to bargain and reduce agreement to writing

Scope of Bargaining:

Terms and conditions of employment and the administration of grievances

Management Rights:

No Specific Provision

Employee Rights:

- To form, join and participate in unions and refrain from so doing
- Present grievances

Grievance Procedure:

- Grievance procedure mandatory
- May end in final and binding arbitration or through CIR

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

CIR maintains list of qualified mediators and factfinders

ARBITRATION

- CIR holds hearings to determine wages, hours and conditions of employment
- Teachers must use procedure in Teachers Negotiation Act, Sec. 79-1293

Strike Policy:

- Prohibited
- Violators guilty of a Class I misdemeanor

CASE LAW:

APPROPRIATE UNIT

Interns and residents at a state university medical center are employees under the Act and belong in the same unit

as other academic staff. *House Officers v. University of Nebraska Med. Cir.*, 95 LRRM 3346 [1977]

CIR JURISDICTION

- The Commission has jurisdiction to settle disputes over terms and conditions of employment. However it does not have the power to settle unfair labor practice charges. *Police Officers Union v. University of Nebraska*, 101 LRRM 3078 [1975]

- CIR is empowered to settle all disputes upon acquiring jurisdiction. *Crete Educ. Ass'n v. School Dist.*, 90 LRRM 2037 [1975]

SCOPE OF BARGAINING

A university instructor's student contact hours is a management prerogative and not a proper subject of bargaining. *Metro Educ. Ass'n v. Community College*, 102 LRRM [1979]

APPROPRIATE UNITS: CRITERIA

CIR may use following criteria to determine appropriate units: Community of interest as relating to wages, hours, working conditions, duties and skills of employees, extent of union organization and desires of employees. *University Professors v. University of Nebraska*, 95 LRRM 2122 [1977]

NEBRASKA (K-12: M)

Statute:

Revised Statutes of Nebraska, Chapter 79, Section 79-1287 to 79-1295, as enacted by Ch. 518, L. 1967

Coverage:

Teachers in Class III, IV, V school districts

Exclusions:

No Specific Provision

Administrating Agency:

- Local school board
- State Department of Education

Unit Determination:

Statute

Unit Determination Criteria:

No Specific Provision

Recognition:

Exclusive; one year duration. If more than one organization, board may recognize group enrolling largest majority over 2 year period

Bargaining Rights:

Meet and confer

Scope of Bargaining:

Employment relations and mutually agreed to matters

Management Rights:

No Specific Provision

Employee Rights:

- Form, join and participate in unions or refrain from so doing
- Present grievances or represent themselves in their employment relations

Grievance Procedure:

No Specific Provision

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

FACTFINDING

- Tripartite panel
- Report issued in 30 days

Strike Policy:

No Specific Provision

NOTES

Nebraska has a right to work amendment

NEVADA (K-12, ESP: M)

Statute:

Nevada Revised Statutes, Local Government Employee - Management Relations Act, Section 288-010 to 288.280, as enacted by Ch. 650, L. 1969; as amended by Ch. 643, L. 1971; AB 599, L. 1973; Chs. 35, 539, Ls. 1975; Chs. 391, 402, 530, 551, Ls. 1977; Ch. 189, AB 426, Ls. 1975; SB 350, L. 1981; as last amended by Chs. 35, 552, Ls. 1983

Coverage:

All local government (state political subdivisions) employees, employees of public or quasi-public corporations and K-12 professional and support staff

Exclusions:

Managerial and confidential employees

Adminstrating Agency:

Local Government Employee-Management Relations Board (LGEMRB)

Unit Determination:

LGEMRB in cases of dispute

Unit Determination Criteria:

- Community of interest of employees
- Supervisors shall not be in the same unit with employees whom they supervise

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- Agreement must be reduced to writing at request of either party

Scope of Bargaining:

- Salary and wage rates or other forms of direct monetary compensation
- Sick leave, vacation leave, holidays and other paid or nonpaid leaves
- Insurance benefits
- Hours of work per day
- Number of days of work per year
- Discharge and discipline procedures
- Recognition clause
- Classification system for unit employees
- Dues deduction
- Protection of unit employees against discrimination for participating in union activities
- No strike provision
- Grievance procedure with arbitration
- Savings clause
- Duration of agreement
- Employee safety

- Teacher preparation time
- Reduction in force procedure
- Any provision negotiated and in effect as of 5/15/75

Management Rights:

- Right to hire, direct, assign, or transfer an employee, except as a form of discipline
- Right to lay off an employee(s) per the negotiated procedures for lack of work or funds
- Right to determine staffing levels and performance standards except for safety considerations
- Determine type of work, performance and workload
- Determine the quality and quantity of public services
- Determine the means and methods of offering those services
- Safety of the public
- Right to take any action whatsoever including suspension of agreement in the event of emergency
- Right without limitation to manage the "operation" in the most efficient manner

Employee Rights:

To join, or refrain from joining any labor union

Grievance Procedure:

Grievance procedure culminating in binding arbitration is mandatory

Union Security:

Dues deduction is mandatory

Unfair Labor Practices:**UNION**

- Interfere with, restrain, or coerce employees in the exercise of rights guaranteed under this Act
- Refuse to bargain collectively and in good faith, including participation in impasse procedures
- Discriminate because of race, color, sex, age, physical or visual handicap or for political, personal or affiliation reasons
- Fail to provide information for the purpose of negotiations

MANAGEMENT

- Interfere with, restrain, or coerce employees in the exercise of any rights guaranteed under this Act
- Dominate, interfere with, or assist in the formation or administration of a union
- Discriminate in hiring, tenure, or any condition of employment to discourage or encourage union membership
- Discharge or discriminate against an employee for petitioning, complaining or giving testimony under this Act or for forming or joining an employee organization
- Refuse to bargain collectively and in good faith including participating in the impasse procedure

- Discriminate because of race, color, sex, age, creed, physical or visual handicap, national origin, or political, personal or affiliation reasons
- Fail to provide information for negotiations as required by Sec. 288.180 of this Act

Impasse Procedure:

(This section does not apply to firemen who may submit disputes to binding factfinding and/or arbitration)

MEDIATION

- Between April 1st - June 1st either party may request a mediator
- Labor commission shall submit a list from which a mediator must be chosen
 - Parties share costs equally
- If parties resort to factfinding prior to July 11th, mediator must provide a report

ADVISORY FACTFINDING

- After mediation and by May 1st if no agreement is reached either party may request advisory factfinding
- Single factfinder chosen via alternate strike from AAA or FMCS list
 - Costs shared equally
 - Report due 30 days after close of hearing
 - Parties may agree to accept report as final and binding

BINDING FACTFINDING

- Request for a panel must be filed by June 25th

- The panel shall be comprised of an attorney, an accountant (supplied by the respective state boards) and a neutral third member selected by the other two
- The disputed issues are submitted to this three person panel
 - A decision must be given by August 10 regarding which issues are binding or advisory
 - The panel may select all or part of the factfinders report as binding

FACTFINDING AWARD CRITERIA:

- The financial ability of the employer, based on all existing revenues and capacity to provide service
- If financial ability is present, factfinder shall apply "normal criteria for interest disputes" in assessing the reasonableness of each party's position
- Only funds retained from a prior year that are dedicated for salaries can be used to pay awarded monetary benefits
- Arbitrable issues are those enumerated as mandatory subjects of bargaining or negotiated prior to 5/75 or are voluntarily negotiated

Strike Policy:

- Prohibited
- No strike pledge required to receive recognition
- Strike penalties for individuals include: fines, imprisonment, suspension, demotion, dismissal, loss of salary
- Strike penalties for unions include: injunctive relief, up to \$50,000 per day fine, union officials up to \$1,000 per day fine and jail

NEW HAMPSHIRE (K-12, ESP, HE: M)

Statute:

New Hampshire Revised Statutes Annotated, Chapter 273-A, Section 1 to 16, as enacted by Ch. 490, L. 1975; as amended by Ch. 437, L. 1977; Ch. 374, L. 1979; as last amended by Ch. 270, L. 1983

Coverage:

All state and local government employees and public corporation employees, including K-12 teachers, higher education faculty, nonteaching professionals and K-G support employees

Exclusions:

Elected, appointed, managerial, confidential, probationary temporary and seasonal employees

Administering Agency:

Public Employee Labor Relations Board (PELRB)

Unit Determination:

PELRB

Unit Determination Criteria:

Community of interest exhibiting one or more of the following:

- Similar conditions of employment
- History of bargaining
- Same craft or profession
- Same functional unit
- No less than 10 employees in unit
- Separation of professionals and nonprofessionals unless both vote for inclusion

Recognition:

Exclusive, by election

Bargaining Rights:

Duty to bargain and reduce agreement to writing by budget submission date

Scope of Bargaining:

Wages, hours and other conditions of employment

Management Rights:

- Merit system and its operation
- Functions, programs and methods of operation
- Use of technology
- Organizational structure
- Selection, direction and number of employees necessary for the operation of the agency

Employee Rights:

To organize and be represented by a union

Grievance Procedure:

- Grievance procedure must be bargained
- Final and binding arbitration may be bargained

Union Security:

No Specific Provision

Unfair Labor Practices:**UNION**

- Restrain, coerce or interfere with employees in the exercise of their rights under this Chapter
- Restrain, coerce or interfere with employees in selection of representatives
- Cause or attempt to cause a public employer to discriminate against a public employee
- Refuse to negotiate in good faith
- Engage in a strike or other form of job action
- Breach a collective bargaining agreement

MANAGEMENT

- Restrain, coerce or interfere with an employees' exercise of their rights under this Chapter
- Dominate or interfere with the formation or administration of a union
- Discriminate in hiring, tenure or condition of employment to encourage or discourage union membership
- Discharge or discriminate against an employee for filing a complaint or giving testimony or information under this Chapter
- Refuse to negotiate in good faith or fail to submit to the legislative body any agreed upon cost item
- Invoke a lockout
- Fail to comply with this Chapter or any rule adopted under this Chapter
- Breach a collective bargaining
- Pass any law, regulation or rule about terms and conditions of employment that would invalidate any portion of an agreement

Impasse Procedure:**MEDIATION**

- At request of either party at impasse or at initiation of PELRB 60 days prior to budget submission date
- Costs shared equally by parties

FACTFINDING

- At request of either party or initiated by PELRB 45 days prior to budget submission date

- Parties mutually select neutral or PELRB appoints
- Report publicized 10 days after close of hearing
- If impasse exists after factfinder's report is rejected by both parties negotiations may be reopened
- Alternative dispute settlement procedures may be negotiated
- Binding arbitration of non-cost items may be negotiated

Strike Policy:

- Strike and lockout prohibited
- Strike is enjoined
- Union subject to fines, costs and legal fees

CASE LAW:**APPROPRIATE UNIT**

- Principals and assistant principals may join as a group for bargaining purposes. *In re Nashua Ass'n of School Principals*, 101 LRRM 2135 [1979]
- College lecturers on fixed term appointment of one year or less are temporary employees. The rule applied is whether or not the employees have a "reasonable expectancy of reemployment" *Keene State College Educ. Ass'n v. New Hampshire*, 100 LRRM 2937 [1979]

SCOPE OF BARGAINING

- A change in hours of work in a day is a mandatory subject of bargaining. *State Employees' Ass'n v. Board of Trustees*, 99 LRRM 2437 [1978]
- Subcontracting, leaves of absence, time-off, state training programs, discipline and removal, classification, promotion, transfer, layoff, seniority and wage administration are non-negotiable within the meaning of the Act or if they infringe on a statutory merit system. *State Employees Ass'n v. PELRB*, 100 LRRM 2484 [1978]
- A university is not obligated to bargain over abolition of department chairmanships, elimination of advisory faculty committees and denial of a faculty observers' right to be present at meetings as these items relate to the employer's organizational structure and are non-negotiable. *Keene State Educ. Ass'n v. New Hampshire*, 104 LRRM 2086 [1980]

DUTY TO BARGAIN: PENDING LITIGATION

A PELRB bargaining order can only be suspended by PELRB or by the court upon proper petition irrespective of pending litigation over an unfair labor practice charge. *Rochester School Board v. PELRB*, 101 LRRM 2129 [1979]

UNFAIR LABOR PRACTICE: PELRB JURISDICTION

Failure to pay teachers negotiated salary rates is a ULP. PELRB does have authority to order that a salary figure be included in an agreement. *Rochester School Board v. PELRB*, 101 LRRM 2129 [1979]

NEW JERSEY (K-12, ESP, HE: M)

Statute:

New Jersey Statutes Annotated, Title 34, Section 34-13A-1 to 34-13A-13, as enacted by Ch. 100, L. 1941; as amended by Ch. 303, L. 1968; Ch. 326, L. 1973; Ch. 23, L. 1974; Ch. 477, L. 1980; as last amended by Ch. 103, L. 1982

Coverage:

Employees of the state and its political subdivisions, including K-12 teachers, higher education faculty, nonteaching professionals and K-G support employees

Exclusions:

Elected officials, board and commission members, managerial and confidential employees, superintendents, other chief administrators and assistant superintendents

Administrating Agency:

Public Employment Relations Commission (PERC)

Unit Determination:

PERC

Unit Determination Criteria:

- Community of interest
- Professionals cannot be in a unit of nonprofessionals except by election
- Appropriate unit of employees
- Separate supervisory units

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain

Scope of Bargaining:

- Grievance procedure
- Terms and conditions of employment
- Service fees

Management Rights:

No Specific Provision

Employee Rights:

To form, join and assist unions and refrain from so doing

Grievance Procedure:

- Grievance procedure mandatory
- Binding arbitration permitted

Union Security:

- Dues deduction mandatory
- Agency shop permitted
- Service fee is prorated

Unfair Labor Practices:**UNION**

- Interfere with, restrain, or coerce employees in exercise of their rights under this Act
- Interfere with, restrain, or coerce employees in selection of their representatives
- Refuse to negotiate in good faith or represent employees
- Refuse to reduce an agreement to writing
- Violate any rules promulgated by PERC

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of their rights under this Act
- Dominate or interfere with the formation, existence or administration of a union
- Discriminate in hiring, tenure, term or condition of employment in order to encourage or discourage union membership
- Discharge or discriminate against an employee for testifying or filing a complaint under this Act
- Refuse to negotiate or process a grievance
- Refuse to reduce an agreement to writing or to sign such agreement
- Violate rules and regulations of PERC

Impasse Procedure:**MEDIATION**

- Request of either party
- Costs borne by PERC

FACTFINDING

- PERC may initiate or recommend
- Single neutral or tripartite panel
- Costs borne by PERC

Strike Policy:

No Specific Provision

CASE LAW:**EMPLOYEE RIGHTS**

Where an agreement provides for individual presentation of grievance, the right of the union to present a grievance is not waived as this right is statutory and cannot be modified. *Education Ass'n v. Red Bank Board of Educ.*, 99 LRRM 2447 [1978] affirming 96 LRRM 2863 [1975]

SCOPE OF BARGAINING: NEGOTIABILITY

- College calendar is not a subject of bargaining. It involves a major educational determination. *Faculty Ass'n v. Board of Trustees*, 84 LRRM 2857 [1973]
- Unilateral adoption of tenure guidelines and periodic evaluation of tenured faculty does not violate duty to bargain. These subjects are not bargainable as they are matters of major educational policy. *Ass'n of College Faculties v. Dungan*, 85 LRRM 2625 [1974]

- Consolidation of different subject departments is neither a subject of negotiations nor arbitrable as it is a matter of educational policy. *Dunellen Board of Educ. v. Educ. Ass'n*, 85 LRRM 2131 [1973]

- Extension of teaching hours of day and tuition reimbursement and salary credit are negotiable and therefore such disputes are arbitrable. *Board of Educ. v. Englewood Teachers Ass'n*, 85 LRRM 2137 [1973]

- Unilateral guidelines limiting compensation from outside employment are negotiable as they affect the work and welfare of employees and do not affect any major educational policy. *Educ. Ass'n v. New Jersey Board of Educ.*, 87 LRRM 2951 [1973]

- Negotiated retirement benefits over and above benefits provided by the system are outside the board's authority and unenforceable. The Act expressly prohibits modification of pension statutes by collective bargaining. *Fair Lawn Educ. Ass'n v. Board of Educ.*, 102 LRRM 2205 [1979]

- Transfers and reassignments are not mandatory subjects of bargaining as they interfere with managerial re-

sponsibilities. *Ridgefield Park Educ. Ass'n v. Board of Educ.*, 98 LRRM 3285 [1978]

UNFAIR LABOR PRACTICES

- PERC has power to order an employer to award employees back pay for actual losses sustained owing to an employer ULP. *Galloway Board of Educ. v. Secretaries*, 99 LRRM 2421 [1978]

- ULP proceedings are not rendered moot upon resolution of the incident giving rise to ULP and upon the cessation of unlawful conduct. PERC may move for enforcement. *Galloway Board of Educ. v. Educ. Ass'n*, 100 LRRM 2250 [1978]

RIGHT TO STRIKE

Public employees do not have right to strike by inference. *Board of Educ. v. New Jersey Education Ass'n*, 69 LRRM 2870 [1947]

NOTES:

NJ has a fire and police arbitration act. *New Jersey Statutes Annotated*, Section 34-13A-14 to 34-13A-21

NEW MEXICO

New Mexico does not have a public employee collective bargaining statute.

NOTES:

The State Personnel Board in 1971 issued regulations for the conduct of labor management relations for classified state employees

NEW YORK (K-12, ESP, HE: M)

Statute:

New York State Statutes Annotated, Civil Service Law, Section 200 to 214 (Taylor Act), as enacted by Ch. 392, L. 1967; as amended by Chs. 414, 1626, Ls. 1970; Ch. 503, L. 1971; Ch. 26, 818, Ls. 1972; Ch. 382, L. 1973; Chs. 283, 443, 587, 724, 725, Ls. 1974; Chs. 830, 854, Ls. 1975; Chs. 216, 429, 677, 678, 817, Ls. 1977; Chs. 291, 465, Ls. 1978; Chs. 316, 618, Ls. 1979; Chs. 378, 655, 814, L. 1981; Chs. 868, 921, Ls. 1982; as last amended by Ch. 254, L. 1983

Coverage:

All public employees of the state and its political subdivisions, including K-12 teachers, higher education faculty, nonteaching professionals and K-G support employees

Exclusions:

Elected, appointed officials, militia, confidential, manage-

rial, court system judges and all employees employed by mayoral agencies of the City of New York

Administrating Agency:

Public Employment Relations Board (PERB)

Unit Determination:

PERB

Unit Determination Criteria:

Appropriateness of unit determined by:

- Community of interest
- Employer determination of which jobs are similar
- Ability to deliver essential services to public

Recognition:

- Exclusive, voluntary or by election
- Exclusivity not to exceed three years

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration not to exceed 3 years

Scope of Bargaining:

- Wages, hours and other terms and conditions of employment defined to include agency shop and grievance procedures
- Exclusions for state employees are: agency shop fee deduction and retirement benefits

Management Rights:

No Specific Provision

Employee Rights:

- To form, join or participate in unions or refrain from so doing
- Be represented by unions in negotiations and/or grievance administration

Grievance Procedure:

Grievance procedure culminating in binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Agency shop mandatory for state employees, optional for local employees
- Must provide rebate procedure upon demand for portion of fee for activities incidental to bargaining

Unfair Labor Practices:**UNION**

- Interfere with, restrain, or coerce public employees in the exercise of rights under this Act
- Cause or attempt to cause a public employer to interfere with, restrain or coerce employees
- Refuse to negotiate

MANAGEMENT

- Interfere with, restrain, or coerce public employees in the exercise of their rights under this Act
- Dominate or interfere with the formation or administration of an employee organization
- Discriminate against any employee to discourage or encourage participation in the activities of an employee organization
- Refuse to negotiate in good faith
- Refuse to continue the terms of an expired agreement until a new one is negotiated

Impasse Procedure:

- An impasse may be deemed to exist if no agreement is reached 120 days prior to the end of the public employer's fiscal year
- Parties may negotiate any resolution procedure
- Parties may request or PERB may initiate assistance for resolution of dispute

MEDIATION

Upon request of either party, or Board may initiate and assign a neutral

FACTFINDING

- Board initiates
- Parties select neutral from PERB supplied list
- Recommendations transmitted to employer and made public within 5 days
- PERB may make recommendations to settle dispute, but shall not appoint a second factfinding board
- Excepting educational disputes, a public hearing shall be held wherein both parties shall explain their positions, thereafter the legislative body shall take appropriate action

ARBITRATION

- Voluntary for state and local employees
- Tripartite panel
- Conventional arbitration
- Parties share costs
- Award not to exceed 2 years contract duration

Strike Policy:

- Prohibited
- Strike may be enjoined
- Strike penalties for union include: loss of dues and agency fee deduction privilege and fines
- Strike penalties for individual include 2 for 1 salary loss, dismembered fines

CASE LAW:**SCOPE OF BARGAINING: HOURS**

- The number of hours of instruction is a term and condition of employment about which a school board must bargain. *School Boards Ass'n v. Board of Educ.*, 92 LRRM 2556 [1976]
- No merit exists for the argument that absent express statutory authority a board is prohibited from bargaining with a union on terms and conditions of employment. The duty to bargain is a broad and unqualified condition which should not be limited in any way except where other applicable statutory provisions expressly prohibit the employer from making an agreement. *Board of Education v. Associated Teachers*, 79 LRRM 2881 [1972] affirming in part and reversing in part 78 LRRM 2109 [1971]
- Class size is not a mandatory subject of bargaining; however, impact of class size is negotiable. *Teachers Ass'n vs. Helsby*, 87 LRRM 2318 [1974] affirming 87 LRRM 2313

IMPROPER PRACTICES: PERB JURISDICTION

- PERB has jurisdiction over an improper practice charge filed against board of education even though the Commissioner of Education is also reviewing the same board action. *Board of Educ. v. Helsby*, 83 LRRM 2526 [1973] affirming 79 LRRM 2303 [1969]
- PERB can order an employer to reinstate employees disciplined for exercise of their rights. *City of Albany v. Helsby*, 79 LRRM 2457 [1972] modifying and affirming 77 LRRM 2352 [1970]

- PERB has the authority to order a community college to bargain over merit salary increase but PERB does not have authority to order an institution to pay the increases. *Board of Supervisors v. PERB*, 89 LRRM 2713 [1975]

ARBITRABILITY: PROPER SUBJECT OF ARBITRATION

Absent a restrictive policy limiting the freedom of contract, a district is free to bargain voluntarily and agree to arbitration without violating the Act, decisional law or public policy. *School District v. Teachers Ass'n*, 90 LRRM 3046 [1975]

STRIKES PENALTIES

Imposition of strike penalties imposed by law prior to a hearing do not deprive an employee of due process rights. *Sanford v. Rockefeller*, 88 LRRM 2189 [1974]

NOTES:

- Separate labor provisions that mirror the Taylor Act are in effect for NYC (and NY-NJ Port Authority)
- Local governments may set up mini-PERBs to handle their own equivalent labor procedures, except ULP's
- Upgrading of civil service positions are not within definition of "terms and conditions of employment"

NORTH CAROLINA

North Carolina does not have any collective bargaining statutes for public employees

CASE LAW:

RIGHT TO ORGANIZE

Employees may join labor unions. *Atkins v. City of Charlotte*, 296 F Supp. 1068 [1969]

DUES DEDUCTION

There is no right to dues deduction in the absence of a

statute even if the public employer makes other deductions for other groups. *City of Charlotte v. Local 460 IAFT*, 96 S. Ct. 2036 [1976]

NOTES:

North Carolina has a statute prohibiting any public employer from entering into a labor contract with a union or group of public employees. *North Carolina General Statutes*, Section 95 to 97

NORTH DAKOTA (K: 12: M)

Statute:

North Dakota Century Code, Teachers Representation and Negotiations Act, Chapter 15-38, 101-15, as enacted by HB 175, L. 1969; as amended by SB 2275, L. 1983

Coverage:

All certified teachers and administrators employed by school districts

Exclusions:

No Specific Provision

Administrating Agency:

Education Fact Finding Commission (EFFC)

Unit Determination:

Local Board of Education

Unit Determination Criteria:

- Common interest, problems and employer
- History of representation
- Administrators and teachers may be in separate unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- An agreement must be reduced to writing at request of either party
- No specific duration

Scope of Bargaining:

Matters relating to terms and conditions of employment and employer-employee relations, including but not limited to salary, hours and other terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To form, join and participate in an employee organization or refrain from so doing

Grievance Procedure:

Grievance procedure culminating in binding arbitration is negotiable

Union Security:

Dues deduction is permitted

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:**MEDIATION**

- Mutual agreement of parties
- Costs shared equally

FACTFINDING

- Parties may ask EFFC to conduct a hearing or appoint a factfinder
- Report issued in 20 days, made public in ten days
- Costs shared equally
- Report nonbinding
- Parties may negotiate own procedures

Strike Policy:

- Prohibited
- Employee loses pay

CASE LAW:**ARBITRABILITY**

Use of sick leave for maternity is arbitrable as use of such leave is within the ambit of a broad arbitration clause. *W. Fargo School Dist. v. Educ. Ass'n*, 97 LRRM 2361 [1977]

INDIVIDUAL CONTRACTS

At the conclusion of the negotiations process, the board is within its rights by complying with Sec. 15-47-27 of Code in issuing individual teacher contracts despite existence of negotiations dispute. No chilling effect on negotiations. *Edgeley Educ. Ass'n v. School Dist.*, 90 LRRM 2437 [1975]

SCOPE OF BARGAINING

Mandatory scope of bargaining includes salaries, hours, formulation of agreement, binding arbitration and interpretation of existing agreement. Permissive items include: class size, reduction in force procedure, curriculum, evaluation policies, transfer procedures, leave procedures and binding impasse arbitration. *Fargo Educ. Ass'n v. Fargo Public School District No. 1*, 2d NW 267 [1980]

NOTES:

- The State has a right to work law
- State has a public employee statute (excluding teachers) dealing with mediation of impasse disputes. *North Dakota Century Code*, Section 31.11.01 to 31.11.05

OHIO

(K-12, ESP, HE: M)

Statute:

Ohio Revised Code Annotated, Chapter 4117.01 to 4117.23, as enacted by SB 133, L. 1983

Coverage:

All public employees of the state and political subdivisions

Exclusions:

Employees of the General Assembly or other legislative body, employees of the governor or a chief executive; militia, state employment relations board employees, confidential, managerial and court employees, employees of public officials serving in a fiduciary capacity and students or assistants, supervisors, part-time faculty and seasonal or temporary employees

Administrating Agency:

State Employment Relations Board (SERB)

Unit Determination:

SERB

Unit Determination Criteria:

- Desires of employees

- Community of interest

- Wages, hours and other working conditions
- Effect of over-fragmentation
- Efficiency of operations
- Administrative structure of public employer
- History of bargaining
- Professionals separate from nonprofessionals

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain and reduce contract to writing
- Duration may not exceed three years

Scope of Bargaining:

Wages, hours or terms and other conditions of employment and the continuation, modification or deletion of an existing provision

Management Rights:

- Unless the public employer agrees otherwise nothing shall impair the following rights and responsibilities: Determine matters of inherent managerial rights such as

functions and programs, standards of service, budget, use of technology, organizational structure

- Direct, supervise, evaluate and hire employees
- Maintain efficiency of operations
- Determine methods, process, means, or personnel needed for operations
- Determine adequacy of work force
- Manage the work force
- Carry out the mission of the agency

Employee Rights:

- Form, join, assist or participate in or refrain from joining a labor union
- Engage in concerted activities
- Representation by a union
- Bargain collectively and present grievances

Grievance Procedure:

- Grievance procedure mandatory
- May culminate in final and binding arbitration

Union Security:

- Dues deduction mandatory
- Agency fee permitted
- Alternative payment permitted for conscientious or religious objection or use for partisan politics or ideological causes

Unfair Labor Practices:

UNION

- Restrain or coerce employees in the exercise of their rights under this Act
- Cause or attempt to cause an employee to commit an unfair labor practice
- Refuse to bargain collectively
- Call, institute, maintain or conduct a layoff against a public employee or picket any place of business of a public employer because of a jurisdictional work dispute
- Induce or encourage any person to engage in an illegal strike or refuse to handle goods or perform services or force a public employer to recognize an uncertified employee organization
- Fail to represent all unit employees
- Encourage picketing at a residence or place of private employment of any public official or employee representative

- Engage in any picketing or striking without giving ten days notice to the employer or the Board

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their rights under this Act or an employee organization in the selection of its representatives
- Initiate, create, dominate or interfere with the formation of an employee organization or contribute financial or other support to it
- Discriminate in hiring or tenure or any condition of employment against an employee for exercising their rights under this Act
- Discharge or discriminate against an employee for filing charges or testifying under this Act
- Refuse to bargain
- Fail to process a grievance or a request for arbitration
- Lockout employees
- Cause or attempt to cause commission of an unfair labor practice

Impasse Procedure:

- Upon request to SERB by parties
- Costs borne 1/2 by state 1/4 by each party

MEDIATION

Begins no later than 45 days from expiration of contract

FACTFINDING

- Begins 30 days before contract expires
- Report issued within 14 days
- Report binding unless 3/5 vote of total membership of either party rejects in which case the report is made public. If no agreement within 7 days, notice of strike must be given

ARBITRATION

Permitted in any form as an alternative dispute settlement mechanism

Strike Policy:

- Strike permitted after following impasse machinery and giving of "notice"
- Strikes may be enjoined for 60 days if found threatening to the public health or welfare

OKLAHOMA (K:12, ESP: M)

Statute:

Oklahoma Statutes Annotated, Title 70, Chapter 7, Section 509.1 to 509.10, as enacted by HB 1325, L. 1971; as amended by HBs 1115, 1170, Ls. 1978; HB 1129, L. 1981; HB 1824, L. 1982; as last amended by SB 188, L. 1983

Coverage:

All certified K-12 teachers and support personnel of school districts

Exclusions:

No Specific Provision

Administrating Agency:

Local Board of Education

Unit Determination:

Local Board of Education

Unit Determination Criteria:

- Separation of supervisory from non-supervisory employees
- Separation of professional from support employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain, no requirement to reduce to writing

Scope of Bargaining:

PROFESSIONAL EMPLOYEES

Items affecting the performance of professional services

SUPPORT PERSONNEL

Terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

No Specific Provision

Grievance Procedure:

No Specific Provision

Union Security:

No Specific Provision

Unfair Labor Practices:**UNION**

Impede, restrain or coerce employees in exercise of their rights under this Act

MANAGEMENT

- Discriminate for exercising or not exercising their rights under this Act
- Impede, restrain or coerce employees in exercise of their rights under this Act

Impasse Procedure:

Parties must establish a negotiations procedure policy

FACTFINDING

In absence of procedure, a panel consisting of 3 members is to make recommendations

Strike Policy:

- Prohibited
- Employees lose all pay
- Union loses recognition

CASE LAW:**RECOGNITION**

- Only one organization can be recognized as the exclusive representative. *O.A.G. #73-150, 2/13/74*
- School board does not have the right to demand review of authorization cards. *Moore Teachers Ass'n v. Board of Educ.*, 96 LRRM [1977]

STRIKE PROHIBITIONS

Strike prohibitions under the Act are effective only for the duration of the strike. *Oklahoma City v. Oklahoma Teachers Federation*, 110 LRRM 2602 [1980]

NOTES:

- State has an open meeting law requiring the school board to deliberate in public unless meeting in executive session.
- State has a police, fire and municipal employees bargaining statute
- Individual employees may petition the board to be excluded from the bargaining unit
- Designation of the bargaining representative shall be made by the recognized organization. *Oklahoma Statutes Annotated*, Title 70, Ch. 7, Sec. 509.2

OREGON (K:12, ESP, HE: M)

Statute:

Oregon Revised Statutes, Section 243.650 to 243.782, as enacted by Ch. 579, L. 1963; as amended by SB 55, L. 1969; Ch. 536, L. 1973; Ch. 679, L. 1975; Ch. 728, L. 1975; as last amended by Chs. 219, 257, Ls. 1979

Coverage:

All employees of the state, its agencies, political subdivisions, including quasi-public corporations, and K-12 teachers, higher education faculty, nonteaching professionals and K-G support staff

Exclusions:

Elected, board or commission appointees, confidential, supervisory and managerial employees

Administering Agency:

- Employment Relations Board (ERB)
- State Conciliation Service (SCS)

Unit Determination:

ERB

Unit Determination Criteria:

- Community of interest
- Wages, hours, and other working conditions
- History of collective bargaining
- Desires of employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- An agreement must be reduced to writing if requested

Scope of Bargaining:

Direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedure, and other conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To form, join and participate in unions

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

- Dues deduction is mandatory
- Service fees, union shop permitted
- Contribution to mutually agreeable non-religious organization permitted for bona fide objection to payment of service fee

Unfair Labor Practices:**UNION**

- Interfere with, restrain, or coerce employees for exercising their rights under this Act
- Refuse to bargain collectively
- Refuse to comply with this Act
- Refuse to comply with any terms of an agreed upon arbitration procedure
- Refuse to reduce an agreement to writing or to sign an agreement
- Communicate with anyone other than employer representatives during negotiations regarding employment relations

MANAGEMENT

- Interfere with, restrain or coerce employees for exercising their rights under this Act
- Dominate, interfere with, or assist in the formation, existence or administration of an employee organization
- Discriminate in hiring, tenure, or any term or condition of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against an employee for filing a complaint or testifying under this Act
- Refuse to bargain collectively
- Refuse to comply with the terms of an agreed upon arbitration procedure
- Refuse to reduce to writing or sign an agreement
- Communicate with unit employees on employment relations matters during the course of negotiations

Impasse Procedures:**MEDIATION**

- Request of either party
- Stipulate unresolved issues
- Mediator appointed by SCS

FACTFINDING

- If no settlement after 15 days, either party may request factfinding, or ERB initiates
- Parties may select own factfinder
- ERB selects if parties do not agree
- Report issued 30 days after close of hearing
- Parties must accept or reject report within five days or report is made public
- Costs borne equally
- Parties may submit dispute to final and binding arbitration at any time, bypassing mediation and factfinding
- Protective services must submit dispute to binding arbitration
- Parties may negotiate alternate dispute resolution machinery

Strike Policy:

- Strike permitted after mediation and factfinding and upon giving ten days notice
- Protective services prohibited from striking
- ULP not a defense to prohibited strike

- Employer may seek injunctive relief where there is a clear and present danger to public health and welfare
- Court may order arbitration
- Honoring a picket line is deemed striking

CASE LAW:**RIGHT TO REPRESENTATION**

- Lawful for employer and union to prohibit a rival organization from presenting grievances. *O.A.G.*, #7376, 12/29/76
- A teacher has neither a statutory nor a constitutional right to representation at evaluation conferences to measure annual growth and development. *O.A.G.*, #7381, 12/29/76

AGENCY SHOP

- Statutory definition of "fair share" is legal in light of

Aboud. Siegel v. Gresham Grade School Teachers Ass'n, 97 LRRM 3125 [1978]

- If an employee objects to the fair share fee contribution or any portion of the fair share contribution because the fee is not used exclusively for employment relations purposes, the employee is not required to make the contribution. *O.A.G.*, #7591, 3/21/78

NOTES:

- Postsecondary students may meet and confer with the parties and attend all the bargaining sessions. Confidentiality is required
- Agreements declared invalid by ERB or the courts or by an inability to execute must be renegotiated
- Counties and cities (Portland, Eugene) may adopt their own ordinance(s) governing labor relations providing these ordinances do not conflict with state law

PENNSYLVANIA (K-12, ESP, HE: M)

Statute:

Purdon's Pennsylvania Statutes Annotated, Public Employee Relations Act, Title 43, Section 1101.101 to 1101.2301, enacted as Act 195, L. 1970; as amended by Act 67, L. 1976

Coverage:

Employees of the state, its political subdivisions and institutions receiving public funds, including K-12 teachers, higher education faculty, nonteaching professionals and K-G support employees

Exclusions:

Elected, appointed officials, police and fire, managerial and confidential employees, clergy or employees of church officials

Administrating Agency:

- Pennsylvania Labor Relations Board (PLRB)
- Pennsylvania Bureau of Mediation (PBM)

Unit Determination:

PLRB

Unit Determination Criteria:

- Community of interest
- Avoidance of overfragmentation
- Separation of professionals from nonprofessionals unless professionals vote for inclusion
- Separate supervisory units
- Statewide units where possible
- Separate units for guards and court employees

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing prior to budget submission date

Scope of Bargaining:

- Wages, hours and other terms and conditions of employment
- Meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as impact thereon

Management Rights:

- Not required to bargain over matters of inherent managerial policy or "acts of discretion" such as functions and programs of the employer
- Standards of service
- Overall budget
- Utilization of technology
- Organizational structure
- Selection and direction of personnel

Employee Rights:

- To organize, form, join or assist unions and refrain from so doing
- Engage in lawful concerted activities

Grievance Procedure:

- Grievance procedure including binding arbitration must be bargained
- PBM may be utilized

Union Security:

- Dues deduction permitted
- Maintenance of membership permitted

Unfair Labor Practices:**UNION**

- Restrain or coerce employees in the exercise of their rights guaranteed under the Act
- Restrain or coerce an employer in selection of his representatives
- Refuse to bargain collectively
- Violate PERB rules for the conduct of elections
- Refuse to reduce to writing or sign an agreement
- Call, institute, maintain or conduct a strike or boycott or picket against a public employer on account of a jurisdictional dispute, or recognize a noncertified organization
- Refuse to comply with the provisions of an arbitration award
- Refuse to comply with the requirements of "meet and confer"

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of rights guaranteed under this Act
- Dominate or interfere with the formation or existence of a union
- Discriminate in hiring or tenure of employment to discourage or encourage membership in a union
- Discharge or discriminate against an employee for exercising rights or filing complaints under this Act
- Refuse to bargain or process a grievance in good faith
- Refuse to comply with provisions of an arbitration award
- Refuse to comply with requirements of "meet and confer"

Impasse Procedures:**MEDIATION**

Both parties must request mediation from PBM 150 days prior to budget submission date

FACTFINDING

- Panel must be appointed not later than 130 days prior to budget submission date
- Report due in 40 days from request for factfinding
- If report not accepted, may be publicized
- State pays 1/2 of cost, parties share balance

ARBITRATION

- Voluntary
- Tripartite panel
- A binding award
- PLRB pays for neutral
- Any part of award requiring legislation is advisory

Strike Policy:

- Permitted after following mandatory impasse procedures
- Employer may seek injunction against strike as threat to public health, safety and welfare
- Violation of injunction punishable by fine and imprisonment
- No pay for strike days

- ULP no defense for illegal strike

CASE LAW:**UNION SECURITY**

- Employee's right to withdraw from a union is restricted only during the term of the contract. New contract may not nullify a valid resignation. *Philadelphia Teachers v. School Board*, 88 LRRM 2163 [1974]
- Agency shop is illegal in any form. *PLRB v. Zelem*, 329 A 2d 477 [1974]

SCOPE OF BARGAINING

- School boards may bargain over pay for days schools are forced to close for lack of funds as the issue relates to wages. *O.A.G.*, 7/17/72
- Sabbatical leave benefits are within the ambit of the mandatory scope of bargaining. But certain statutory provisions regarding eligibility criteria for sabbatical leaves are non-negotiable. *O.A.G.*, #31, 4/19/73
- An item of dispute is not automatically removed from bargaining simply because it touches upon managerial policy since it is also of fundamental concern to employees' interest in wages, hours, and other terms and conditions of employment. *PLRB v. School District*, 90 LRRM 2081 [1975]

ARBITRABILITY: IMPROPER DELEGATION

Arbitration of a discharge of a non-tenured teacher is permitted and is also a proper subject of negotiation. The arbitration provision does not delegate away the board's authority to enforce regulations regarding the management of school affairs or removal of teachers. *Philadelphia Board of Educ. v. Philadelphia Teachers*, 90 LRRM 2879 [1975]

STRIKES

- A strike is enjoined if the Acts' procedural requirements are not met. *School District v. Educ. Ass'n*, 79 LRRM 2306 [1971]
- Where a threat to public health, welfare and safety is not established a preliminary injunction is dissolved since the strike did nothing more than the usual and disruptive effects of a teacher's strike. *School District v. Educ. Ass'n*, 79 LRRM 2455 [1971]
- Court does not have jurisdiction to enjoin a threatened strike as such action would frustrate the intent of the Act. *Commonwealth of Pennsylvania v. Region*, 88 LRRM 2638 [1974]

CONTRACTING OUT

A city is obligated to negotiate over possible contracting out of unit work. *Wilkesburg v. Sanitation Dept.*, 90 LRRM 2818 [1975]

NOTES:

- State has a police and fire bargaining act (Act 111, Title 43, Sec. 217.1-11)
- State has a separate transit authority. *Right to Organize*, statute

RHODE ISLAND (K-12: M)

Statute:

Rhode Island General Laws, Section 28.9.3-1 to 28.9.3-16, Chapter 9.3 of Title 28, as enacted by Ch. 149, L. 1966; as amended by Ch. 54, L. 1975; as last amended by Ch. 418, L. 1981

Coverage:

All certified employees of a school district and support personnel whose position requires a professional certificate issued by the State Department of Education

Exclusions:

All supervisory and managerial personnel above the rank of assistant principal

Administrating Agency:

R.I. State Labor Relations Board (RISLRB)

Unit Determination:

Statute

Unit Determination Criteria:

No Specific Provision

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration not to exceed 3 years

Scope of Bargaining:

Hours, salary, working conditions and all other terms and conditions of professional employment

Management Rights:

No Specific Provision

Employee Rights:

To organize, be represented, negotiate and bargain collectively, and to refrain from so doing

Grievance Procedure:

No Specific Provision

Union Security:

- Dues deduction mandatory
- Service fee required

Unfair Labor Practices:

There is no specific provision in the Act for ULP's. The Act however (Sec. 28-9-3-4) references Chapter 7, (28-7.13) of the State Labor Relations Act which specifies

ULP's for an employer

UNION

Refuse to bargain

MANAGEMENT

- To spy or keep surveillance on employees or their representatives
- To blacklist employees
- Assist in the formation, administration of a union
- Discharge or discriminate on account of union membership or giving testimony or filing complaints under this Act
- Require an employee as a condition of employment to join a union
- Refuse to discuss grievances
- Refuse to bargain in good faith
- Interfere with, restrain or coerce employees in the exercise of their rights under this Act

Impasse Procedure:**MEDIATION**

- At request of either party
- Any time after 30 days from first bargaining session

ARBITRATION

- At request of either party
- Tripartite panel
- Hearing concluded within 20 days
- May bypass mediation
- Binding on all matters except money

Strike Policy:

Prohibited

NOTE:**ARBITRABILITY**

Statutory grant to school committees regarding selection of teachers refers to initial hiring. Because the Arbitration Act is broad and unqualified a school committee may subject promotion decisions to arbitral review. *Belanger v. Matteson*, 91 LRRM 2003 [1975]

AGENCY FEE

Agency shop provisions must neither require a nonjoiner to share expenses of benefits that are not received nor pay for more than a proportionate share of the costs of benefits. *Town v. Teachers Ass'n*, 82 LRRM 2010 [1972]

UNFAIR LABOR PRACTICE: JUDICIAL RELIEF

An employee organization must exhaust the procedures of the Arbitration Act prior to invoking a judicial remedy. *Warren Educ. Ass'n v. Jupon*, 67 LRRM 2523 [1967]

RHODE ISLAND
(HE: M)

Statute:

Rhode Island General Statutes, Section 36-11.1 to 36-11.12, Title 36, Chapter 11, as enacted by Ch. 178, L. 1958; as amended by SB 28, L. 1970; HB 5354, L. 1972; Ch. 256, L. 1973; as last amended by Ch. 356, L. 1980

Coverage:

All higher education faculty, nonteaching professionals and support employees

Exclusions:

Casual and seasonal employees

Administrating Agency:

R.I. State Labor Relations Board (RISLRB)

Unit Determination:

RISLRB

Unit Determination Criteria:

Supervisors excluded from unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Wages, hours and other conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To organize and choose a bargaining representative

Grievance Procedure:

No Specific Provision

Union Security:

- Dues deduction mandatory
- Agency shop mandatory
- Service fees equal to membership dues

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

FACTFINDING

- Any unresolved dispute 30 days after the first bargaining session may be submitted to RISLRB for conciliation and factfinding
- If conciliator cannot resolve the dispute within ten days a panel will be convened to make a finding of fact with recommendations
- If the report is rejected, parties shall take all unresolved issues to final and binding arbitration

ARBITRATION

- Mandatory on unresolved issues
- Monetary items advisory only
- Report in 20 days
- Costs shared equally

ARBITRATION AWARD CRITERIA

- Comparison with public and private sector employees doing similar work
- Interest and welfare of the public
- Peculiarities of employment such as hazards, qualifications, training and skills

Strike Policy:

No Specific Provision

NOTES:

Contract duration may not exceed 3 years

RHODE ISLAND (ESP: M)

Statute:

Rhode Island General Statutes, Chapter 19, Title 28, Section 28.9.4-1 to 28.9.4-19, as enacted by SB 386, L. 1967; and reenacted as Ch. 9, Title 28, L. 1970

Coverage:

All employees of any political subdivision of the state, including K-12 school district support personnel

Exclusions:

Elected or appointed officials, administrative, supervisory managerial and employees covered by other laws

Administering Agency:

R.I. State Labor Relations Board (RISLRB)

Unit Determination:

RISLRB

Unit Determination Criteria:

No Specific Provision

Recognition:

Exclusive, by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration of contract not to exceed three years

Scope of Bargaining:

Hours, salaries, working conditions and all other terms and conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To organize, be represented, negotiate and bargain collectively

Grievance Procedure:

- Grievance procedure culminating in final and binding arbitration is negotiable
- State director of labor available for conciliation of grievances

Union Security:

No Specific Provision

Unfair Labor Practices:

There is no specific provision in the Act for ULP's. The Act however (Sec. 28-9-3-4) references Chapter 7.128-7.13) of the State Labor Relations Act which specifies ULP's for an employer

UNION

Refuse to bargain

MANAGEMENT

- To spy or keep surveillance on employees or their representatives
- To blacklist employees
- Assist in the formation, administration of a union
- Discharge or discriminate on account of union membership or giving testimony or filing complaints under this Act
- Require an employee to join a union as a condition of employment
- Refuse to discuss grievances
- Refuse to bargain in good faith
- Interfere with, restrain or coerce employees in the exercise of their rights under this Act

Impasse Procedure:**FACTFINDING**

- Any unresolved dispute 30 days after the first bargaining session may be submitted to RISLRB for conciliation and factfinding
- If conciliator cannot resolve the dispute within ten days a panel will be convened to make a finding of fact with recommendations
- If the report is rejected, parties shall take all unresolved issues to final and binding arbitration

ARBITRATION

- Mandatory on unresolved issues
- Monetary items advisory only
- Report in 20 days
- Costs shared equally

ARBITRATION AWARD CRITERIA

- Comparison with public and private sector employees performing similar work
- Interest and welfare of the public
- Peculiarities of employment such as hazards, qualifications, training and skills

Strike Policy:

Prohibited

SOUTH CAROLINA

South Carolina does not have a collective bargaining statute for public employees

NOTES:

- South Carolina has a right to work law
- The state has a statute granting state employees a

grievance procedure and also establishing a state employees Grievance Committee. *South Carolina Statutes*, Section 1 to 8

- The state has a statute authorizing establishment of county and municipal employees grievance procedures. *South Carolina Statutes*, Section 8-17-150

SOUTH DAKOTA (K-12, ESP, HE: M)

Statute:

South Dakota Codified Laws, Chapter 88, Section 3-18-1 to 3-18-17, as enacted by Ch. 88, L. 1969; as amended by HB 716, L. 1971; HBs 619, 786, 860, SB 158, Ls. 1973; HB 600, L. 1974; HB 1286, L. 1978; Ch. 41, L. 1982; as last amended by HB 1079, 1080, Ch. 24, Ls. 1983

Coverage:

All employees of the state and its political subdivisions including K-12 teachers, higher education faculty, non-teaching professionals and K-G support employees

Exclusions:

- Elected and appointed officials
- Members of boards or commissions
- Administrators (except K-12), supervisors, part-time temporary or student employees
- National guard
- Judges or court employees

Administering Agency:

Division of Labor and Management (DLM)

Unit Determination:

DLM

Unit Determination Criteria:

- Principles of efficient administration
- Position classification and compensation plans
- History and extent of organization
- Occupational classification
- Administrative and supervisory levels of authority
- Geographical locations
- Recommendations of the parties

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- Contract must be reduced to writing
- No duration specified

Scope of Bargaining:

Rates of pay, wages, hours of employment or other conditions of employment

Management Rights:

No Specific Provision

Employee Rights:

To form, join and assist unions, and to refrain from so doing

Grievance Procedure:

- Grievance procedure is mandatory
- If procedure is not negotiated, DLM will establish
- Appeals and binding decision rest with DLM

Union Security:

No Specific Provision

Unfair Labor Practices:

UNION

- Restrain or coerce an employee in the exercise of rights under this Act
- Restrain or coerce an employer in the selection of his representatives
- Cause or attempt to cause an employer to discriminate against an employee
- Discriminate against an employee with respect to membership
- Refuse to bargain collectively

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of rights guaranteed by this Act
- Dominate, interfere with or assist in the formation or administration of an employee organization or contribute to its support
- Discriminate in hiring or term or condition of employment to encourage or discourage union membership
- Discharge or discriminate against an employee for filing a complaint or testifying under this Act
- Refuse to negotiate in good faith
- Fail or refuse to comply with a provision of this Act

Impasse Procedure:

- Either party may request DLM intervention upon ten days notice to other party. DLM shall conduct mediation and other procedures under the provisions of *SDCL* Sec. 60.10.116010.3
- The parties are free to adopt any agreeable impasse procedure

Strike Policy:

- Prohibited
- Injunctive relief available
- Strike penalties for individual may include fines up to \$1,000 and imprisonment
- Strike penalties for union may include fines up to \$50,000 and officers imprisoned

CASE LAW:**SCOPE OF BARGAINING**

• School Board is not obligated to bargain over elementary conferences, teacher aides, class size, audio-visual expansion, guidance and counselling program, retirement, planning periods or budget allowances as such items are not within the ambit of "other conditions of employment" and therefore are not material items to working conditions or wages and hours but are at the discretion of the board. *Aberdeen Educ. Ass'n v. Board of Educ.*, 85 LRRM 2801 [1974]

- The term "other conditions of employment" is held to apply to items which materially affect rates of pay, wages, hours and working conditions. *O.A.G. #72-10* 3/21/72

MANAGEMENT RIGHTS

The provisions of SDCL 3.18 neither limit the rights of a Board of Regents at a state educational institution to control that institution, nor limit the Regent's ability to unilaterally set salaries, discharge employees or establish employee qualifications. *Board of Regents v. Carter*, 89 LRRM 2216 [1975]

NOTES:

The state has a right to work statute applicable to public employees

TENNESSEE (K-12: M)

Statute:

Tennessee Code Annotated, Title 49-5-601 to 49-5-613, as enacted by Ch. 570, L. 1978

Coverage:

Certified public school employees

Exclusions:

Managerial employees

Administrating Agency:

- Local board of education
- State Commissioner of Education

Unit Determination:

Local school board

Unit Determination Criteria:

All professional employees in positions requiring a certificate

Recognition:

Exclusive, by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration not to exceed 3 years

Scope of Bargaining:

Salaries or wages, grievance procedure, insurance, fringe benefits excluding retirement, working conditions, student discipline, leaves, payroll deductions and other terms and conditions of employment

Management Rights:

Rights and responsibilities of boards of education, superintendents, and professional employees as contained in *Tennessee Code Annotated*, Title 49

Employee Rights:

- Right to self organization
- To form or join an employee organization
- Negotiate through representatives
- Engage in concerted activities
- Refrain from engaging in any union activities

Grievance Procedure:

- Grievance procedure must be negotiated
- Final and binding arbitration is negotiable

Union Security:

Dues deduction is negotiable

Unfair Labor Practices:**UNION**

- To cause or attempt to cause an employer to violate this Act
- Refuse to negotiate in good faith or execute a written contract
- Interfere with, restrain or coerce employees or the board of education in exercise of rights guaranteed under this Act
- Refuse to participate in impasse resolution procedures
- Engage in a strike
- Urge, coerce or encourage others to engage in prohibited acts defined in this Act
- Enter the grounds of the employer at times which disrupt school operations

MANAGEMENT

- To impose, or threaten to impose reprisals or to discriminate against an employee by reason of exercising rights under this Act
- To interfere with, restrain or coerce employees in exercise of rights guaranteed under this Act
- Refuse to negotiate in good faith or fail to execute a written agreement
- Refuse access to the work place to employee representatives
- Encourage or discourage membership in any employee organization by discriminating in hiring, tenure or other condition of employment
- Discharge or discriminate against an employee for giving testimony, filing affidavits or complaints under this Act
- Dominate, interfere with or assist in the administration of an employee organization
- Refuse to participate in the impasse resolution procedures

Impasse Procedure:**MEDIATION**

- Request of either party to FMCS
- If services of a mediator are not available a representative from each side shall select a third to serve as mediator
- Mediator shall not make findings of fact unless so instructed
- Costs borne by requesting party

FACTFINDING/ADVISORY ARBITRATION

- Request of either party
- Report due within 30 days of appointment
- Costs borne by requesting party

Strike Policy:

- Prohibited
- Employer may seek injunctive relief
- Strike penalties for individual may include dismissal and loss of tenure for 3 years

CASE LAW:**APPROPRIATE UNIT**

Principals or any other professional employee cannot be excluded from the negotiating unit unless these employees devote a majority of their time to system wide personnel management, fiscal affairs or general management. *O.A.G.*, #182, 5/1/79

ELECTIONS

To appear on a ballot an employee organization must submit a request for recognition and signed petition cards

from 30% of the unit. *O.A.G.*, #76, 10/31/78

UNION SECURITY/CLOSED SHOP

- Closed shop is prohibited as the Act gives an employee the right not to join an employee organization. *O.A.G.*, #188, 6/14/79
- Fair share agreements are prohibited unless such payments are voluntary and recognize the individuals right to refrain from contributing. *O.A.G.*, #5, 7/30/79

NEGOTIABLE ITEMS

The list of items provided in the law is not all-inclusive. Absent statutory guidance, the broad language of the Act will require a case by case determination for items not specifically mentioned in the Act. *O.A.G.*, #6, 6/20/78

OPEN MEETING LAW

Strategy sessions of the Board of Education are required to be open to the public under the state's open meeting statute. *O.A.G.*, #6, 6/20/78

CONTRACT RATIFICATION

The Act does not require a contract to be ratified by a majority of all professional employees but by the governing body of the professional organization. *O.A.G.*, #49, 9/25/79

FAILURE TO REACH AGREEMENT: UNILATERAL CHANGE

If a teachers' organization and school board fail to reach agreement prior to the start of a new school year, the employer may institute in good faith changes in salaries and benefits as reflected in the budget for that school year. *O.A.G.*, #45, 8/24/79

BINDING NATURE OF AGREEMENT

All agreed-upon, non-monetary items are binding on the employer. All monetary items requiring funding are binding as soon as funds are appropriated. *O.A.G.*, #6, 6/20/78

IMPASSE PROCEDURE

Once the parties exhaust the impasse procedures they may resume negotiations. Members may be assessed individually to defray costs of impasse procedure if the organization does not have sufficient funds. *O.A.G.*, #6, 9/6/80

NOTES:

- State has an open meeting law
- City of Memphis has adopted a labor relations ordinance covering city employees
- Public transit employees have the right to bargain *Tennessee Code Annotated*, 160, Section 6-3802

TEXAS

Texas does not have a statute granting public employees the right to collective bargaining

NOTES:

- Texas does have a Fire and Police Employee Relations Act applicable to towns, cities and political subdivisions that choose inclusion through referendum
- Texas also has two laws for counties with over 20,000 and cities with over 10,000 in population that al-

low dues deduction if the union agrees to bear the costs

- Texas has an open meeting law applicable to public sector collective bargaining
- Texas has a right to work law
- A Board of Trustees and administrative personnel of school districts may consult with teachers on matters of education policy and conditions of employment. *Vernon's Texas Code Annotated*, Section 13.901
- Teachers may present grievances through an employee representative. *O.A.G.*, #M-77, 5/67

UTAH

Utah does not have a statute granting public employees the right to collective bargaining

NOTES:

- Utah does have a statute mandating dues deduction for all employees. The amount of the dues deducted cannot be more than 3% of monthly wages
- The Utah Supreme Court has held collective bargaining with binding arbitration to be unconstitutional. *Salt Lake City vs. International Association of Firefighters, Locals 1645, 593, 165 and 2064*, 563 P.2d 786 [1977]
- Transit district employees have a statutory right to

collective bargaining and arbitration

- Salt Lake City has an ordinance governing collective bargaining for city employees
- Utah has a right-to-work law
- Public employees are authorized to organize
- The Utah Attorney General has opined that public employers may collectively bargain and enter into collectively bargained agreements
- The Utah Supreme Court has held that public employees in Utah generally have no collective bargaining rights. *Pratt vs. City Council of the City of Riverton*, 639 P.2d 172 [1981]

VERMONT
(HE: M)

Statute:

3 *Vermont Statutes Annotated*, Chapter 27, Section 901 to 1007, L. 1969; as amended by PA 193, L. 1972; PA 176, L. 1974; PA 52, L. 1975; HB 153, L. 1976; as last amended by Act 169, L. 1977

Coverage:

All state employees including certified teachers in state hospitals, correctional and training institutions; higher education faculty and nonteaching professionals and state police

Exclusions:

Exempt employees under state classified service; administrative, managerial, confidential, legislative, judicial employees and any employee in certain budget departments or an employee who would have a conflict of interests

Administrating Agency:

Vermont State Labor Relations Board (VSLRB)

Unit Determination:

VSLRB

Unit Determination Criteria:

- Authority of employer to take positive action on negotiable matters
- Community of interest
- Desires of employees
- Avoid over fragmentation
- Supervisors in separate units
- Effective operation of agency

Recognition:

Exclusive, by election

Bargaining Rights:

- Duty to bargain
- Agreement must be reduced to writing
- Duration for higher education agreements is unspecified, two years all others

Scope of Bargaining:

- Wages, salaries, benefits and reimbursement practices relating to expenses
- Hours of work per week
- Working conditions

- Overtime compensation and related matters
- Leaves
- RIF procedures
- Terms of coverage and employee financial participation in insurance programs
- Rules and regulations for personnel administration except classified service rules

Management Rights:

- Carry out statutory goals and mandates of agency
- Utilize personnel, methods and means in the most appropriate manner
- Take necessary action in case of emergency

Employee Rights:

- To organize, form, join or assist unions
- Engage in collective bargaining
- Engage in concerted activities
- Refrain from so doing
- Present grievances

Grievance Procedure:

- Grievance procedure is negotiable
- Final and binding determination by the VSLRB

Union Security:

- No specific provision for dues deduction
- Union shop and agency shop prohibited

Unfair Labor Practices:**UNION**

- Restrain or coerce employees in the exercise of their rights guaranteed by statute, rule or regulation
- Restrain or coerce employees in the selection of a representative
- Cause or attempt to cause an employer to discriminate against an employee in violation of this Act
- Discriminate against an employee on account of membership in an employee organization
- Refuse to bargain collectively
- Engage in a strike or refuse to handle materials, goods or perform authorized functions
- Cause an employer to pay for services not performed
- Picket an employer to force recognition or to bargain with an employee organization
- Engage in unlawful activities proscribed by this Act
- Threaten or coerce an employer to require an employee to join an employee organization or enter into an agreement prohibited by this Act; or cease using, handling or

dealing with a particular vendor; or bargain with an employee organization if another is certified; or assign work to particular employees

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of rights guaranteed by this Act
- Dominate or interfere with the formation or administration of a union or to contribute to its financial support
- Discriminate in hiring, tenure or any term or condition of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against an employee for testifying or filing a complaint under this Act
- Discriminate against an employee on account of race, color, creed, sex or national origin

Impasse Procedure:**MEDIATION**

- Request of either party, or
- SLRB appointed neutral

FACTFINDING

- Request of either party, or,
- SLRB appoints
- Tripartite panel may mediate
- Report made public
- Costs shared equally

FACTFINDING AWARD CRITERIA

- Prevailing rates for comparable work within state
- Employee needs
- Requirements of agency to deliver service
- Accepted safety standards and working conditions within state

If impasse continues 15 days after issuing report, parties may present last offer to VLRB as a package. VLRB presents package to legislature

Strike Policy:

Prohibited

NOTES:

- All terms and conditions of an agreement must be compatible with merit system
- No item can be agreed upon if there is inadequate funding

VERMONT (ESP: M)

Statute:

21 *Vermont Statutes Annotated*, Chapter 22, Section 1721 to 1734, as enacted by HB 239, L. 1973; as amended by Act 113, L. 1975; HB 153, L. 1976; as last amended by Act 201, L. 1978

Coverage:

Employees of political subdivisions of the state, including K-12 support personnel

Exclusions:

Elected, appointed, supervisory, confidential, certified or part-time employees

Administrating Agency:

Vermont State Labor Relations Board (VSLRB)

Unit Determination:

VSLRB

Unit Determination Criteria:

- Community of interest
- Avoid over fragmentation
- Effective operation of the agency
- Extent to which unit previously organized is not controlling
 - No mixed units of nonprofessionals and professionals unless professionals vote for inclusion

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain and reduce agreement to writing
- No contract duration specified

Scope of Bargaining:

Wages, hours, and the conditions of employment as defined to include matters directly affecting the economic circumstances, health, safety or convenience of employees

Management Rights:

Any matters of inherent managerial policy

Employee Rights:

- To form, join or assist unions
- To present grievances

Grievance Procedure:

- Grievance procedure culminating in binding arbitration is negotiable
- Voluntary, binding arbitration of tenure or discharge under contract supercedes any state or municipal procedure

Union Security:

- Dues deduction is negotiable
- Agency shop or service fee is negotiable

Unfair Labor Practices:

UNION

- Restrain or coerce employees in the exercise of rights guaranteed to them by statute, rule or regulation
- Restrain or coerce employees in the choice of a representative
- Cause or attempt to cause an employer to discriminate against an employee in violation of this Act
- Refuse to represent all employees
- Refuse to bargain
- Engage in conduct designed to force employees to join an employee organization or an employer to cease doing business with a vendor
- Force agency employees to pay an excessive initiation fee
- Force an employer to pay for goods or services not rendered
- Picket in order to force an employer to recognize an employee organization or employees to join an employee organization
- Discriminate on account of race, creed, color, religion, sex, age, national origin or political affiliation
- Penalize a person for exercising rights guaranteed by federal or state statute
- Cause to discharge an employee for nonpayment of service fees because of religious beliefs

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of rights under this Act
- Dominate or interfere with the formation or administration of an employee organization or contribute to its financial support
- Discriminate in hiring, tenure or condition of employment to encourage or discourage membership in an employee organization
- Discharge or discriminate against an employee for filing charges or testifying under this Act
- Refuse to bargain
- Refuse to implement an agreement
- Discriminate on account of race, color, religion, creed, sex, national origin, age or political affiliation
- Discriminate or discharge an employee for nonpayment of agency fee

Impasse Procedure:

MEDIATION

- At request of either party
- Commissioner of Labor may appoint
- Costs shared equally

FACTFINDING

- Neutral appointed after 15 days of mediation or if mediator certifies impasse exists
- At request of either party
- Factfinder may mediate
- Report issued 30 days after close of hearing
- Costs shared equally

ARBITRATION

- Voluntary or by adopted resolution of municipality
- Two days after factfinding report publicized
- Tripartite panel
- Award rendered 30 days after close of hearing
- Costs shared equally
- Judicial review with guidelines

FACTFINDING/ARBITRATION AWARD CRITERIA

- Authority of the employer
- Stipulation of the parties
- Interest and welfare of the public
- Ability to pay
- Comparisons between other employees in public and private sectors with respect to wages and conditions of employment
- Cost of living
- Overall compensation levels and their continuance

Strikes:

- Strike is prohibited
- Strike may be enjoined if it occurs sooner than 30 days after the delivery of the factfinder's report
- After dispute submitted to final and binding arbitration
- Endangers public health, safety or welfare

**VERMONT
(K-12: M)****Statute:**

16 *Vermont Statutes Annotated*, Chapter 51, Title 16, Section 1981 to 2010, L. 1969

Coverage:

Certified employees of a school district in any quasi-public or private elementary or secondary school that directly or indirectly receives support from public funds

Exclusions:

Superintendent and assistant superintendents

Administrating Agency:

No Specific Provision

Unit Determination:

Statute

Unit Determination Criteria:

Supervisory personnel in a separate unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain
- Must reduce agreement to writing
- No specific contract duration

Scope of Bargaining:

Salaries, related economic conditions of employment, procedures for processing grievances and any mutually agreed upon matters not in conflict with Vermont statutes or laws

Management Rights:

No Specific Provision

Employee Rights:

Join, assist or participate in an employees' organization or to refrain from so doing

Grievance Procedure:

- Grievance procedure is negotiable
- May culminate in final and binding arbitration

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:**MEDIATION**

- Mutual agreement of parties
- Costs shared equally

FACTFINDING

- Request of either party
- Tripartite panel
- Report due within 30 days of panel appointment
- Report publicized within ten days of issuance of report
- Costs shared equally

Strike Policy:

No Specific Provision

CASE LAW:**IMPASSE ARBITRATION: LEGALITY**

Binding arbitration of contract terms though not specifically permitted by statute is legal if board agrees. *School Directors v. Fifield*, 85 LRRM 2939 [1974]

NOTES:

- A teachers organization is granted by statute access to buildings, equipment, facilities and school mail privileges
- Although the word "strike" does not appear in the Act, Sec. 2010 has been interpreted to include strikes within the meaning of "actions posing a clear and present danger"

VIRGINIA

Virginia does not have a statute granting public employees the right to bargain collectively.

CASE LAW:**RIGHT TO BARGAIN**

Virginia's State Supreme Court ruled that a local government or school board cannot enter into binding agreements absent enabling legislation. Public employers do not have an implied power to bargain. *Commonwealth of Virginia v. County Board of Education of Arlington County*, 232 S.E. 2d 30 [1977]

NOTES:

- Virginia has a statute which establishes a grievance procedure for teachers. The local school board makes the final determination on all grievances. A fact finding panel may make a recommendation to the board prior to its decision. *Code of Virginia*, Section 22.1-306 to 22.1-315
- Virginia has two statutes which deal with availability of grievance procedures for state and local employees. Each statute ends with a determination of a tripartite panel. The decision is final and binding. *Code of Virginia* Section 2.1-114.5(1) and Section 15.1-7.1
- Virginia prohibits strikes. *Code of Virginia* Section 40.1-55, Section 40.1-57.1 (1970)

**WASHINGTON
(K-12: M)****Statute:**

Revised Code of Washington, Title 41, Chapter 59, Section 41.59.010 to 41.59.950, as enacted by SB 2500, L. 1975; as amended by Ch. 146, L. 1979; as last amended by Ch. 57, L. 1983

Coverage:

Certified employees of school districts

Exclusions:

Chief executive and administrative personnel; superintendents and their deputies, confidential and business managers

Administrating Agency:

Public Employment Relations Commission (PERC)

Unit Determination:

PERC

Unit Determination Criteria:

- Duties, skills and working conditions
- History of bargaining
- Extent of prior organization within the unit
- Desire of employees

- Separation of principals, assistant principals, supervisors from teachers unless both groups vote for inclusion

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Maximum 3 year duration if requested by either party

Scope of Bargaining:

- Wages, hours and terms and conditions of employment
- Supervisory units limited to compensation, hours and number of work days per year

Management Rights:

No Specific Provision

Employee Rights:

- Organize, form, join or assist unions
- Present grievances
- Refrain from so doing

Grievance Procedure:

- Grievance procedure is negotiable
- Binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Closed and union shop prohibited
- Agency shop permitted
- Religious exemption and alternative service fee payment permitted

Unfair Labor Practices:

UNION

- Restrain or coerce employees in exercise of their rights under this Act
- Cause or attempt to cause an employee to discriminate against an employee
- Refuse to bargain

MANAGEMENT

- Interfere with, restrain or coerce employees in exercise of rights guaranteed under this Act

- Dominate or interfere with administration of a union or contribute to its financial support
- Encourage or discourage membership in an employee organization by discriminating in hiring or condition of employment
- Discharge or discriminate against an employee for filing charges or giving testimony under this Act
- Refuse to bargain collectively

Impasse Procedure:

MEDIATION

- Either party may require PERC to appoint a mediator
- Costs borne by PERC

FACTFINDING

- After ten days of mediation either party may request a factfinder
- Report due within 30 days of appointment
- Costs borne by PERC

Strike Policy:

No Specific Provision

WASHINGTON

(HE: MC)

Statute:

Revised Code of Washington, Title 28B, Chapter 52, Section 28B.52.010 to Section 28B.52.100, as enacted by HB 739, L. 1971; as amended by Ch. 205, L. 1973; as last amended by Ch. 296, L. 1975

Coverage:

Academic employees of community college districts defined as teachers, counselors, librarians and department heads

Exclusion:

Chief administrative officer and administrators in each community college

Administering Agency:

Public Employment Relations Commission (PERC)

Unit Determination:

PERC

Unit Determination Criteria:

No Specific Provision

Recognition:

Exclusive, by election

Bargaining Rights:

- Meet and confer

- Any agreement must be reduced to writing
- Duration not to exceed three years

Scope of Bargaining:

Including but not limited to curriculum, textbooks, in-service training, student-teacher programs, personnel, hiring and assignment practices, leaves of absence, salaries and salary schedules and noninstructional duties

Management Rights:

No Specific Provision

Employee Rights:

Employees may represent themselves

Grievance Procedure:

No Specific Provision

Union Security:

No Specific Provision

Unfair Labor Practices:

No Specific Provision

Impasse Procedure:

At request of both parties, PERC may be asked to provide mediation and/or factfinding assistance

Strike Policy:

No Specific Provision

WASHINGTON (ESP: M)

Statute:

Revised Code of Washington, Title 41, Chapter 56, Section 41.56.010 to 41.56.950, as enacted by Ch. 108, L. 1967; as amended by Ch. 215, L. 1969; Chs. 59, 131, Ls. 1973; Ch. 296, L. 1975; Ch. 14, L. 1976; Ch. 184, L. 1979; as last amended by Ch. 57, L. 1983

Coverage:

Employees of counties, municipal, corporations, political subdivisions including K-12 support personnel and uniformed (protective services) personnel

Exclusions:

- Elected, appointed or confidential employees
- Employees covered by other laws

Administrating Agency:

Public Employment Relations Commission (PERC)

Unit Determination:

PERC

Unit Determination Criteria:

- Duties, skills and working conditions of employees
- History of collective bargaining
- Extent of prior unit organization
- Desire of employees

Recognition:

Exclusive, voluntary or by election or cross-check of cards

Bargaining Rights:

- Duty to bargain
- An agreement must be reduced to writing
- Duration not to exceed three years

Scope of Bargaining:

Collective negotiations on personnel matters, including wages, hours and working conditions, and grievance procedure

Management Rights:

No Specific Provision

Employee Rights:

- Organize, bargain and present grievances
- Refrain from so doing

Grievance Procedure:

- Grievance procedure is mandatory
- Final and binding arbitration is negotiable

Union Security:

- Dues deduction mandatory

- Closed shop prohibited
- Union shop permitted
- Agency shop and service fee permitted
- Religious belief exemption permits alternative contribution

Unfair Labor Practices:**UNION**

- Interfere with, restrain or coerce employees in exercise of rights guaranteed under this Act
- Induce a public employer to commit an unfair labor practice
- Discriminate against a public employee who has filed an unfair labor practice
- Refuse to negotiate

MANAGEMENT

- Interfere with, restrain, or coerce public employees in exercise of rights guaranteed by this Act
- Control, dominate or interfere with a bargaining representative
- Discriminate against an employee who has filed a ULP
- Refuse to negotiate

Impasse Procedure:**NON-UNIFORMED PERSONNEL**

Either party may request mediation by PERC

UNIFORMED PERSONNEL

- Either party may request mediation by PERC
- Mediator may recommend or PERC initiates arbitration
- Tripartite panel
- PERC absorbs cost of neutral
- Award shall be final and binding after panel makes finding of fact

ARBITRATION AWARD CRITERIA

- Constitutional and statutory authority of the employer
- Stipulations of the parties
- Wages and hours comparison of employees in similar sized municipalities on the west coast
- Cost of living
- Any changes in foregoing during pendency of proceedings
- Any other factors traditionally considered in rendering such awards

Strike Policy:

Strikes not authorized for nonuniformed (K-12) personnel

WASHINGTON (ESP-H.E.: M)

Statute:

Revised Code of Washington, Title 28B, Chapter 16, Sections 28B.16.100 to Section 28B.16.930, as enacted by Ch. 17, L. 1971; as amended by HBs 489, 1099, Ls. 1973; Ch. 152, L. 1977; as last amended by Ch. 53, L. 1982

Coverage:

Support employees (ESP) in state institutions of higher education

Exclusions:

Supervisory, managerial, confidential, professional employees and faculty

Administrating Agency:

Higher Education Personnel Board (HEPB)

Unit Determination:

HEPB

Unit Determination Criteria:

- Duties, skills, working conditions
- History of bargaining
- Extent of prior unit organization
- Desires of employees

Recognition:

Exclusive, election or cross-check of cards

Bargaining Rights:

Duty to bargain and reduce an agreement to writing

Scope of Bargaining:

Grievance procedure and personnel matters over which the institution may lawfully exercise discretion

Management Rights:

No Specific Provision

Employee Rights:

To organize and bargain

Grievance Procedure:

Grievance procedure must be bargained

Union Security:

- Dues deduction mandatory
- Service fee permitted
- Religious belief exemption permits alternative payment

Unfair Labor Practices:

- No Specific Provision
- Unfair labor practices as prescribed in Sec. 4156.010 of Municipal Employees Act are incorporated by reference

Impasse Procedure:

No Specific Provision

Strike Policy:

Prohibited

WEST VIRGINIA

West Virginia does not have a statute granting public employees collective bargaining rights

WISCONSIN (ESP [state]: M)

Statute:

Wisconsin Statutes Annotated, Chapter III, Section 111.80 to 111.94, Subchapter V of Ch. 111, as enacted by Ch. 612, L. 1966; as amended by AB 475, L. 1971; Ch. 212, L. 1974; Ch. 238, L. 1976; Ch. 196, L. 1978; as last amended by Ch. 126, L. 1982

Coverage:

State employees below the rank of professional, including teachers in state institutions; K-12 and postsecondary support employees of state institutions

Exclusions:

Faculty teachers in state system, temporary, seasonal, project supervisors, managerial, confidential and WERC employees

Administrating Agency:

Wisconsin Employment Relations Commission (WERC)

Unit Determination:

Statute lists 15 occupational groups

Unit Determination Criteria:

- Avoid excess fragmentation
- Statewide units

Recognition:

Exclusive, by election

Bargaining Rights:

- Duty to bargain
- Reduce an agreement to writing

Scope of Bargaining:

Wage rates, fringe benefits, hours and conditions of employment and grievance procedure

Management Rights:

- Carry out statutory goals expeditiously and with appropriate personnel
- Manage employees
- Hire, fire, promote, transfer or assign
- Establish work rules
- Discipline, suspend or demote employees
- Lay off employees for lack of work or funds or owing to inefficiency

Employee Rights:

- Organize, form, join or assist unions
- Bargain collectively
- Engage in lawful concerted activities
- Present grievances
- Refrain from so doing

Grievance Procedure:

- Grievance procedure is mandatory
- Final and binding arbitration is negotiable

Union Security:

- Dues deduction mandatory
- Service fees and agency shop permitted with 2/3 vote of unit employees

Unfair Labor Practices:**UNION**

- Coerce or intimidate employees in the exercise of their legal rights under this Act
- Coerce or intimidate an employer into denying an em-

ployee rights guaranteed under this Act, or commit an unfair labor practice

- Refuse to bargain
- Violate provisions of any written agreement with respect to terms and conditions of employment or violate terms of a binding arbitration award
- Engage in a strike or refuse to work
- Coerce or intimidate supervisory employees to join or assist a labor organization

MANAGEMENT

- Interfere with, restrain or coerce employees in the exercise of their rights
- Initiate, create, dominate or interfere with the formation of a union or contribute to its financial support
- Discriminate in hiring, tenure or condition of employment to induce or discourage membership in a labor organization
- Refuse to bargain collectively
- Violate provisions of any written agreement with respect to terms and conditions of employment or violate terms of a binding arbitration award
- Deduct unauthorized dues payments from an employee

Impasse Procedure:**MEDIATION**

Either party may request or WERC may initiate and assign a mediator

FACTFINDING

- Joint request or WERC assigns
- Single neutral or tripartite panel
- Factfinder may mediate
- Costs shared equally
- Parties must notify WERC of disposition of report

CRITERIA FOR FACTFINDING

Efficient and effective administration of agency

Strike Policy:

- Prohibited
- Employer may seek injunction, file ULP or both
- Individuals subject to discipline, loss of employment eligibility, fines
- Union subject to fines and damages

WISCONSIN (K-12, ESP, CC: M)

Statute:

Wisconsin Statute Annotated, Chapter 111, Section 111.70 to 111.71, Subchapter IV, as enacted by Ch. 509, L. 1959; as amended by Chs. 124, 246, 247, Ls. 1971; Ch. 65, L. 1973; Ch. 178, L. 1977; as last amended by Ch. 442, L. 1978

Coverage:

Municipal employees and employees of political subdivisions of the state including K-12 teachers, vocational and technical college faculty and support (ESP) personnel

Exclusions:

Supervisory, managerial, confidential and executive employees, and independent contractors

Administering Agency:

Wisconsin Employment Relations Commission (WERC)

Unit Determination:

WERC

Unit Determination Criteria:

- Avoid excessive fragmentation
- Desires of employees
- Separate units for professionals unless majority vote for inclusion in non-professional unit
- Separate unit for craft employees unless the majority vote for inclusion in a noncraft unit

Recognition:

Exclusive, voluntary or by election

Bargaining Rights:

- Duty to bargain and reduce an agreement to writing
- Duration not to exceed three years

Scope of Bargaining:

Wages, hours and working conditions

Management Rights:

No Specific Provision

Employee Rights:

- Organize, form, join or assist unions
- Bargain collectively
- Engage in lawful concerted activities
- Present grievances
- Refrain from so doing

Grievance Procedure:

Grievance procedure culminating in final and binding arbitration is negotiable

Union Security:

- Dues checkoff and service fee permitted

- Fair share fee subject to referendum unless unit is certified

Unfair Labor Practice:**UNION**

- Coerce or intimidate a public employee in exercise of rights under this Act
- Coerce, intimidate or induce an employer to interfere with employees' exercise of rights under this Act or to engage in an unfair labor practice
- Violate an agreed upon collective bargaining agreement or binding arbitration award
- Coerce or intimidate supervisory employees to induce them to join the labor organization

MANAGEMENT

- Interfere with, restrain or coerce employees in exercising their rights under this Act
- Dominate or interfere with the formation or administration of a labor organization or contribute to its financial support
- Discriminate in hiring, tenure or condition of employment to induce or discourage membership in an employee organization
- Refuse to bargain collectively
- Violate a previously agreed to collective bargaining agreement
- Deduct dues without authorization
- Refuse to implement an arbitration award

Impasse Procedure:

(Non-uniformed employees through July 1, 1987)

MEDIATION

- WERC or designee
- No power of compulsion

VOLUNTARY IMPASSE RESOLUTION

- Permissive subject of bargaining
- May provide for strike by municipal employees
- May provide for binding interest arbitration

MEDIATION-ARBITRATION

- Available upon reaching deadlock and if mediation and voluntary impasse resolution procedure, if any, have been exhausted
- At request of either party or jointly
- Final offer
- Neutral will mediate and if no settlement will ask parties if want to withdraw final offers and will inform parties of intent to issue final and binding decision
- Costs shared equally by parties

ARBITRATION AWARD CRITERIA

- Lawful authority of the employer
- Stipulations, if any, of the parties
- Interest and welfare of the public

- Ability of employer to meet costs of award
- Comparisons with employees performing similar work in public/private sector in same and comparable municipalities
- Cost of living
- Overall compensation, including fringe benefits
- Changes in circumstances during pendency of proceedings
- Other factors usually considered in wage and benefit determinations

Strike Policy:

Prohibited unless the strike is sanctioned under the Med-Arb provision of Act, in which case,

- Both parties withdraw their final offers prior to arbitration
- Ten days notice given to employer and WERC
- Injunctive relief possible where threat to public health or safety exists
- Penalty for an illegal strike includes: individual fines up to \$10.00 per day, loss of compensation during strike, loss of fair share and dues checkoff, union fine of \$2.00 per member per day not to exceed \$10,000, and possible contempt and civil liability proceedings

CASE LAW:

SCOPE OF BARGAINING: MANDATORY SUBJECTS
Notice and input into evaluation procedures; scope of personnel files, access to files, just cause standard for non-renewal, layoffs, student discipline, school calendar, inservice days; and impact of class size found to relate to wages, hours and conditions of employment
Association proposal for training assistance to teachers having professional difficulties, and referral of problem students for counselling are not mandatory subjects of bargaining. *In City of Beloit v. WERC*, 92 LRRM 3318 [1976]

RIGHT TO SPEAK AT SCHOOL BOARD MEETING

WERC could not prohibit a teacher from speaking at a school board hearing on grounds that such conduct presents a danger to labor-management relations. School board cannot discriminate at public meeting between speakers on basis of their employment or content of their speech. *In School District #8 v. WERC*, 93 LRRM 2970 [1976]

UNIT DETERMINATION

WERC properly ordered a city to recognize the losing organization in a representation election as said organization was the choice of employees prior to pre-election smear campaign. *WERC v. City of Evansville*, 89 LRRM 2989 [1975]

WYOMING

Wyoming does not have legislation granting collective bargaining rights to public employees

NOTES:

- Wyoming has a firefighters bargaining and arbitration statute
- Wyoming has a right to work law



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 4, 1985

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

RE: House Bill Number 130

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

NEA-Alaska strongly supports and urges passage of HB 130.

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.

Listed below are some suggestions which pertain specifically to HB 130 which, in our opinion, would enhance this legislation. We are hopeful that the Committee will give them serious consideration.

a) Page 5, Section 7; lines 17 - 20

- In the event the mediator, as an employee of a federal agency is reluctant to take direction from the Statute a void could be filled by simply having either party notify EELRA and call for arbitration.

- On lines 20 and 21, same section: We question the worth or need for a "cooling off" period since it may tend to lengthen the collective bargaining process.

b) Page 5, Section 8; line 29

- We recommend placing a comma after the word arbitrator and inserting the word "or". In our opinion, this clarifies the intent of this section.

c) Page 6, Section 8; lines 5, 6 and 7

- We recommend removal of the Alaska residence requirement for the arbitrator. The fact of the "last best offer" technique as opposed to the more traditional conventional arbitration substantially diminishes the needs relative to residence. Further, it is our opinion that there will be a much larger pool of competent arbitrators available as a result of removal of the residence requirements.

d) Page 6, Section 8; paragraphs (b) and (c)

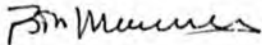
- We recommend that the "last best offer package" concept be changed to "last best offer, item by item".

- It is our feeling that each issue that remains in dispute should be scrutinized on its own merits and not as a part of a package. Each issue should be defensible and worthy of consideration on the basis of the arguments, data, and information that pertain to it. Such an approach will emphasize the "win/win" perspective which is essential to the collective bargaining process.

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:



Robert Manners
Executive Secretary

185:05

Attachments

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF LABOR RELATIONS

BILL SHEFFIELD, GOVERNOR

POUCH C-0220
JUNEAU, ALASKA 99811
(907) 465-4404

March 1, 1985

Honorable Mike Navarre
Chairman
Labor & Commerce Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

RE: CSHB 130, Collective Bargaining
Privileges of Educational Employees
in the State

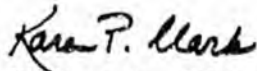
It has been determined that the additional burden placed on the Personnel Board in HB 130 to also serve on the Educational Employees Labor Relations Agency (EELRA) is not feasible. As you may be aware, the Personnel Board also serves the Labor Relations Agency for State employees and the Alaska Railroad, as well as serving the Retirement Board.

In these alternative capacities, the State has asked the members to devote a substantial amount of time, all without compensation. Accordingly, I believe it more appropriate to establish a separate educational employees labor relations agency. I enclose a draft committee substitute which modifies the proposed A.S. 14.20.605 to incorporate these revisions (sec. 11).

Since the new agency will no doubt consist of individuals who do not possess the many years of experience gained by the member of the Personnel Board, and since the Board's present contract staff will not be available to them, it is necessary to revise our fiscal note to provide separate contractual staffing. The revised fiscal note, presently being prepared, is projected to be in the neighborhood of \$150,000.

Should you have any questions, please call me at 465-4403.

Sincerely,

for 
William J. Gibbons
Director

WJG/vcy

Enclosure: (1)

cc: Commissioner Lisa Rudd
Department of Administration

Eileen Plate
Special Assistant
to the Commissioner
Department of Labor

Teacher Negotiation Act

The following is the full text of the revised Connecticut statute concerning the Right of Certified Professional Employees to Negotiate with Boards of Education (Sections 10-153a through 10-153j of the General Statutes), as amended by Public Act Nos. 79-405 and 79-422 enacted by the 1979 Connecticut General Assembly. PA 79-405 took effect July 1, 1979 and PA 79-422 was effective October 1, 1979.

SECTION 10-153a. RIGHTS CONCERNING PROFESSIONAL ORGANIZATION AND NEGOTIATIONS.

(a) Members of the teaching profession shall have and shall be protected in the exercise of the right to form, join or assist, or refuse to form, join or assist, any organization for professional or economic improvement and to negotiate in good faith through representatives of their own choosing with respect to salaries and other conditions of employment free from interference, restraint, coercion or discriminatory practices by any employing board of education or administrative agents or representatives thereof in derogation of the rights guaranteed by this section and sections 10-153b to 10-153j, inclusive.

← Right of teaching profession to organize and negotiate through representatives

(b) Nothing in this section or in any other section of the General Statutes shall preclude a local or regional board of education from making an agreement with an exclusive bargaining representative to require as a condition of employment that all employees in a bargaining unit pay to the exclusive bargaining representative of such employees an annual service fee, not greater than the amount of dues uniformly required of members of the exclusive bargaining representative organization which represents the cost of collective bargaining, contract administration and grievance adjustment; and that such service fee be collected by means of a payroll deduction from each employee in the bargaining unit.

← Right to bargain annual service fee

← Annual service fee defined

SECTION 10-153b. SELECTION OF TEACHERS' REPRESENTATIVES.

(a) Whenever used in this section or in sections 10-153c to 10-153j, inclusive: (1) The "administrators' unit" means those certified professional employees in a school district who are employed in positions requiring an intermediate administrator or supervisor certificate, or the equivalent thereof, and are not excluded from the purview of sections 10-153a to 10-153g, inclusive. (2) The "teachers' unit" means the group of certified professional employees who are employed by a local or regional board of education in positions requiring a teaching or other certificate and are not included in the administrators' unit or excluded from the purview of sections 10-153a to 10-153g, inclusive. (3) "Commissioner" means the commissioner of education. (4) "To post a notice" means to post a copy of the indicated material on each bulletin board for teachers in every school in the school district or, if there are no such bulletin boards, to give a copy of such information to each employee in the unit affected by such

← Administrators' unit defined

← Teachers' unit defined

← Commissioner defined

← To post notice defined

Budget submission date defined → notice. (5) "Budget submission date" means the date on which a school district is to submit its itemized estimate of the cost of maintenance of public schools for the next following year to the board of finance in each town having a board of finance, to the board of selectmen in each town having no board of finance and, in any city having a board of finance, to said board, and otherwise to the authority making appropriations therein. (6) "Days" means calendar days.

Days defined →

Certain professional personnel excluded from the purview of this act → (b) The superintendent of schools, assistant superintendents, certified professional employees who act for the board of education in negotiations with certified professional personnel or are directly responsible to the board of education for personnel relations or budget preparation, temporary substitutes and all non-certified employees of the board of education are excluded from the purview of this section and sections 10-153c to 10-153g, inclusive.

Designation for representation procedure → (c) The employees in either unit defined in this section may designate any organization of certified professional employees to represent them in negotiations with respect to salaries and other conditions of employment with the local or regional board of education which employs them by filing, during the period between March first and March thirty-first of any school year, with the board of education a petition which requests recognition of such organization for purposes of negotiation under this section and sections 10-153c and 10-153d and is signed by a majority of the employees in such unit. Within three school days next following the receipt of such petition, such board shall post a notice of such request for recognition and mail a copy thereof to the commissioner. Such notice shall state the name of the organization designated by the petitioners, the unit to be represented and the date of receipt of such petition by the board. If no petition which requests a representation election and is signed by twenty per cent of the employees in such unit is filed in accordance with the provisions of subsection (d) with the commissioner within the thirty days next following the date on which the board of education posts notice of the designation petition, such board shall recognize the designated organization as the exclusive representative of the employees in such unit for a period of one year or until a representation election has been held for such unit pursuant to this section and section 10-153c, whichever occurs later. If a petition complying with the provisions of subsection (d) is filed within such period of thirty days, the local or regional board of education shall not recognize any organization so designated until an election has been held pursuant to said sections to determine which organization shall represent such unit.

Election for representation procedure

Petition →

Date for filing with commissioner →

Action of the commissioner →

(d) Twenty per cent or more of the personnel in an administrators' unit or teachers' unit may file during the period between March first and April thirtieth of any school year with the commissioner a petition requesting that a representation election be held to elect an organization to represent such unit. The commissioner shall file notice of such petition with the local or regional board of education on or before the third school day following receipt of the petition. The commissioner shall not divulge the names on such petition or any petition filed with the commissioner pursuant to this section to anyone except upon court order. Such notice shall

state the name of the petitioning group, the unit for which an election is sought and the date the petition was filed. Within three school days after receipt of such notice, the local or regional board of education shall post a copy of the notice. Any organization interested in representing personnel in such unit may intervene within ten school days after the board posts notice of such petition by filing with the commissioner a petition signed by ten per cent of the employees in such unit provided that any employee who signs more than one such petition between March first and April thirtieth in any one school year shall not be deemed to have signed any such petition. The commissioner shall notify the local or regional board on or before the third day following receipt of the intervening petition, and such board shall post notice of the intervening petition within three days following receipt thereof. No intervening petition shall be required from any incumbent organization previously designated by the board or elected and such incumbent organization shall be listed on the ballot if a petition for a representation election is filed. The petitioning organization, the incumbent organization, if any, and any intervening organization may agree on an impartial person or agency to conduct such an election consistent with the other provisions of this section, provided not more than one such election shall be held to elect an organization to represent the employees in such unit in any one school year, except, however, if no organization receives a majority of the vote validly cast, the election shall not be deemed completed and within ten days after the initial election a run-off election shall be held. In the event of a disagreement on the agency to conduct the election, the method shall be determined by the board of arbitration selected in accordance with section 10-153c. The person or agency so selected shall conduct, between twenty and forty-five days after the first petition requesting an election is filed with the commissioner, an election by secret ballot to determine which organization, if any, shall represent such unit, provided if no organization receives a majority of the vote validly cast, such election shall not be deemed completed and a run-off election shall be held within ten days after the initial election. The organizations participating in the representative election shall share equally in the cost incurred by the impartial person or agency selected to conduct the election. Such person or agency shall immediately report the results of the election to the commissioner. If satisfied that the election has been conducted properly, the commissioner shall certify that the organization receiving a majority of votes is the exclusive representative of the employees in such unit.

← Board shall post a copy of notice from the commissioner

← Intervening petitions

← Incumbent organization

← Selection of impartial agency to conduct the election

← Time period for conducting election

← Secret ballot

← Majority vote

← Run-off election

← Cost of elections

← Certification of representative

(e) The representative designated or elected in accordance with this section shall, from the date of such designation or election, be the exclusive representative of all the employees in such unit for the purposes of negotiating with respect to salaries and other conditions of employment, provided any certified professional employee or group of such employees shall have the right at any time to present any grievance to such persons as the local or regional board of education shall designate for that purpose. Whenever a multiple year contract is in effect, no representative election shall be held until two years of such contract have elapsed or until less than one year remains prior to the

← Duty of designated representative

← Multiple year contract bar

expiration date of such contract, whichever is sooner. The terms of any existing contract shall not be abrogated by the election or designation of a new representative. During the balance of the term of such contract the board of education and the new representative shall have the duty to negotiate pursuant to section 10-153d concerning a successor agreement. The new representative shall, from the date of designation or election, acquire the rights and powers and shall assume the duties and obligations of the existing contract during the period of its effectiveness.

Combined unit representation →

(f) Any organization which has been designated or elected the exclusive representative of a unit which includes teachers and administrators shall continue to be the exclusive representative of such personnel upon expiration of the salary agreement in effect between such organization and the board of education employing such personnel on July 1, 1969, until or unless employees of such board of education in either of the units defined in this section initiate a petition for designation or election of an organization to represent them in accordance with the procedures set forth in this section and sections 10-153e to 10-153g, inclusive.

SECTION 10-153c. DISPUTES AS TO ELECTIONS.

Disputes as to eligibility of persons voting or agency to conduct the election →

Any dispute as to the eligibility of personnel to vote in an election, or the agency to conduct the election required by section 10-153b, shall be submitted to a board of arbitration for a binding decision with respect thereto. If there are two or more organizations seeking to represent employees, each may name an arbitrator within five days after receipt of a request for arbitration made in writing by any party to the dispute. Such arbitrators shall select an additional impartial member thereof within five days after the arbitrators have been named by the parties. The impartial agency selected to conduct the election shall decide all procedural matters relating to such election and shall conduct such election fairly. Each organization shall have, during the election process, equal access to school mail boxes and facilities.

Negotiations

SECTION 10-153d. MEETING BETWEEN BOARD OF EDUCATION AND FISCAL AUTHORITY REQUIRED. DUTY TO NEGOTIATE.

Board of education shall meet with authority for making appropriations →

(a) Within thirty days prior to the date on which the local or regional board of education is to commence negotiations pursuant to this section, such board of education shall meet and confer with the board of finance in each town or city having a board of finance, with the board of selectmen in each town having no board of finance and otherwise with the authority making appropriations therein. A member of such board of finance, such board of selectmen, or such other authority making appropriations, shall be permitted to be present during negotiations pursuant to this section and shall provide such fiscal information as may be requested by the board of education.

Authority for appropriations shall be permitted to be present during negotiations and shall provide fiscal information as requested by the board of education →

Duty to negotiate →

(b) The local or regional board of education and the organization designated or elected as the exclusive representative for the appropriate unit, through designated officials or their representatives, shall have the duty to negotiate with respect to salaries and other conditions of em-

ployment about which either party wishes to negotiate. Such negotiations shall commence not less than one hundred eighty days prior to the budget submission date. Any local board of education shall file forthwith a signed copy of any contract with the town clerk and with the commissioner of education. Any regional board of education shall file a signed copy of any such contract with the town clerk in each member town and with the commissioner of education. Upon receipt of a signed copy of such contract the clerk of such town shall give public notice of such filing. The terms of such contract shall be binding on the legislative body of the local or regional school district, unless such body rejects such contract at a regular or special meeting called and convened for such purpose within thirty days of the filing of the contract. If a vote on such contract is petitioned for in accordance with the provisions of section 7-7, in order to reject such contract, a minimum of fifteen per cent of those persons eligible to vote shall be required to participate in the voting and a majority of those voting shall be required to reject. Any regional board of education shall call a district meeting to consider such contract within such thirty-day period if the chief executive officer of any member town so requests in writing within fifteen days of the receipt of the signed copy of the contract by the town clerk in such town. The body charged with making annual appropriations in any school district shall appropriate to the board of education whatever funds are required to implement the terms of any contract not rejected pursuant to this section. If the legislative body rejects such contract within such period, the parties shall renegotiate the terms of the contract in accordance with the procedure in this section. All organizations seeking to represent members of the teaching profession shall be accorded equal treatment with respect to access to teachers, principals, members of the board of education, records, mail boxes and school facilities and, in the absence of any recognition or certification as the exclusive representative as provided by section 10-153b, participation in discussions with respect to salaries and other conditions of employment.

← Negotiations shall commence not less than 180 days prior to the budget submission date
← Filing a signed contract

← Terms of contract binding unless local legislative body rejects within a calendar period

← If legislative body rejects . . .

← Equal treatment to organizations seeking to represent members of the teaching profession

SECTION 10-153e. STRIKES PROHIBITED. INTERFERENCE WITH THE EXERCISE OF EMPLOYEES' RIGHTS PROHIBITED. HEARING BEFORE STATE BOARD OF LABOR RELATIONS. APPEAL PENALTY.

(a) No certified professional employee shall, in an effort to effect a settlement of any disagreement with the employing board of education, engage in any strike or concerted refusal to render services. This provision may be enforced in the superior court for any judicial district in which said board of education is located by an injunction issued by said court or a judge thereof pursuant to sections 52-471 to 52-479, inclusive, provided the commissioner of education shall be given notice of any hearing and the commissioner or said commissioner's designee shall be an interested party for the purposes of section 52-474.

← No strike

← Issuance of injunctions

(b) The local or regional board of education or its representatives or agents are prohibited from: (1) interfering, restraining or coercing certified professional employees in the exercise of the rights guaranteed in sections 10-153a to 10-153g; (2) dominating or interfering with the

← Board of education prohibited from . . .

formation, existence or administration of any employees' bargaining agent or representative; (3) discharging or otherwise discriminating against or for any certified professional employee because such employee has signed or filed any affidavit, petition or complaint under said sections; (4) refusing to negotiate in good faith with the employees' bargaining agent or representative which has been designated or elected as the exclusive representative in an appropriate unit in accordance with the provisions of said sections; or (5) refusing to participate in good faith in mediation or arbitration. A prohibited practice committed by a board of education, its representatives or agents shall not be a defense to an illegal strike or concerted refusal to render services.

Professional employees organization prohibited from . . . →

(c) Any organization of certified professional employees or its agents is prohibited from: (1) interfering, restraining or coercing (A) certified professional employees in the exercise of the rights guaranteed in this section and sections 10-153a to 10-153c, inclusive, provided that this shall not impair the right of an employees' bargaining agent or representative to prescribe its own rules with respect to acquisition or retention of membership provided such rules are not discriminatory and (B) a board of education in the selection of its representatives or agents; (2) discriminating against or for any certified professional employee because such employee has signed or filed any affidavit, petition or complaint under said sections; (3) refusing to negotiate in good faith with the employing board of education, if such organization has been designated or elected as the exclusive representative in an appropriate unit; (4) refusing to participate in good faith in mediation or arbitration; or (5) soliciting or advocating support from public school students for activities of certified professional employees or organizations of such employees.

"To negotiate in good faith" defined →

(d) As used in this section, sections 10-153a to 10-153c, inclusive, and section 10-153g, "to negotiate in good faith" is the performance of the mutual obligation of the board of education or its representatives or agents and the organization designated or elected as the exclusive representative for the appropriate unit to meet at reasonable times, including meetings appropriately related to the budget-making process, and to participate actively so as to indicate a present intention to reach agreement with respect to salaries and other conditions of employment, or the negotiation of an agreement, or any question arising hereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

Prohibitive practices →

(e) Whenever a board of education or employees' representative organization has reason to believe that a prohibited practice, as defined in subsection (b) or (c) of this section, has been or is being committed, such board of education or representative shall file a written complaint with the state board of labor relations and shall mail a copy of such complaint to the party that is the subject of the complaint. Upon receipt of a properly filed complaint said board shall refer such complaint to the agent who shall, after investigation and within ninety days after the date of such referral, either (1) make a report to said board recommending dismissal

Filing complaint with state board of labor relations →

Investigation →

Report of investigation →

of this section shall be a written complaint filed with the board of labor relations. If no such complaint is filed, the board of labor relations shall in such case be treated for the purposes of this section as a complaint issued by the agent. Upon receiving a report from the agent recommending dismissal of a complaint, said board of labor relations may issue an order dismissing the complaint or may order a further investigation or a hearing thereon. Upon receiving a complaint issued by the agent, the board of labor relations shall set a time and place for the hearing. Any such complaint may be amended with the permission of said board. The party so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such complaint or within such other time as said board may limit. Such party shall have the right to appear in person or otherwise to defend against such complaint. In the discretion of said board any person may be allowed to intervene in such proceeding. In any hearing said board shall not be bound by technical rules of evidence prevailing in the courts. A stenographic or electronic record of the testimony shall be taken at all hearings of the board of labor relations and a transcript thereof shall be filed with said board upon its request. Said board shall have the power to order the taking of further testimony and further argument. If, upon all the testimony, said board determines that the party complained of has engaged in or is engaging in any prohibited practice, it shall state its finding of fact and shall issue and cause to be served on such party an order requiring it to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of subsections (b) to (d), inclusive, of this section. Such order may further require such party to make reports from time to time showing the extent to which the order has been complied with. If upon all the testimony the board of labor relations is of the opinion that the party named in the complaint has not engaged in or is not engaging in any such prohibited practice, then said board shall make its finding of fact and shall issue an order dismissing the complaint. Until a transcript of the record in a case has been filed in the superior court, as provided in subsection (g) of this section, said board may at any time, upon notice, modify or set aside in whole or in part any finding or order made or issued by it. Proceedings before said board shall be held with all possible expedition. Any party who wishes to have a transcript of the proceedings before the board of labor relations shall apply therefor. The parties may agree on the sharing of the costs of the transcript but, in the absence of such agreement, the costs shall be paid by the requesting party.

← Hearing procedure

← Post hearing action

(f) For the purpose of hearings pursuant to this section before the board of labor relations said board shall have power to administer oaths and affirmations and to issue subpoenas requiring the attendance of witnesses. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court, upon application by said board, shall have jurisdiction to order such person to appear before said board to produce evidence or to give testimony touching the matter under investigation or in question, and any failure to obey such order may be

← Powers of board of labor relations

punished by said court as a contempt thereof. No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required may tend to incriminate or subject such person to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which such individual is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Complaints, orders and other processes and papers of the board of labor relations or the agent may be served personally, by registered or certified mail, by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of service shall be proof of such service. Witnesses summoned before said board or the agent shall be paid the same fees and mileage allowances that are paid witnesses in the courts of this state, and witnesses whose depositions are taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of this state. All processes of any court to which an application or petition may be made under this chapter may be served in the judicial district wherein the person or persons required to be served reside or may be found.

Board of labor relations may petition the
superior court for enforcement →

(g) (1) The board of labor relations may petition the superior court for the judicial district wherein the prohibited practice in question occurred or wherein any party charged with the prohibited practice resides or transacts business, or, if said court is not in session, any judge of said court, for the enforcement of an order and for appropriate temporary relief or a restraining order, and shall certify and file in the court a transcript of the entire record of the proceedings, including the pleadings and testimony upon which such order was made and the finding and orders of said board. Within five days after filing such petition in the superior court, said board shall cause a notice of such petition to be sent by registered or certified mail to all parties or their representatives. The superior court, or, if said court is not in session, any judge of said court, shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such relief, including temporary relief, as it deems just and suitable and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of said board. (2) No objection that has not been urged before the board of labor relations shall be considered by the court, unless the failure to urge such objection is excused because of extraordinary circumstances. The findings of said board as to the facts, if supported by substantial evidence, shall be conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before said board, the court may order such additional evidence to be taken before said board and to be made part of the transcript. The board of labor re-

...the board of labor relations shall have the jurisdiction to review the order of the board of labor relations, and if it shall be such modified order, which is supported by substantial evidence, and shall be sustained by the board of labor relations, for the modification of its original order.

...of the superior court shall be subject to review by the supreme court, on appeal, by either party, irrespective of the nature of the decree or judgment or the amount involved. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court, and the record so certified shall contain all that was before the lower court.

← Jurisdiction of the superior court

(4) Any party aggrieved by a final order of the board of labor relations granting or denying in whole or in part the relief sought may obtain a review of such order in the superior court for the judicial district where the prohibited practice was alleged to have occurred or in the judicial district wherein such party resides or transacts business by filing in the court, or, if said court is not in session, with any judge thereof, within two weeks from the date of such order, a written petition in duplicate praying that the order of said board be modified or set aside. The clerk of the superior court shall thereupon mail the duplicate copy to said board. The board of labor relations shall then file in said court a transcript of the entire record in the proceeding, certified by said board, including the pleadings, testimony and order of the board. Upon such filing said court or such judge shall proceed in the same manner as in the case of a petition by said board under this section and shall have the same exclusive jurisdiction to grant to the party such temporary relief or restraining order as it deems just and suitable, and in like manner to make and enter a decree enforcing or modifying and enforcing as so modified or setting aside, in whole or in part, the order of said board. Unless otherwise directed by the court, commencement of proceedings under subdivisions (1) and (4) of this subsection shall not operate as a stay of such order. (5) Petitions filed under this subsection shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the superior court or supreme court under this chapter shall take precedence over all other matters, except matters of the same character.

← Review

(h) Subject to regulations to be made by the board of labor relations, the complaints, orders and testimony relating to a proceeding instituted under subsection (e) of this section may be available for inspection or copying. All proceedings pursuant to said subsection shall be open to the public.

(i) Any person who willfully resists, prevents or interferes with any member of the board of labor relations or the agent in the performance of duties pursuant to subsections (e) to (i), inclusive, of this section shall be fined not more than five hundred dollars or imprisoned not more than six months or both.

SECTION 10-153f. MEDIATION AND ARBITRATION OF DISAGREEMENTS.

(a) There shall be in the department of education an arbitration panel of fifteen persons to serve as provided in subsection (c) of this

← Arbitration panel

section. The governor shall appoint such panel, with the advice and consent of the general assembly, as follows: (1) five members shall be representative of the interests of local and regional boards of education and shall be selected from lists of names submitted by such boards; (2) five members shall be representative of the interests of exclusive bargaining representatives of certified employees and shall be selected from lists of names submitted by such bargaining representatives; and (3) five members shall be representative of the interests of the public in general and shall be selected from lists of names submitted by the state board of education. Each member of the panel shall serve a term concurrent with that of the governor and may be removed for good cause. Persons appointed to the arbitration panel shall serve without compensation but each shall receive a per diem fee for each day during which he or she is engaged in the arbitration of a dispute pursuant to sections 10-153a to 10-153g, inclusive. The parties to the dispute so arbitrated shall pay the fee in accordance with subsection (c) of this section.

- Mediation → (b) If any local or regional board of education cannot agree with the exclusive representatives of a teachers' or administrators' unit after negotiation concerning the terms and conditions of employment applicable to the employees in such unit, either party may submit the issues to the commissioner for mediation.
- Either party may request → 120 days prior to budget submission date the commissioner shall order mediation to commence → 'f on the one hundred twentieth day prior to the budget submission date, the parties have not reached agreement and have failed to initiate mediation, the commissioner shall order the parties to appear before said commissioner to commence mediation. In either case, the parties shall meet with a mediator mutually selected by them, provided such parties shall inform the commissioner of the name of such mediator, or with the commissioner or commissioner's agents or a mediator designated by said commissioner. Mediators shall be chosen from a panel of mediators selected by the state board of education or from any other panel of qualified mediators. Such mediators shall receive a per diem fee determined on the basis of the prevailing rate for such services, and the parties shall share equally in the cost of such mediation. In any civil or criminal case, any proceeding preliminary thereto, or in any legislative or administrative proceeding, a mediator shall not disclose any confidential communication made to such mediator in the course of mediation unless the party making such communication waives such privilege. The parties shall provide such information as the commissioner may require. The commissioner may recommend a basis for settlement but such recommendations shall not be binding upon the parties. Such recommendation shall be made within thirty days after the day on which mediation begins.
- Selection of mediator →
- Parties shall share the cost →
- Recommendation for settlement →
- Arbitration
- When → (c) (1) On the fourth day next following the end of the mediation session or on the ninth day prior to the budget submission date, whichever is sooner, the commissioner shall order the parties to report their settlement of the dispute, or, if there is no settlement, to appear before the commissioner. At such meeting the parties shall notify the commissioner of the name of the single arbitrator mutually selected by them or shall notify the commissioner of the name of the arbitrator selected by each of them. Unless the parties have agreed to submit their dispute to a single arbitrator, their
- Selection of arbitrator(s) →

Arbitrators shall select a third arbitrator who shall be representative of the interests of the public in general, within five days after meeting with the commissioner and the arbitrators. If, at such meeting, either party notify the commissioner of the selection of an arbitrator, the commissioner shall designate an arbitrator to serve and the two arbitrators shall select a third who shall be representative of the interests of the public in general. If in either case the two arbitrators fail to agree on the selection of a third arbitrator within five days after said meeting with the commissioner, the commissioner shall select the third arbitrator who shall be representative of the interests of the public in general. If both parties fail to select an arbitrator, the commissioner shall recommend to the parties the names of three arbitrators, who shall be representative of the interests of the public in general, and the parties shall mutually select one of those so recommended to arbitrate the dispute, provided that if the parties are unable to agree on the selection of such arbitrator, the commissioner shall designate such arbitrator. Arbitrators shall be selected from the panel appointed pursuant to subsection (a) of this section and shall receive a per diem fee determined on the basis of the prevailing rate for such services. Whenever a panel of three arbitrators is selected, the chairperson of such panel shall be representative of the interests of the public in general.

(2) The chairperson of the arbitration panel or the single arbitrator shall set the time and place for a hearing to be held in the school district on the tenth day after such chairperson or such single arbitrator is designated except that if such day is Saturday, Sunday or a holiday, the hearing shall be held on the next Monday or the day following the holiday. At least five days prior to such hearing, a written notice of the time and place of the hearing shall be sent to the board of education and the representative organization which are parties to the dispute, and, if a three member arbitration panel is selected, to the other members of such panel. Such written notice shall also be sent to the fiscal authority having budgetary responsibility or charged with making appropriations for the school district, and a representative designated by such body may be heard at the hearing as part of the presentation and participation of the board of education. At the hearing each party shall have full opportunity to submit all relevant evidence, to introduce relevant documents and written material, and to argue on behalf of its positions. The chairperson of the arbitration panel or the single arbitrator shall preside over such hearing.

← Arbitration hearing

(3) The hearing may, at the discretion of the arbitration panel or the single arbitrator, be continued but in any event shall be concluded within twenty days after its commencement.

(4) After hearing all the issues, the arbitrators or the single arbitrator shall, within fifteen days, render a decision in writing, signed by a majority of the arbitrators or the single arbitrator, which states in detail the nature of the decision and the disposition of the issues by the arbitrators or the single arbitrator. The arbitrators or the single arbitrator shall file one copy of the decision with the commissioner, each town clerk in the school district involved and the board of education and organization which are parties to the dispute. The decision

← Filing a written decision

← Decision to be final and binding

- of the arbitrators or the single arbitrator shall be final and binding upon the parties to the dispute. Such decision of the arbitrators or the single arbitrator shall incorporate those items of agreement the parties have reached prior to its issuance. At any time prior to the issuance of a decision by the arbitrators or the single arbitrator, the parties may jointly file with the arbitrators or the single arbitrator, any stipulations setting forth contract provisions which both parties agree to accept. The factors to be considered by the arbitrators or the single arbitrator in arriving at a decision shall include (1) the negotiations between the parties prior to 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 conditions of employment of the employee group and those of similar groups and (6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market. The parties shall submit to the arbitrators or the single arbitrator their respective positions on each individual issue in dispute between them in the form of a last best offer. The arbitrators or the single arbitrator shall resolve separately each individual disputed issue by accepting the last best offer thereon of either of the parties, and shall incorporate in a decision each such accepted individual last best offer. Notwithstanding the provisions of subsection (b) of section 10-153d the decision of the arbitrators or the single arbitrator shall not be subject to rejection by the legislative body of the local or regional school district or by referendum. The parties shall each pay the fee of the arbitrator selected by or for them and share equally the fee of the third arbitrator or the single arbitrator and all other costs incidental to the arbitration.
- (5) The commissioner shall assist the arbitration panel or the single arbitrator as may be required in the course of arbitration pursuant to this section.
- (6) If the day for filing any document required pursuant to this section falls on Saturday, Sunday or a holiday, the time for such filing shall be extended to the next business day thereafter.
- (7) The decision of the arbitrators or a single arbitrator shall be subject to judicial review upon the filing by a party to the arbitration, within thirty days following receipt of a final decision, of a motion to vacate or modify such decision in the superior court for the judicial district wherein the school district involved is located. The superior court, after hearing, may vacate or modify the decision if substantial rights of a party have been prejudiced because such decision is: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the panel; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
- (d) The commissioner and the arbitrators or single arbitrator shall have the same powers and duties as the board under section 31-108 for the purposes of mediation or arbitration pursuant to sections 10-153a to 10-153g, inclusive, and all provisions in section 31-108 with
- incorporation of previously agreed items →
- Factors to be considered in arriving at decision →
- Last best offer →
- Issue by issue →
- Not subject to legislative body rejection →
- Judicial review →
- Powers and duties of the commissioner and arbitrator(s) →

...of any speaker
and ... of local ordinance; the
provisions of sections 10-153a to 10-153f shall
apply to negotiations concerning salaries and
conditions of employment conducted by boards
of education and certified personnel.

SECTION 10-153. DESIGNATION OF STATUTORY AGENT FOR SERVICE OF PROCESS

(a) (1) Every administrators' or teachers' representative organization shall file with the commissioner a written designation, on such form as the commissioner shall prescribe, of all statutory agents for service of process who shall be the statutory agent for all members of that administrators' unit or teachers' unit, as defined in subsection (a) of section 10-153b, who shall be (A) a natural person who is a resident of this state or (B) a domestic corporation. (2) Each written appointment shall be signed by the president or vice president or secretary of the appointing organization. Each written appointment shall also be signed by the statutory agent for service therein appointed.

← Statutory agent required for representative organization

(b) If a statutory agent for service dies, disposes, removes from the state or resigns, the organization shall forthwith appoint another statutory agent for service. If the statutory agent for service changes such agent's address within the state from that appearing upon the record in the office of the commissioner, the organization shall forthwith file with the commissioner notice of the new address. A statutory agent for service may resign by filing with the commissioner a signed statement in duplicate to that effect. The commissioner shall forthwith file one copy and mail the other copy of such statement to the organization at its principal office. Upon the expiration of thirty days after such filing, the resignation shall be effective and the authority of such statutory agent for service shall terminate. An organization may revoke the appointment of a statutory agent for service by making a new appointment as provided in this section and any new appointment so made shall revoke all appointments theretofore made.

← Changing statutory agent

SECTION 10-153I. THE MAKING OF SERVICE OF PROCESS, NOTICE OR DEMAND

(a) Except for citations for contempt, any process, notice or demand in connection with any action or proceeding pursuant to subsection (a) of section 10-153e, to be served upon any member of an administrators' unit or any member of a teachers' unit as defined in subsection (a) of section 10-153b, may be served upon the statutory agent for service by any proper officer or other person lawfully empowered to make service. The person making service of such process, notice or demand shall immediately send a true and attested copy thereof by registered or certified mail to each person named in such process, notice or demand.

Koponen Amendment

The factors to be considered by the arbitrator in arriving at a decision shall include (1) the negotiations between the parties prior to 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 conditions of employment of the employee group and those of similar groups and (6) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market.

Koponen Amendment #2

- (e) The decision of the arbitrator shall be subject to judicial review upon the filing by a party to the arbitration, within thirty days following receipt of a final decision, of a motion to vacate or modify such decision in the superior court for the judicial district wherein the school district involved is located. The superior court, after hearing, may vacate or modify the decision if substantial rights of a party have been prejudiced because such decision is: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the arbitrator; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Pg 6 - Lw. 23

Harley Amendment

Cramer ✓

A M E N D M E N T

*#1
Adopted*

Offered in the LABOR AND COMMERCE COMMITTEE

To: HB 130

Page 6, after line 18, insert a new subsection to read:

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

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

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

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

(4) changes in the cost of living;

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

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

Reletter remaining subsections accordingly.

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 management, one representative of organized labor, and one public member. The members representing management and organized labor must have knowledge and experience in educational employment issues.

yes. UNANIMOUS

Harvey Amersfoort

Cramer -

A M E N D M E N T

#3

Offered in the LABOR AND COMMERCE COMMITTEE

To: HB 130

Page 1, lines 25 - 29, delete all material and insert:

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

Sec. 14.20.550. NEGOTIATION BETWEEN SCHOOL BOARDS AND EMPLOYEES

(a) A school board and an employee bargaining organization shall negotiate in good faith on matters pertaining to employment and the fulfillment of professional duties.

(b) In this section, 'negotiate in good faith' means the performance of mutual obligations of the parties to meet at reasonable time and to participate actively, indicating a present intention to reach agreement ^{time off or fringe benefits} ~~on wages, hours, and other mutually agreed conditions of employment,~~ or to negotiate an agreement or a question arising under the agreement, and at the request of either party to execute a written contract incorporating any agreement reached. However, the requirement to negotiate in good faith may not be interpreted to compel either party to agree to a proposal or to make a concession."

Renumber remaining bill sections accordingly.

ASSOCIATION OF ALASKA SCHOOL BOARDS

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

March 20, 1985

Representative Mike Navarre, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
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: #41

"(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~~ ^{school district} 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."

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 transfer in the public employment system.

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 work loads 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: ~~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-

ersive 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.

Annotation: 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 employer'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

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

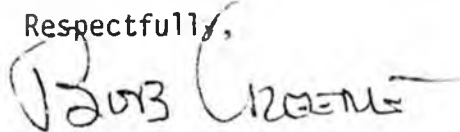
Dear Representative Pearce:

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 ten percent.

RECENTLY SETTLED:

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.



NEA-ALASKA

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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.

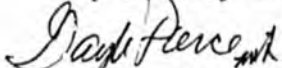
So for these districts and bargaining units which become locked in impasse we need finality. The mechanism we support differs from conventional arbitration. In this bill there is provision for public hearing which subjects the positions of each party to public scrutiny and exerts considerable pressure 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, appearing to read "Gayle Pierce".

Gayle Pierce
President

L85:11

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 12 months.

(d) Nothing in this chapter prohibits recognition of an organization as the exclusive representative by a public agency 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 expense 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 investigation, 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

**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)

Additional File Contents - HB 130

March 11, 1985 Monday

- 1) Revised Fiscal Note, Position Statement, and Fiscal Note for proposed CSHB 130 -- Dept. of Administration
- 2) Kenai Decision; Alaska Supreme Court, December 9, 1977.
(from the Pacific Reporter-Includes the list of 9 non-negotiable items and 38 negotiable items)
- 3) Copy of CS for SB 78 (HESS) am, by Kerttula from the 13th Legislature; with attached FN from the Dept. of Administration and a Senate HESS Committee Report on the bill, including a sectional analysis.
- 4) Written testimony from William Gibbon's statements to Committee on February 25, 1985
- 5) Written testimony from Robert Nick, Chairman, Lower Kuskokwim School District read to Committee on February 25, 1985
- 6) Position Statement on HB 130 and HB 90 by the Alaska Public Employees Association

**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 board would 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 Educational 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

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

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).

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,⁵ 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.⁶ 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. 398, 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. Wkrs. 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).

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does not compel either party to make con-
cessions, intransigent positions, adopted in
an effort to avoid any agreement, are disfa-
vored.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 pub-
lic sector, and particularly in education, the
question of what is properly bargainable is
thrown into more doubt. If teachers' un-
ions 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 erod-
ed, 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 serv-
ices 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 correspondently less concerned
that high prices due to costly wage de-
mands will decrease output and hence
employment.

The government officials making deci-
sions as the public 'employer' are less
likely to act as a cohesive unit than are
managers in private industry, in part be-
cause different levels of public authori-
ty—department managers, budgetary of-
ficials, and legislative bodies—are in-
volved, and in part because each official
may respond to a distinctive political con-
stituency. 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 deci-
sions of critical importance to others.

Finally, decisionmaking by a public em-
ployer 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 overlap-
ping classes of voters—taxpayers, users
of particular government services, and
government employees. Through exer-
cise 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

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 483, 484 (5th Cir. 1968); *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F.2d 131, 134-35 (1st Cir. 1953), cert. denied, 346 U.S. 88, 74 S.Ct. 139, 98 L.Ed. 391 (1953) ("the employer is obliged to make some reasonable

effort in some direction to compose differences with the union"; emphasis in original); *Majure v. N. L. R. B.*, 198 F.2d 7, 5th Cir. 1952). See generally Sverdlov, *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).

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 *Abood* 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 298.¹

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).

1810, 52 L.Ed.2d

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(1974); Wellin-
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3 Yale L.J. 1107
gaining and Poli-
3 U.C.L.A.L.Rev.

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 un-
ion. 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 deci-
sion. 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 Supervi-*
sors, 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 dele-
gation 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 un-
ion 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 in-
terpreting 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 legisla-
tion. The statute in question dealt with only a
limited aspect of bargaining; and *Dunellen* has

Courts in other jurisdictions have con-
sidered 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 interpreta-
tion.

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 re-
quirement to bargain about "terms and con-
ditions" 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 wheth-
er to consolidate chairmanships of the social
studies department and English department
was not a subject of mandatory bargaining.
It was a matter predominately of educa-
tional 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 ne-
gotiated under a statute which permitted it
to "participate in professional negotiation
with boards of education . . . for the
purpose of establishing, maintaining, pro-
tecting or improving terms and conditions
of professional service." The state consti-
tution, 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 every-
thing pertaining to school operations was
negotiable.

been followed by the courts despite the statuto-
ry 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).

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 *Shawnee 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) (argues 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.

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In the *Mat-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. Kelsby*, 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

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.

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

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



APPENDIX

LIST OF NEGOTIABLE AND
NON-NEGOTIABLE 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.

I. REQUEST

Bill/Resolution No.: CS SB 78 (Hess)
 Title: Teachers' Collective Bargain, Agmts
 Sponsor: Health, Educ. & Social Serv.
 Requestor: _____

II. FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: Independent Oper
 BRU, Program of Subprogram(s) Affected:
 Labor Relations Agency

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-0-	-0-	0-	-0-	-0-	-0-
200 TRAVEL	-0-	7.5	4.7	4.7	4.7	4.7
300 CONTRACTUAL	-0-	27.6	17.3	17.3	17.3	17.3
400 COMMODITIES	-0-	0.4	0.3	0.3	0.3	0.3
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	35.5	22.3	22.3	22.3	22.3
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	35.5	22.3	22.3	22.3	22.3
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

None

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Ken Ryals *Ken Ryals*
 Division: Administrative Services

Phone: 465-2277

Date: 4/21/83

Approved by Commissioner: Lisa Rudd *Lisa Rudd*
 Department: ADMINISTRATION

Date: 4/21/83

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

Offered: 3/20/84

Original sponsors: Kerttula, V. Fischer,
Josephson, et al

1 IN THE SENATE

BY THE RULES COMMITTEE

2

CS FOR SENATE BILL NO. 78 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

7

8

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

9

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

10

11

Sec. 14.20.540. PUBLIC POLICY. The legislature finds that it is

12

the public policy of the state to promote harmonious and cooperative

13

relationships between government and its employees by permitting

14

school district certificated employees to organize and bargain collec-

15

tively. The legislature further finds that the welfare of the citi-

16

zens of this state is promoted by assuring the effective and orderly

17

operations of government. Accordingly the legislature declares that

18

strikes by school district certificated employees shall be prohibited

19

and that school district certificated employees shall be guaranteed

20

the right to join or refuse to join, and to participate in or refuse

21

to participate in, employee organizations.

22

* Sec. 2. AS 14.20 is amended by adding a new section to read:

23

Sec. 14.20.552. RIGHTS OF CERTIFICATED EMPLOYEES. A certif-

24

icated employee of a school district shall have the right to

25

(1) organize or form, join or assist, any employee orga-

26

nization;

27

(2) negotiate collectively through representatives of their

28

own choosing;

29

(3) engage in other peaceful activities for the purposes of

1 collective bargaining or other mutual aid or protection unless the
2 activity is prohibited by law;

3 (4) refuse to join or participate in the activities of an
4 employee organization, including the payment of dues, fees, assess-
5 ments, or service fees of any type; and

6 (5) representation by the certified and recognized orga-
7 nization for the purpose of the administration of grievances arising
8 under collective bargaining agreements.

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 may [SHALL] be conducted by one team representing all
13 the certificated employees [, ONE TEAM REPRESENTING ALL THE CERTIF-
14 ICATED ADMINISTRATIVE PERSONNEL IF THEY HAVE JOINED TOGETHER TO NEGO-
15 TIATE INDEPENDENTLY AS PROVIDED IN AS 14.20.560(f),] and one team
16 representing all the participating regional school boards. If admin-
17 istrative personnel or noncertificated employees have joined together
18 to negotiate independently as provided in AS 14.20.560(f), a team
19 representing the independent employee organizations shall participate
20 in the negotiations.

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

22 Sec. 14.20.560. NEGOTIATING UNIT. (a) Upon petition for certi-
23 fication by 25 percent of the employees in a proposed negotiation unit
24 and if the agency has reasonable cause to believe that a question of
25 representation exists, the agency shall provide for an appropriate
26 hearing upon 10 days notice to all certificated employees of the
27 school district. If the agency finds that there is a question of
28 representation, the agency shall conduct an election by secret ballot
29 to determine whether or by which organization the employees desire to

1 be represented and shall certify the results of the election. The
2 ballot shall contain a "No Representation" option. A hearing may be
3 waived by stipulation of the agency and petitioning employees and the
4 agency may conduct a consent election or voluntary certification in
5 conformity with the regulations of the agency or an election in a
6 negotiating unit agreed upon by the parties. The agency shall deter-
7 mine the persons eligible to vote in an election and shall establish
8 rules governing the election. If none of the choices on the ballot in
9 an election receives a majority of the votes cast, a runoff election
10 shall be conducted. The ballot in the runoff election shall provide
11 for selection between the two choices receiving the largest and the
12 second largest number of valid votes cast in the election. If an
13 organization receives the majority of the votes cast in the election,
14 it shall be certified by the agency as the exclusive representative of
15 all the employees in the negotiating unit.

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

19 (c) A school board may recognize an organization as the exclu-
20 sive representative of the certificated employees by mutual conse c.

21 (d) An election may not be conducted by the agency in a negoti-
22 ating unit in which there is in force a valid agreement, except during
23 the 90-day period preceding the expiration date of the agreement.
24 However, an election may be held upon petition of 25 percent of the
25 persons in the negotiating unit but not parties to the agreement if
26 more than three years have elapsed since the execution of the agree-
27 ment or the last timely renewal, whichever was later.

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

29 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board

1 shall, upon the written request of an employee bargaining organiza-
2 tion, meet with the representative of the organization within 20 days
3 after the request at a time and place to be mutually agreed upon. In
4 the same manner, representatives of an employee bargaining organiza-
5 tion are required to meet with a school board or its representatives
6 within 20 days after receiving a written request from the board.

7 (b) Notwithstanding AS 44.62.310, a negotiating meeting may be
8 held in executive session upon mutual agreement of both parties, but
9 all final agreements shall be made at a public meeting of the school
10 board.

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

12 (a) Upon the written request for mediation by an employee bar-
13 gaining organization or a school board, and upon certification by the
14 requesting party that the parties cannot agree on an independent
15 private mediator and that good faith negotiations have terminated in
16 an impasse, the following shall occur [OCCURS]:

17 (1) Within seven days of the certification the requesting
18 party shall ask the United States Federal Mediation and Conciliation
19 Service to serve as the agency to resolve the dispute. The requesting
20 party shall notify the agency that the parties have requested a media-
21 tor.

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

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

1 EXTENDED.]

2 (3) [(4)] Each party to the dispute may select a team of
3 not more than five persons to present the evidence, thinking, and
4 position of the group they represent [,] to the mediator.

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

6 Sec. 14.20.580. CONTINUED IMPASSE. The mediator shall notify
7 the agency when the parties jointly agree, or when the mediator inde-
8 pendently determines, that further mediation would not promote resolu-
9 tion of the dispute. The notification from the mediator to the agency
10 shall indicate the items at impasse that qualify for arbitration
11 determination. Those items shall be limited to wages and fringe
12 benefits of a monetary nature. Following mediation, the parties shall
13 observe a 10-day cooling off period.

14 * Sec. 8. AS 14.20 is amended by adding new sections to read:

15 Sec. 14.20.585. ARBITRATION. (a) If impasse continues after a
16 10-day cooling off period and continued negotiations thereafter, the
17 parties shall submit all items still in dispute and determined eligi-
18 ble for arbitration by the mediator to the process of last best offer
19 mediated arbitration. An agreement between a board and an employee
20 group shall include a procedure to promptly select an arbitrator. If
21 the parties are unable to agree on a contractual provision that
22 provides for the selection of an arbitrator, the agency shall direct
23 the parties to use the services of and comply with the procedures of
24 the American Arbitration Association in the selection of an arbitra-
25 tor.

26 (b) In last best offer mediated arbitration under this section
27 each party shall submit a final offer on all issues in dispute. Each
28 party shall submit to the arbitrator oral or written evidence in
29 support of its position and shall be given an opportunity to respond

1 to the presentation of evidence by the other party. The arbitrator
2 may propose compromises to points in dispute. At the request of
3 either party, or on the motion of the arbitrator, the arbitrator may
4 conduct a public meeting for the purpose of allowing the parties to
5 present and explain their positions and final offers. The arbitrator
6 shall allow each party to revise its last best offer before final
7 submission to the arbitrator for decision.

8 (c) The decision of the arbitrator shall take into consideration

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

11 (2) the public interest and financial resources of the
12 school district;

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

14 (4) changes in the cost of living;

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

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

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

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

23 Sec. 14.20.586. ARBITRATION AWARD. An arbitration award may be
24 implemented in a school district only if the award has been approved
25 by the local municipal government in the case of city and borough
26 school districts or the legislature in the case of a regional educa-
27 tional attendance area. If an arbitration award is not approved by
28 the local municipal government or the legislature, the parties shall
29 return to arbitration.

1 Sec. 14.20.587. JUDICIAL RELIEF. (a) On application of a
2 party, the superior court shall confirm an award unless grounds are
3 urged for vacating, modifying, or correcting the award.

4 (b) On application of a party, the court shall vacate an award
5 if

6 (1) the award was procured by fraud or other undue means;

7 (2) there was evident partiality, corruption, or misconduct
8 by an arbitrator prejudicing the rights of a party;

9 (3) the arbitrator exceeded its powers;

10 (4) the arbitrator refused to postpone the hearing upon
11 sufficient cause being shown for postponement, refused to hear evi-
12 dence material to the controversy, or otherwise conducted the hearing
13 to substantially prejudice the rights of a party.

14 (c) The fact that the relief ordered by an arbitrator could not
15 or would not be granted by a court is not a ground for vacating or
16 refusing to confirm the award.

17 (d) An application to the superior court under this section
18 shall be made within 90 days after delivery of a copy of the award to
19 the applicant. However, if the application is predicated upon grounds
20 set out in (b)(1) and (2) of this section, it shall be made within 90
21 days after the grounds are known or should have been known.

22 (e) In vacating an award the court may order a rehearing before
23 a new arbitrator chosen as provided in the agreement, or in the ab-
24 sence of a provision in the agreement, as provided in AS 14.20.585(a).
25 If the award is vacated on grounds set out in (b)(3) or (4) of this
26 section, the court may order a rehearing before the arbitrator who
27 made the award or a successor appointed as provided in this subsec-
28 tion. The time within which the original agreement of the parties
29 requires an arbitration award to be made is applicable to the

1 rehearing and commences from the date of the order requiring a
2 rehearing.

3 (f) If the application to vacate is denied and a motion to
4 modify or correct the award is not pending, the court shall confirm
5 the award.

6 Sec. 14.20.588. MODIFICATION OR CORRECTION OF AWARD. (a) On
7 application of a party made within 90 days after delivery of a copy of
8 the award to the applicant the superior court shall modify or correct
9 the award if

10 (1) there was an evident miscalculation of figures or an
11 evident mistake in the description of a person or real or personal
12 property referred to in the award;

13 (2) an arbitrator has made an award concerning a matter not
14 submitted to the arbitrator and the award may be corrected without
15 affecting the merits of the decision upon the issues submitted; or

16 (3) the award is imperfect in a matter of form not affect-
17 ing the merits of the controversy.

18 (b) If the application of a party under this section is granted,
19 the court shall modify and correct the award to effect its intent and
20 shall confirm the award as modified and corrected. If the application
21 is denied, the court shall confirm the award as made.

22 (c) An application to modify or correct an award may be joined
23 in the alternative with an application to vacate the award.

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

25 Sec. 14.20.590. GRIEVANCE PROCEDURES. Negotiations agreements
26 between school boards and their certificated employees [EXECUTED AFTER
27 JULY 1, 1975] shall define "grievances" as a misapplication or mis-
28 interpretation of the terms and conditions of a negotiated agreement
29 and provide for grievance procedures for the certificated staff. The

1 grievance procedures shall provide that the final step in the proce-
2 dure shall be binding arbitration. The negotiations agreement shall
3 provide a method for the selection of an arbitrator to resolve griev-
4 ances.

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

6 Sec. 14.20.600. INDIVIDUAL RIGHTS [CASES]. Nothing in AS 14.-
7 20.540 - 14.20.615 [AS 14.20.550 - 14.20.590] prohibits an employee
8 from addressing a school board, as an individual, through the regular
9 procedures of the school board for hearing individual cases.

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

11 Sec. 14.20.605. CERTIFICATED EMPLOYEES LABOR RELATIONS AGENCY.

12 (a) There is established a certificated employees labor relations
13 agency that consists of five members. The three members of the state
14 personnel board (AS 39.25.060) are members of the certificated employ-
15 ees labor relations agency. The governor shall appoint two additional
16 members to the agency, one each from lists of nominees submitted by
17 the National Education Association of Alaska and the Alaska Associa-
18 tion of School Boards. Each nominee shall have at least three years
19 experience in matters relating to education in Alaska. The two
20 appointees of the governor to the certificated employees labor rela-
21 tions agency serve at the pleasure of the governor.

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

25 (c) The agency may employ staff assistance as it considers
26 necessary to implement the provisions of AS 14.20.540 - 14.20.615.

27 Sec. 14.20.606. APPLICABILITY OF PUBLIC EMPLOYMENT RELATIONS
28 ACT. (a) The agency shall perform the functions described in
29 AS 23.40.120 - 23.40.180 to carry out the provisions of AS 14.20.540 -

1 14.20.615.

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

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

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

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

12 (1) direct the work of its employees;

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

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

17 (4) maintain the efficiency of governmental operations;

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

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

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

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

26 * Sec. 13. AS 14.20 is amended by adding new sections to read:

27 Sec. 14.20.611. REDUCTION IN FORCE. (a) A school district may,
28 for reasons of program reduction or insufficient revenue, reduce the
29 work force of the district by placing certificated tenured and non-

1 tenured employees on unpaid furlough status at any time during the
2 school year with 30 days prior notice to the employee.

3 (b) An employee on furlough status has the first right of re-
4 fusal on a vacancy for which the furloughed employee is qualified.

5 (c) Failure on the part of a furloughed employee to accept an
6 offer of reemployment with the district shall constitute an abrogation
7 of all rights to reemployment with the district.

8 Sec. 14.20.612. STRIKES PROHIBITED. (a) A certificated em-
9 ployee or certificated employee organization may not, directly or
10 indirectly, induce, instigate, encourage, authorize, ratify, or par-
11 ticipate in a strike against a school district.

12 (b) A school board may not authorize, consent to, or condone a
13 strike or pay a certificated employee for any day in which the em-
14 ployee participates in a strike. A school board may not pay an in-
15 crease in compensation or benefits to a certificated employee in
16 response to or as a result of a strike that violates (a) of this
17 section. An official or representative of a school board may not
18 authorize, ratify, or participate in a violation of this subsection.
19 This subsection does not prohibit new or renewed bargaining and agree-
20 ment within the scope of negotiations as permitted by AS 14.20.540 -
21 14.20.615, at any time after a violation of (a) of this section has
22 ceased; but a school board or certificated employee organization may
23 not bargain at any time regarding suspension or modification of a
24 penalty provided in this section or regarding a request by the school
25 board to a court for the suspension or modification.

26 (c) A citizen domiciled within the jurisdictional boundaries of
27 the school district may petition the superior court for an injunction
28 restraining a violation or imminent violation of this section.

29 (d) If a certificated employee violates this section the

1 employee shall be ineligible for employment by the same school dis-
2 trict for a period of 12 months and the school board shall immediately
3 discharge the employee.

4 (c) If a certificated employee organization or any of its offi-
5 cers violates this section the certificated employee organization
6 shall be immediately decertified, shall cease to represent the bar-
7 gaining unit, shall cease to receive dues by checkoff, and may again
8 be certified only after 12 months have elapsed from the effective date
9 of decertification.

10 (f) A person who violates this section is guilty of a class B
11 misdemeanor. The penalties provided in this section may be suspended
12 or modified by the court, but only upon request of the public employer
13 and only if the court determines the suspension of modification is in
14 the public interest.

15 Sec. 14.20.615. DEFINITIONS. In AS 14.20.540 - 14.20.615

16 (1) "agency" means the certificated employees labor rela-
17 tions agency;

18 (2) "certificated employee" includes teachers, counselors,
19 and nonadministrative certificated personnel as considered appropriate
20 by the agency but does not include assistant principals, principals,
21 and other certificated administrative personnel.

22 * Sec. 14. This Act does not modify or terminate a negotiating unit or
23 agreement in existence on the effective date of this Act.

24 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
25 10.070(c).

SENATE COMMITTEE REPORT (HESS) - CSSB 78

Mr. President:

For years, the representatives of certificated school employees have asked for a change in the way disputes between their bargaining groups and school districts are resolved.

The matter is important to the public for several reasons. Alaska needs to attract and retain qualified school personnel. Alaska should avoid disruptions in the school year. An orderly and fair way to resolve disputes should be provided for.

The administration recommended that school boards be given the right to choose among three procedural options -- granting employees the right to strike, submitting to mediated arbitration, or granting employees the right to "limited strike" (strike for a limited time period).

The administration proposed that school boards be allowed to exercise these options after a dispute has arisen.

Your Committee preserves the idea of the school boards' right to select procedural options, but the Committee Substitute would require that the school boards make their respective option choice within 90 days after enactment of the bill, or thereafter from time to time but not while a dispute is in progress. The so-called "limited strike" option is removed, since testimony showed no compelling reason for its inclusion and indicated that this option would rarely, if ever, be chosen.

The Committee Substitute introduces the "last best offer" approach to mediation and arbitration. The Committee Substitute reflects the belief that by requiring the arbitrator to select between the settlement package proposed by management and the settlement package proposed by the employees, both sides will be induced to narrow the differences between them and to adopt reasonable positions.

The Committee Substitute expressly retains the boards' right to make fiscal decisions on educational policies.

At present, there exists within the Department of Administration the State Labor Relations Agency. In school employee matters, this agency would serve as part of the educational employees labor relations agency. The agency would consist of three members of the State Labor Relations Agency augmented by two additional members to be selected by the Governor, one from a list submitted by the National Education Association-Alaska, and one selected from a list submitted by the Alaska Association of School Boards.

- A. Assumptions: Since this bill will make the three member State Labor Relations Agency (LRA) serve as the majority of the new, five member Educational Employees Labor Relations Agency (EELRA), it will add to the LRA's workload. Our experience with implementation of the Public Employment Relations Act leads us to believe that the workload increase will be most pronounced during the first year of operation under the new law, as bargaining units are set up and representation elections conducted. Subsequent years' workloads will be permanently higher than present, since a larger client group will permanently be served, but the lasting impact on workload will be significantly less than the initial impact. We have assumed a 40% workload increase (above present) for the first year; subsequent years' workloads are assumed to be 25% higher than the present.

While serving as the EELRA, travel and per diem costs will be proportionately higher, since five members will be participating instead of the present three.

- B. Program Summary: Present Labor Relations Agency services include bargaining unit determination; conducting representation elections, investigation and conciliation of complaints, holding hearings, and issuing orders and decisions. A larger client group - educational employees, their representatives, and school boards - will receive these services. No new positions will be required; none presently are authorized. Since office and legal services are contracted for, there will be a significant increase in contractual services. Travel and per diem will also increase with the size and workload of the Agency.

C. Computations: 1. First year under CS SB 78 - FY84

- 200 Travel: Funded @ \$11.2 for FY83. This is for three members (\$3.7 ea.) with an assumed workload of 1.00. If workload is increased to 1.40 and five members participate in the new case load, the increase in travel funding requirements will be:

Three existing members: $\$11.2 \times .40 = \$4.5$

Two new members: $\$3.7 \times .80 = 3.0$

Total FY84 Travel Increase \$7.5

300 Contractual: Funded during FY83 at \$69.0. Increase of .40 = \$27.6

400 Commodities: Funded during FY83 at \$1.0. Increase of .40 = \$.4

Total FY84 Increase \$35.5

2. Subsequent years under CS SB 78 - FY85-88

200 Travel:

Three existing members: $\$11.2 \times .25 = \$2.8$

Two new members: $\$3.7 \times .50 = \$1.9$

Total FY85-88 Travel Increase \$4.7

300 Contractual: $\$69.0 \times .25 = \$17.3$

400 Commodities: $\$1.0 \times .25 = \$.3$

Total FY85-88 Increase \$22.3

Among the educational employees labor relations agency's functions would be the determination of appropriate negotiation units; determinations as to the need for elections to resolve questions of representation in a negotiation unit; the determination of the eligibility of voters in such elections and the rules governing elections.

Sectional Analysis:

14.20.540. Declares the policy supporting collective bargaining in the public schools.

14.20.550. Includes noncertificated employees in the requirement that school boards negotiated with employees on matters pertaining to their employment, in good faith; defines "certificated employees" to include teachers, counselors, principals, assistant principals, and 'other certificated administrative personnel', but excludes superintendents, assistant superintendents, and other 'certificated executive administrative personnel who the educational employees labor relations agency determines to be inappropriate members of an employee negotiating unit.'

14.20.555(a). Corrects language in the existing law to address the new provisions for negotiations with noncertificated personnel in REAAS.

14.20.560. Provides that the educational employees labor relations agency will decide the appropriate unit for purposes of negotiation, and sets out criteria or factors to be used by the agency.

14.20.560(b). Contains procedures for representation elections within a proposed negotiation unit.

14.20.560(c). Prohibits a representation election in a negotiating unit if a valid election has been held within the preceding 12 months.

14.20.560(d). Permits a school board to recognize an employees' organization as the employees' exclusive representative, by consent of the board.

14.20.560(e). Limits the agency's power to direct an election to the 90-day period before the expiration date of the employer-employee agreement, except upon a petition of persons in the negotiating unit, who are not parties to the agreement, if more than three years have elapsed since the execution of the agreement or the last timely renewal of the agreement.

14.20.560(f). Permits noncertificated employees, or certificated administrated personnel groups, to decide by secret ballot to negotiate independently of other school personnel. Requires the educational employees labor relations

agency to conduct a representation election in such circumstances, upon petition of 25 percent of the employees in a proper negotiating unit.

14.20.565. Requires the school board, on request of an employee bargaining organization, to meet with the organization's representatives within 20 days after the request. Reciprocally, requires the employee bargaining organization to meet with a school board or its representatives within 20 days after its request.

14.20.565(b). Permits negotiation meetings to be in executive session, except that all final agreements shall be made at a public meeting of the school board.

14.20.570(a). When an employee bargaining agency or a school board certifies that the parties cannot agree on an independent private mediator, and that good faith negotiations have terminated in an impasse, and the requesting party asks for mediation from the U. S. Federal Mediation and Conciliation Service, the requesting party must notify the educational employees labor relations agency. This paragraph deletes provisions requiring a mediator to reduce "all the agreed terms, conditions and other items to a written contract" within 30 days "of the initial meeting of the parties (unless the parties mutually agree to extend the period)." This paragraph also deletes language in present law governing the size of the negotiating team that appears before the mediator.

14.20.580. Requires the mediator to notify the educational employees labor relations agency either when the parties reach agreement or when the mediator determines that they are at impasse. Provides for a 10-day cooling-off period following mediation.

14.20.581. Provides the "local option", i.e., the school board's right by resolution adopted following public hearing to decide "whether last best offer mediated arbitration or the right to strike shall follow the mediation procedure." However, the board's resolution shall be adopted before the "mediation process begins." (However, the parties may mutually agree to modify the option selected originally by the board).

14.20.582. Provides that where a school board has taken the right-to-strike option, a strike may occur if a majority of the employees in the bargaining agency elect to strike. Provides that where the employees vote not to strike, the school board shall not be required to participate in arbitration. Provides that "an aggrieved person" may apply to the Superior Court to enjoin a strike, and an injunction can issue if the strike "threatens the health, safety, or welfare of the public." If a strike is enjoined by the Court, after considering "the total equities", and an impasse still

remains, the parties shall submit to arbitration. Provides that elections under this section will be conducted by the educational employees labor relations agency.

14.20.583. Provides for arbitration if the school board's "local option" is the non-strike option, or if arbitration arises after a Court injunction against a strike, or where a strike has occurred in a district which permits strikes and a majority of the employees in the bargaining agency have elected to strike. Provides that the educational employees labor relations agency may direct the parties to use the services of and comply with the procedures of the Federal Mediation and Conciliation Service or the American Arbitration Association, if the parties are unable to otherwise agree upon a mutually selected arbitrator.

14.20.582(b). Provides for mediated arbitration. The parties are to submit evidence to support their respective positions before the arbitrator. Each party can respond to the other's evidence. The arbitrator may propose compromises. The arbitrator, on his own motion or the request of either party, may call for a public meeting to allow the parties to present and explain their "last best offer(s)". Before final submission to the arbitrator for decision, the arbitrator shall allow each party "to revise its last best offer."

14.20.582(c). Sets out the factors which the arbitrator will take into consideration.

14.20.582(d). Requires the arbitrator to adopt "without modification" the last best offer of either of the parties.

14.20.582(3). Requires the parties to share the cost of the arbitrator equally.

14.20.584. Provides for the confirmation by the Court of the arbitrator's award, and provides for Court vacation of an award in certain circumstances similar to those applicable under the Alaska Arbitration Act.

14.20.585. Provides for modification or correction of an award, under circumstances similar to those applicable in the Alaska Arbitration Act where modification or correction is provided for.

14.20.590. Requires grievance procedures and a definition of "grievances" in all agreements. Requires each agreement to provide a method for the selection of an arbitrator to resolve grievances.

14.20.600. Requires the educational employees labor relations agency to set forth procedures to safeguard the rights of "nonassociation" of employees having "bona fide religious convictions."

14.20.605. Establishes the educational employees labor relations agency, as explained above. Members of the agency receive no compensation, but are entitled to per diem and travel expenses. The agency may employ staff to implement the provisions of the chapter.

14.20.606. Functions set out in AS 23.40.120 - 23.40.180 are to be performed by the educational employees labor relations agency, as well as specific functions set out in this chapter. The school board and the employee organization alike are prohibited from "unfair labor practices", as described in AS 23.40.110.

14.20.610. Reiterates the power of school boards to "make final decisions on educational policies."

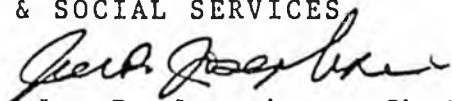
Sec. 13. (Temporary Provision). School Boards must make their initial local option decision between last best offer mediated arbitration and the right-to-strike within 90 days after enactment of the chapter.

Sec. 14. (Temporary Provision). "Grandfather" clause for existing negotiating units and negotiating agreements.

Sec. 15. (Temporary Provision). The effective date is to be immediate.

Respectfully Submitted,

COMMITTEE ON HEALTH, EDUCATION
& SOCIAL SERVICES


By: Joe P. Josephson, Chair

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF LABOR RELATIONS

BILL SHEFFIELD, GOVERNOR

POUCH C-0220
JUNEAU, ALASKA 99811
(907) 465-4404

February 27, 1985

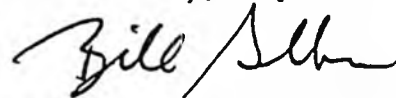
Honorable Mike Navarre
Chairman
Labor & Commerce Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

RE: HB 130
HB 90

As you requested at the hearing on Monday, I have enclosed copies of my statement for the Committee regarding the above bills.

Sincerely,



William J. Gibbons
Director

WJG/vcy

Encl:

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.

It is 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.

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Public Testimony
~~HB-90~~ ~~HB-130~~ ~~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 liberalness~~ 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.



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

AMENDMENTS TO HB 130

Page 5 & 6, delete lines 16 - 22 and insert:

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

(a) In the event mediation fails to produce an agreement on all of the issues in dispute, either party may call for arbitration. When arbitration is requested, the parties shall submit to item by item, last best offer arbitration.

(b) If the parties are unable to agree on a procedure to promptly select an arbitrator, the educational employees labor relations agency shall direct the parties to utilize the services of and comply with the procedures of the American Arbitration Association.

(c) In last best offer mediated arbitration under this section each party shall submit a final offer on each issue in dispute. Each party may submit to the arbitrator oral and/or written evidence in support of its position and shall be given an opportunity to respond to the presentation of evidence by the other party. The arbitrator may propose compromises to points in dispute. The arbitrator may conduct a public meeting for the purpose of taking testimony from any interested person, on the issues in dispute. The arbitrator shall allow each party to revise its final offer on each issue before making his/her decision.

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

~~ACB~~ Page 5, line 29, after "arbitration", delete [.] and insert ", or"

ok Page 6, line 5, delete "An", and delete lines 6 & 7

Page 6, line 17, after "best offer", insert ", item by item"

Page 6, line 22, after "offers", insert ", item by item"

page 1 line 30

a. "To negotiate in good faith" is the performance of the mutual obligation of the board of education or its representatives or agents and the organization designated or elected as the exclusive representative for the appropriate unit to meet at reasonable times, and to participate actively so as to indicate a present intention to reach agreement, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

G:38



Delta/Greely School District

REAA #15
P. O. Box 527
Delta Junction, Alaska 99737
(907) 895-4657

TO: Mike Navarre, Chairperson, House Labor & Commerce Committee
FROM: Glen Chowning, Superintendent, Delta/Greely School District
RE: Binding Arbitration Bills
DATE: February 27, 1985

The Delta/Greely School District would respectfully like to go on record opposing the Binding Arbitration Legislation currently being considered by the Legislature.

The contention that there is presently no final decision or that advisory arbitration doesn't work in the negotiation process is erroneous--the arbitration process has worked in every case in relationship to settlement of our contract negotiations--both the Union and the District has agreed with the arbitration reports.

It is our contention that a final decision to the negotiation process is one of local control. It seems a third party intervention diminishes the very fiber of local control and puts fiscal responsibility in the hands of a person who is not accountable to the local constituents of the District.

The public officials, the local District School Board, who represent and are elected by the general public should have the final decision making authority on all matters that financially affect the District.

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

Max

p. 7, line 2

best offer ~~of~~ on each
issue presented by }

yes: Greenberg
Taylor
Haley
Koponen

no: Thompson
Hanley

The Capital REPORTER

A Journal of Alaskan Political News and Opinion

Volume 1, No. 9

March 8, 1985

Binding Arbitration: Proponents Try Again This Session

Teachers, marshalling their forces behind the National Education Association (NEA), are again hoping to push through legislation calling for mandatory binding arbitration for teachers.

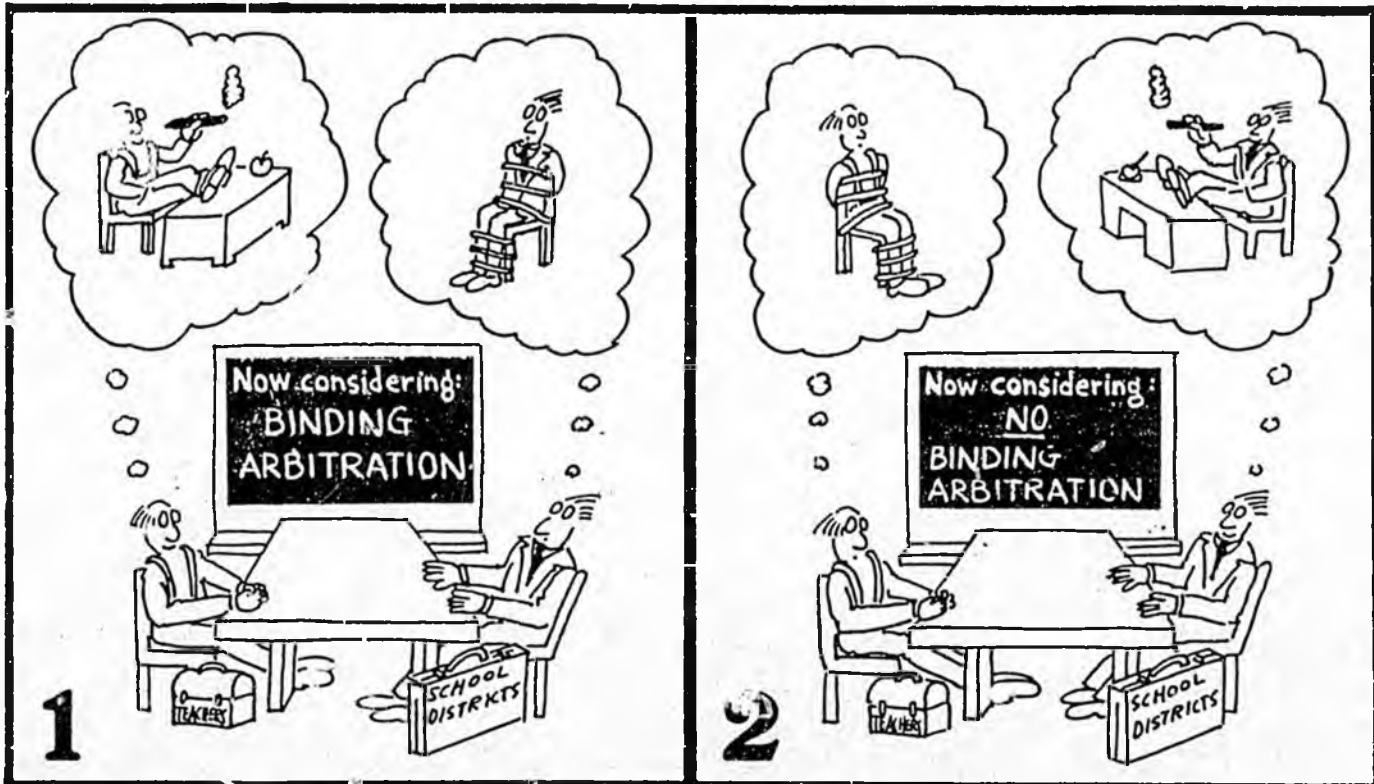
The issue has been debated regularly in the legislature over the last several legislatures, but has never made it through both the House and

the Senate during one two-year legislature. During the 1983-84 sessions, a Senate Rules Committee Substitute for SB 78 by Senator Kerttula passed the Senate handily, but died a slow death in Rep. Walt Furnace's House Labor & Commerce Committee, despite efforts by Rep. Mike Miller of Juneau to pull it from committee in the waning days of the 1984 session. The binding arbitration

bill in the 1981-82 session, SB 668 by Governor Hammond, also failed to make it through the House.

This year Governor Sheffield has made it one of his priorities, introducing HB 130 and intending to follow this with a companion bill in the Senate. HB 130 along with a related bill, HB 90, have been heard several times in House Labor &

AT THE NEGOTIATING TABLE...



(Continued on page 8)

Teachers . . .

(Continued from page 1)

Commerce and are expected to pass from the committee within the next week. Supporters in the House hope that at the very least the bill will pass the House this session. Although similar bills passed the Senate last year, the change in make-up after the last election have left supporters uncertain as to its chances of passing the Senate this year.

HB 130 extends collective bargaining privileges to noncertificated school district employees (janitors, secretaries, etc.) and establishes a comprehensive collective bargaining procedure for all educational employees, to be administered by a newly created "Educational Employees Labor Relations Agency" (EELRA). If, after mediation, employees and the school board are unable to reach an agreement, both parties would be required to submit to "last best offer mediated arbitration." Under that form of arbitration, an outside arbitrator would be called in to choose which side had offered the most reasonable package. The arbitrator, before making a decision, would be able to offer suggestions for compromise and both parties would be given the opportunity to revise their last offer. A provision is included for public hearings to air the differences, upon the motion of either party or the arbitrator. Sheffield claims that the system "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."

Last best offer mediated arbitration, argues the NEA, will introduce some "finality" into a bargaining process that presently can drag on for months, even years. Four districts in Alaska have not yet settled negotiations for the 1984-85 school year: Northwest Arctic, Lower Yukon, Lower Kuskokwim and Skagway.

HB 90, by Rep. Nillo Koponen (D-Fairbanks), simply grants noncertificated school district employees the right to bargain collectively. It would not include them under binding arbitration procedures, as does HB 130, but instead would allow them to strike for unlimited periods of time. Rep. Koponen says he would prefer to see HB 130 pass the legislature, but that if that bill falters, he will push for

passage of HB 90. An identical bill, SB 129, has been introduced in the Senate by Senator Bill Ray (D-Juneau), but as yet no action has been taken on it by Senate Labor and Commerce.

Noncertificated employees, for nebulous reasons, were left in limbo in 1970 when teachers were granted the right to bargain collectively. They were specifically left out of the laws governing certificated school employees (AS 14.20.550 - 14.20.610), but were not specifically covered by collective bargaining laws for other public employees (the Public Employment Relations Act, or PERA, AS 23.40.070 - 23.40.260).

NEA maintains that although the larger districts bargain with their noncertificated employees, this fact is held over the employees' heads as a gift, not a right. They feel statutory recognition would "provide some equity" for these employees.

"Binding arbitration takes power away from local school boards and puts it into the hands of an outside third party."—Dennis Murray, Kodiak Is. Borough School District

School districts around the state seem uniformly opposed to the adoption of binding arbitration, claiming it will wrest from them control over hiring and firing, undermine their influence over their employees, and result in more costly settlements.

At a House Labor & Commerce meeting on March 4, representatives from several school districts said they were concerned that under a binding arbitration scheme, their boards would forfeit considerable control over hiring and firing. Billy Williams from the Copper River School District said that it would undermine the local board's ability to influence employees if the employees knew that by stalling, an outside third party would be brought in to resolve an impasse. He suggested that if teachers are granted binding arbitration, perhaps they should forfeit tenure rights to make up for the loss of control by school boards.

School districts want management rights more specifically defined. CSSB 78(R1s) from last year listed the rights of school boards, including the right to

hire, promote, demote, transfer, suspend, or discharge employees for cause.

Dennis Murray from the Kodiak Island Borough School Board recommended that lawmakers limit the scope of what can be arbitrated to salaries and benefits (which was the case with CSSB 78(R1s) from last year). He pointed out that there are no penalties for letting negotiations stall and go to arbitration.

Bob Green from the Alaska Association of School Boards said that the bill does not deal with what is and is not bargainable, and that these must be spelled out before the bill is acceptable to his organization. He said there should be a set list of "required," "prohibited" and "permissible" items, and that the difference between arbitrable and bargainable items must be defined. He also recommended that some sort of penalty be added for going to arbitration. Green said the stock phrase relating to arbitration is "save a little bit for the arbitrator," since both parties always shoot for more than they'll actually settle for. Holding firm until arbitration may actually seem preferable than slogging through negotiations where compromise is the name of the game.

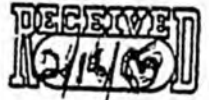
Green said that negotiations rarely take place over the summer in Alaska and that the issue of time is not addressed in the bill. He said that the choice of an item-by-item decision or last best offer was "a toss of the coin" to him. He tended to go with the idea of a package decision, since both parties would be less likely to come up with unreasonable demands knowing they'll lose.

Don MacKinnon of the Alaska Council of School Administrators commented that there is no mechanism to opt out of the collective bargaining procedure for noncertificated personnel who choose not to bargain. Under HB 130, he claims, such employees would be required to bargain. He said that it would force employees to bargain who would prefer just to "sit down and talk things out." He pointed out that the larger districts do bargain with their noncertificated personnel.

NEA has submitted a list of recommended changes to HB 130. They want arbitrators to be able to make an item-by-item decision, rather than having to select one or the other "last best offer." They also recommend eliminating the requirement that the arbitrator be a resident of Alaska.

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES



P.O. BOX 179 SITKA, ALASKA 99835

February 14, 1985

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

Dear Governor Sheffield:

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

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

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

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

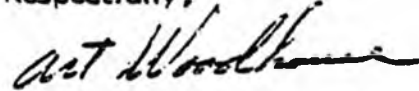
Governor Sheffield
February 14, 1985
Page 2

SITKA SCHOOL DISTRICT

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

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

Respectfully,



Art Woodhouse
Superintendent

AW/sh

encs.

cc: Representative Ben Grussendorf
Senator Richard Ellason
Board of Education President Ernestine Griffin

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

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

Mayor Young
was one of the
prime sponsors
of Act 312 when
he was in
the
Legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- End of Quote -

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

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

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

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

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

in a balanced, fair, and reasonable manner.

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

Our Opinions

Suspend Arbitration

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

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

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

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

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

The arbitration award for the police-fire contract beginning in 1977 cost the city \$79 million more than raises for all of the city's other employees, who engaged in collective bargaining.

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

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

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

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

What lender or investor, surveying the damage already inflicted by Act 312, would gamble on the outcome of yet another arbitration?

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Monday, May 4, 1992

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RICHARD,

THIS IS WHERE
IT STARTED.

Art

POSITION PAPER ON PUBLIC EMPLOYMENT
LABOR RELATIONS POLICY
FOR MICHIGAN

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

A Prescriptive Analysis Prepared On
Behalf of the Michigan Municipal League

December 4, 1979



THE LAW OF PUBLIC EMPLOYMENT LABOR RELATIONS IN MICHIGAN

Louis D. Beer

Synopsis

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

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

I BACKGROUND:

Until 1955, Michigan operated under a statute commonly known as the "Hutchinson Act" which effectively reduced public employment labor relations to what union adherents contemptuously referred to as "collective begging". While public employee unions did exist they were not widespread, and relied for what little support they had on their powerful private sector brethren who were able to wield political influence with the public employer. Public Act 379 of that year, known as the Public Employment Relations Act, changed all of that. It provided for a system of regulation of public employee unions roughly paralleling that of the National Labor Relations Board in the Private Sector, with the pivotal exception that all Unions in the public sector were absolutely forbidden to strike. However, unlike the Hutchinson act, "PERA", as it is commonly known, provided no mandatory discharge for strikers. Instead, it set up what proved to be a rather elaborate hearing process in the case of any discipline of a striker. With what appears to be amazing naivete with the benefit of fifteen years hindsight, the legislators chose to rely on fact finding. They believed, apparently, that "the shining of the light of public opinion" on the issues in dispute would resolve disputes, making strikes unnecessary. If it worked, it was only briefly, and in only some communities, and public employee strikes, although illegal, proliferated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III BARGAINING PROCESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV DISPUTE RESOLUTION IN THE ABSENCE OF AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V CONCLUSION

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

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

PERS



PUBLIC EMPLOYMENT RELATIONS SERVICES

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(518) 438-6836

September 26, 1980

Ms. Betty Dillman
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Betty:

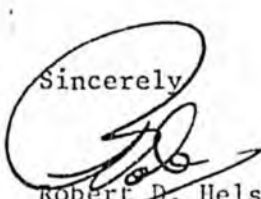
I welcomed the opportunity to be in Alaska and to meet with the Blue Ribbon Commission and I hope that my contribution may have assisted the Commission in what I believe to be a very important responsibility.

As requested, I am enclosing the following:

1. A listing of mandatory, permission and illegal subjects of bargaining decided under New York's Taylor Law.
2. Copies of the provisions of a number of state statutes regarding the treatment of management rights and scope of bargaining. It is my understanding that you will reproduce these and give them to each of the Commission members.

If I can be of further help to the Commission, do not hesitate to let me know.

Sincerely


Robert D. Helsby

Annotations: This provision doesn't require a school board to give release time to teachers for the purpose of organizational campaigns and elections [Richmond Unified Sch. Dist. (PERB, 7) No. SF-R-55].

District violated release time provision by refusing to meet at any time during the instructional day [Magnolia Educators Assn. and Magnolia Sch. Dist. (PERB, 1977) No. LA-CE-31].

¶16,213 Membership dues; deduction.] (d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to employee in the negotiating unit shall not be permissible except to the exclusive representative.

¶16,214] Sec. 3543.2. Scope of representation. The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" include health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are in the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

Annotations: State law entitled them to same paid holidays as classified employees (teachers), but school calendar gave two paid days to teachers which were working days for classified employees. So classified employees were entitled to regular pay plus 1½ times regular pay or comp time of 1½ days for each such worked, but school district could decide method of overtime [CSEA v. New Haven Unif. Sch. Dist. (Calif. Ct. of App., 2d Dist., Div. 5, 1978) 154 Cal. Rptr. 479].

Temporary teachers laid off for lack of work or funds aren't entitled to pretermination hearings [Calif. Tchrs. Assn. v. Pasadena Unif. Sch. Dist. (Calif. Ct. of App., 2nd Dist., Div. 5, 1978) 154 Cal. Rptr. 556].

Though district failed to comply with its regulation that teachers be notified of complaints against them and be given preliminary decisions on complaints in 2 days, district could still demand teachers since after teacher strike meeting deadline was possible and since no serious prejudice resulted to teachers [Calif. Tchrs. Assn. v. Nielson, et al. (Calif. Ct. of App., 1st Dist., 3, 1978) 149 Cal. Rptr. 728].

Contracting out of driver training courses as allowed by state [Ed. Code §41913] not an unconstitutional delegation of authority of public school system or of public funds to private schools since district keeps authority over program [Calif. Tchrs. Assn.,

et al. v. Bd. of Trustees, Fullerton Union H.S. Dist. (Calif. Ct. of App., 4th Dist., Div. 2, 1978) 87 C.A. 3d 249].

Where services provided were above those required by law, school board could eliminate those provided beyond minimum [Campbell Elem. Tchrs. Assn. v. Abbot (Calif. Ct. of App., 1st Dist., Div. 4, 1978) 76 C.A. 3d 796].

Where state laws don't compel reclassification of teacher's status, neither length of service, expectation of employment or fact that teacher is taking place of specific teacher on leave can force district to grant teachers knowingly hired as temporary probationary status [Santa Barbara Fed. of Tchrs. v. Santa Barbara H.S. Dist. (Calif. Ct. of App., 2nd Dist., Div. 3, 1977) 76 C.A. 3d 223].

Where contract provided extra pay for teachers performing special duties district couldn't eliminate extra pay after contracts were renewed [A.B.C. Fed. of Tchrs., et al. v. A.B.C. Unif. Sch. Dist. (Calif. Ct. of App., 2nd Dist., Div. 3, 1977) 75 C.A. 3d 332].

Where state law allowed paid leave for personal necessity, school board had power to decide what was necessary and didn't abuse its discretion in refusing to allow paid leave for religious observance [Calif. Tchrs. Assn. v. Bd. of Trustees of Cucamonga Elem. Sch. Dist. (Calif. Ct. of App., 4th Dist., 1977) 70 C.A. 3d 431].

¶16,215] Sec. 3543.3. Duty of employer to negotiate. A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations designated as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

Annotations: Though layoffs affected employment conditions, normal sequence requiring school board to meet and confer doesn't yield to allow employer to make final decision in time to legal deadline for notifying teachers of terminations [Campbell Elem. Tchrs. Assn. v. Abbot (Calif. Ct. of App., 1st Dist., Div. 5, 1978) 76 C.A. 3d 796].

Reference to be drawn from provisions of Act is that negotiations are to be closed to public unless parties agree otherwise.

wise [Ross Sch. Dist. Tchrs. Assn. v. Ross Sch. Dist. Bd. of Trustees, PERB, 2-21-78].

As long as school board doesn't meet and negotiate with minority union to disadvantage of the exclusive representative, minority union's first amendment right to speak at public school board meetings must be recognized [Chula Vista Elem. Ed. Assn., CTA/NEA v. Chula Vista City Sch. Dist., PERB, 10-25-77].

¶16,216] Sec. 3543.4. Representation of persons in management or confidential positions. No person serving in a management position or a confidential position shall be represented by an exclusive representative. Any person serving in a position shall have the right to represent himself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. No repre-

Annotations: City labor negotiator made agreement with firefighters that there'd be parity between salaries of police and firefighters. City was made aware of agreement after police contract was negotiated at pay increase 1% above that of firefighters and honored it. Since neither police nor city knew of agreement during negotiations they hadn't violated duty to bargain in good faith [City of Middletown and Middletown Police Union, Local 1361 and Council 15, AFSCME, SBLR, 8-14-78].

Even if city acted in good faith and out of economic reasons, it was an unfair practice to change working conditions (giving patrol boats which had been manned by police for 30 years to CETA employees supervised by park dept.) without prior bargaining [City of Bridgeport and Bridgeport Police Emps., Local 1159, SBLR, 7-7-78].

Not all unilateral action of employer, even on mandatory bargaining subjects, is refusal to bargain in good faith. Union had notice of city plan to reduce pensions and passed up an opportunity to bargain over it, so city could put change into effect [City of Norwich v. Norwich Fire Fighters (Conn. S. Ct., 1977) 377 A.2d 290].

Though new shift schedule's impact would normally have to be bargained to impasse, police chief could make change unilaterally because union president had said union would never agree to change. Chief could rely on this statement to mean change would have to be made unilaterally [City of Milford and Milford Police Union Local 899 and Council 15, AFSCME, SBLR, 4-7-79].

Even discharge of employee not covered by MERA may be a prohibited practice if it occurs out of anti-union sentiment, but here position was eliminated for economic reasons [Borough of Jewitt City and Nat'l. Assn. of Municipal Emps., SBLR, 4-4-77].

Employer's refusal to comply with a grievance settlement is unlawful [South Fire Dist. of Middletown and Local 1073, IAFF (SBLR, 1977) Case No. MPP-3886].

[§13,109 Employee organizations] [§7-470] (b) Employee organizations or their agents are prohibited from: (1) Restraining or coercing (A) employees in the exercise of the rights guaranteed in subsection (a) of section 7-468, and (B) a municipal employer in the selection of his representative for purposes of collective bargaining or the adjustment of grievances; (2) refusing to bargain collectively in good faith with a municipal employer, if it has been designated in accordance with the provisions of sections 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit; (3) refusing to comply with a grievance settlement, or arbitration settlement, or a valid award or decision of an arbitration panel or arbitrator rendered in accordance with the provisions of section 7-472.

Annotations: Union demanded agency shop fees retroactive to date of resignation from rejoining police officers who had resigned from union before contract setting up agency shop was negotiated. This was unfair practice because fees from other members had been retroactive only to date of contract and officers had had no reason to think resignation would lead to penalties [AFSCME, Police Local 1361, et al. and Aresco, SBLR, 5-15-78].

Union not guilty of unfair labor practice in insisting, after impasse, on taking board of education to binding arbitration over minimum manning requirements for school engineers, because such requirements are mandatory bargaining subjects. Under the law if impasse results from bargaining of mandatory subject, arbitration panel is to resolve the conflict [AFSCME, Local 287 and New Haven Bd. of Ed., SBLR, 3-28-78].

Union demand for arbitration followed by request for another

[§13,110 To bargain collectively] [§7-470] (c) For the purposes of said sections, to bargain collectively is the performance of the mutual obligation of the municipal employer or his designated representatives and the representative of the employees to meet at reasonable times, including meetings appropriately related to the budget-making process, and confer in good faith with respect to wages, hours and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation shall not compel either party to agree to a proposal or require the making of a concession.

After contract expires, employer can't withhold increments automatically granted when contract was in effect, but can change work hours if it previously had done so during the contract's life [Stratford Library Assn. and Stratford Fed. of Library Emps., Local 136, Int'l. Fed. of Professional and Technical Engineers (SBLR, 1977) Case No. U-3549].

Passage of charter amendments allowing pension changes wasn't a prohibited practice though police and fire contracts promised no pension changes before 7-1-78. Amendments said changes in benefits would be bargained and though they allowed city to replace pension trustees there wasn't proof such changes wouldn't be bargained [City of Bridgeport and Bridgeport Police Emps., Local 1159, AFSCME; City of Bridgeport and Fire Dept. Emps., Local 834, IAFF, SBLR, 3-11-77].

Unilateral reduction in tuition reimbursements for police a prohibited act because change was substantial and union hadn't waived right to negotiate over it [Wethersfield Police Dept. and IBPO, Local 391, SBLR, 7-13-76].

Employer, who unilaterally reduced employees' working hours, was guilty of a prohibited labor practice [Town of Newington Bd. of Ed. and Local 1303, AFSCME (SBLR, 1973) Case No. MPP-2383].

A town's refusal to change its position on the duration of a contract may not be a prohibited practice if done in good faith and not for the purpose of frustrating the bargaining process [Town of New Canaan v. SBLR (Conn. S. Ct., 1971) 278 A.2d 761].

When the subject of a dispute is a mandatory bargaining item, adamant insistence on one bargaining position is not necessarily a refusal to bargain in good faith [Town of New Canaan v. SBLR (Conn. S. Ct., 1971) 278 A.2d 761].

bargaining session didn't indicate refusal to bargain in good faith. Union negotiator had mistakenly believed union's right to demand arbitration would expire, and union did make some concessions during the session in attempt to reach agreement [Police Local 789, AFSCME and Town of Enfield, SBLR, 8-1-77].

Use of strikes or job actions to coerce a result during collective bargaining is failure to bargain in good faith. Here boycott of extra duty assignments was economic coercion [Police Union Local 530 and Council 15, AFSCME and City of New Haven, SBLR, 7-5-77].

Using tape recorders in bargaining sessions is a negotiable ground rule, but union's insistence on its use, over employer's objection, was a refusal to bargain [City of New London and New London Police Union, Local 724 and Council #15, AFSCME (SBLR, 1976) Case No. MEPP-3562].

(3) If any person misbehaves during a proceeding or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, record, or document, or refuses or fails to appear after having been subpoenaed, or upon appearing refuses to take oath or affirmation as a witness, or after having taken the oath refuses to be examined according to law, the commission shall certify the facts to the circuit court having jurisdiction in the county where the proceeding is taking place which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process or order of or in the presence of the court.

(4) Any subpoena, notice of hearing, or other process or notice of the commission issued under the provision of this part shall be served personally or by certified mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service and a returned post office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this part shall be served in the county wherein the persons required to be served reside or may be found.

(5) The commission shall adopt rules as to the qualifications of persons who may serve as mediators and special masters, and shall¹ maintain lists of such qualified persons who are not employees of the commission. The commission may¹ initiate dispute resolution procedures by special masters, pursuant to the provisions of this part.

(6) Pursuant to its established procedures, the commission shall resolve questions and controversies concerning claims for recognition as the bargaining agent for a bargaining unit, determine or approve units appropriate for purposes of collective bargaining expeditiously process charges of unfair² labor practices, and violations³ of s. 447.505 by public employees, and resolve such other questions and controversies as it may be authorized herein to undertake. The¹ petitioner, charging party, respondent, and any intervenors shall be the adversary parties before the commission in any adjudicatory proceeding conducted pursuant to this part. Any commission statement of general applicability that implements, interprets, or prescribes law or policy, made in the course of adjudicating a case pursuant to s. 447.307 or s. 447.503 shall not constitute a rule within the meaning of s. 120.52(14).

Annotations: PERC's failure to determine appropriate unit or order election within statutory 90 days after hearing officer's report didn't invalidate subsequent election because city hadn't suffered as result [City of Panama City and PERC, et al. (Fla. Dist. Ct. of App., 1st Dist., 1978) 363 So. 2d 135].

PERC was able to determine appropriateness of including sergeants in unit without hearing if enough evidence was already on record [City of Panama City and PERC, et al. (Fla. Dist. Ct. of App., 1st Dist., 1978) 363 So. 2d 135].

(7) The commission shall provide by rule a procedure for the filing and prompt disposition of petitions for a¹ declaratory statement as to the applicability of any statutory provision or any rule or order of the commission. Such rule, or rules shall provide for, but not be limited to an expeditious disposition of petitions posing questions relating to potential⁴ unfair labor practices. Commission disposition of petitions shall be final agency action and¹ shall not constitute a rule as defined in s. 120.54(14). [Am. L. 1977, Ch. 343.]

Annotation: In genuine unfair labor practice cases, the courts should defer to the commission, but in breach of collective bargaining agreement cases, the state courts may decide the issues

[Maxwell v. Sch. Bd. of Broward Cnty. (Fla. Dist. Ct. of App., 1976) 330 So. 2d 1977].

[§ 11,105] Sec. 447.209. Public employer's rights.—It is the right of the public employer to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the public employer to direct its employees, take disciplinary action for proper cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or civil or career service regulation.

Annotations: School boards can dismiss nontenured teachers without basing dismissal on proper cause regardless of proper cause provision in bargaining agreement [Lake Cnty. Ed. Assn. v. Sch. Bd. of Lake Cnty. (Fla. Dist. Ct. of App., 2nd Dist., 1978)

360 So. 2d 1280].

School calendar not a managerial decision that can be unilaterally changed by school board [Polowitch, et al. and Orange Cnty. Sch. Bd., PERC, 10-25-77].

[§ 11,106] Sec. 447.301. Public employees' rights; organization and representation.—(1) Public employees shall have the right to form, join, and participate in, or to refrain from forming, joining, or participating in, any employee organization of their own choosing.

Annotations: Since mechanic consulted union officials before complaining to newspaper about city's decision to limit tool allowances, his action was protected as participation in employee organization [AFSCME v. City of Venice, PERC, 1-27-78].

Dept. head's interrogation of assistants about union accompanied by threats interfered with exercise of their rights [Laborers Intl. Union, Local 666 v. Jess Parrish Memorial Hosp., PERC, 12-12-77].

[Footnote § 11,104 cont'd.] (2) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "engagement in prohibited."

(3) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "charges of striking."

(4) L. 1979, Ch. 85, eff. 7-1-79, substituted italicized material for "the scope of negotiations or to possible prohibited."

Fair share plan requiring nonunion employees to contribute proportional fee for union services violates state constitutional provision establishing right not to join union [Fla. Ed. Assn./

United v. PERC (Fla. Dist. Ct. of App., 1st Dist.) No. BB-246, 1-26-77].

(2) Public employees shall have the right to be represented by any employee organization of their own choosing, to negotiate collectively through a certified bargaining agent with their public employer in the determination of the terms and conditions of their employment, excluding any provisions of the Florida Statutes or appropriate ordinances relating to retirement. Public employees shall have the right to be represented in the determination of grievances on all terms and conditions of their employment. Public employees shall have the right to refrain from exercising the right to be represented.

(3) Public employees shall have the right to engage in concerted activities not prohibited by law, for the purpose of collective bargaining or other mutual aid or protection. Public employees shall also have the right to refrain from engaging in such activities.

Annotations: Teacher fired for failing to discuss job performance with principal was refused presence of union representative and claimed principal prevented concerted activities for mutual aid and protection. Since provision was adopted after grievance arose, teacher had no right to refuse to appear before principal [Seitz v. Duval Cnty. Sch. Bd. and PERC (Fla. Dist. Ct. of App., 1st Dist., 1979) 366 So. 2d 119].

Since mechanic's action in complaining to newspapers about city decision to eliminate tool allowance was approved by fellow mechanics after it happened and since it was in furtherance of fellow employees' working conditions, it was protected by this provision [AFSCME v. City of Venice, PERC, 1-27-78].

(4) Nothing in this part shall be construed to prevent any public employee from presenting, at any time, his own grievances, in person or by legal counsel, to his public employer, and having such grievances adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and if the bargaining agent has been given reasonable opportunity to be present at any meeting called for the resolution of such grievances.

Annotations: An employer's photographic surveillance of employees' lawful, informational picketing interferes with the employees' rights of participation in protected activities [Escambia Ed. Assn. and Sch. Bd. of Escambia Cnty., PERC, 5-13-76].

The dismissal or demotion of teachers because of their union activities violates this section and is remediable by reinstating the teachers at their former salary levels with backpay and interest

[Pasco Classroom Tchrs. Assn. and Sch. Bd. of Pasco Cnty., PERC, 4-1-76].

An agency shop or "fair share" plan requiring each employee who isn't a union member to contribute a proportional fee for union services would violate this section protecting the right of public employees not to participate in any employee organization [Fla. Ed. Assn./United, PERC, 2-27-76].

(5) In negotiations over the terms and conditions of service and other matters affecting the working environment of employees or the learning environment of students in institutions of higher education, one student representative selected by the council of student body presidents may, at his discretion, be present at all negotiating sessions which take place between the Board of Regents and the bargaining agent for an employee bargaining unit. In the case of community colleges, the student government association of each college shall establish procedures and shall select a student representative to be present, at his discretion, at negotiations between the bargaining agent of the employees and the board of trustees. Each student representative shall have access to all written draft agreements and all other written documents pertaining to negotiations exchanged by the appropriate public employer and the bargaining agent, including a copy of any prepared written transcripts of any negotiating session. Each student representative shall have the right at reasonable times during the negotiating session to comment to the parties and to the public upon the impact of proposed agreements on the educational environment of students. Each student representative shall have the right to be accompanied by alternates or aides, not to exceed a combined total of two in number. Each student representative shall be obligated to participate in good faith during all negotiations and shall be subject to the rules and regulations of the Public Employees Relations Commission. The student representatives shall have neither voting nor veto power in any negotiation, action, or agreement. The state or any branch, agency, division or agent or any institution of the state shall not expend any moneys from any source for the payment of reimbursement for travel expenses or per diem to aides, alternates, or student representatives participating in, observing, or contributing to any negotiating sessions between the bargaining parties; provided that this limitation shall not apply to the use of student activity fees for the reimbursement of travel expenses and per diem to the university student representative, aides or alternates participating in the aforementioned negotiations between the Board of Regents and the bargaining agent for an employee bargaining unit. [Am. L. 1977, Ch. 343.]

[§11,107] Sec. 447.303. Dues; deduction and collection.—Any employee organization which has been certified as a bargaining agent shall have the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments. However, such authorization is revocable at the employee's request upon thirty (30) days' written notice to the employer and employee organization. Said deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless

(b) "Employer" means the state of Indiana or any political subdivision of the state, including without limitation, any town, city, county, public institution of higher education or vocational education, social service or welfare agency, public and quasi-public corporation, housing authority or other authority or public agency established by law, and any person or persons designated by the employer to act in its interest in dealing with the employees.

(c) "Employee" means any employee of an employer, and shall not be limited to the employees of a particular employer, and shall include any employee of an employer, whether or not in the classified service of the employer, except officials appointed or elected pursuant to a statute to a policy-making position, and shall include any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action. "Employee" does not mean policemen, firemen, professional engineers, faculty member of any university or certificated employees of school corporations or confidential employees or municipal or county health care institution employees.

(d) The term "municipal or county health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, or any other institution devoted to the prevention of disease and maintenance of the public health or to the care of sick, infirm, or aged persons which is a wholly-owned municipal or county governmental agency, unit or corporation.

(e) "Employees' organizations" means any organization of any kind in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

(f) "Exclusive representative" means the employees' organization which has been certified for the purposes of this chapter by the Indiana education employment relations board, or recognized by an employer pursuant to the provisions of section 7(b) of this chapter, or recognized by an employer before July 1, 1975, as the exclusive representative of the employees in an appropriate collective bargaining unit. No unit which includes supervisors with other employees shall be deemed appropriate.

(g) "Board" means the Indiana education employment relations board.

(h) "Unfair labor practice" means any unfair labor practice listed in section 5.

(i) "Labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.

(j) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(k) "Bargain collectively" shall mean the performance of the mutual obligation of the employer through its chief executive officer or his designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

(l) "Deficit financing" with respect to any budget year shall mean expenditures in excess of monies legally available to the employer.

(m) "Strike" means concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer, or in any concerted manner interfering with the operation of the employer as defined in subsection (b) of this section for any purpose.

(n) "Certificated employee" means a person whose contract with the school corporation requires that he hold a license or permit from the state board of education or a commission thereof as provided in IC 1971, 20-6.

(o) "Confidential employee" means an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties.

[§11,103] Sec. 2. Rights of Employees and Organizations. Employees shall have the right to form, join, or assist employee organizations, to participate in collective bargaining with employers through representatives of their own choosing and to engage in other legal activities, individually or in concert, for the purpose of establishing, maintaining, or improving terms and conditions of employment.

[§11,104] Sec. 3. Rights of Public Employers. Public employers shall have the responsibility and authority to manage and direct in behalf of the public the operations and activities of the public agency to the full extent authorized by law. Such responsibility and activity shall include but not be limited to the right of the public employer to:

- (1) direct the work of its employees;
- (2) establish policy;
- (3) hire, promote, demote, transfer, assign and retain employees;
- (4) suspend or discharge its employees in accordance with applicable law;

- (5) maintain the efficiency of public operations;
- (6) relieve its employees from duties because of lack of work or other legitimate reason; and
- (7) take actions necessary to carry out the mission of the public agency as provided by law.

[§11,105] Sec. 4. Dues Deduction. The employer shall, on receipt of the written authorization of an employee, deduct from the pay of that employee any fees designated or certified by the appropriate officer of an employees' organization, and shall remit those fees to the employees' organization: Provided, that if an exclusive representative has been designated, the employer may not entertain a written or oral authorization on behalf of any other employees' organization from an employee in the bargaining unit: Provided, further that any such assignment may be revoked on a sixty (60) day written notice to the employer.

[§11,106] Sec. 5. Unfair Labor Practices. (a) It shall be an unfair labor practice for an employer to:

- (1) interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 2 of this chapter;
- (2) dominate, interfere with or assist in the formation or administration of any employees' organization, or contribute financial or other support to it: Provided, that subject to rules and regulations made and published by the board pursuant to section 8 of this chapter, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hiring or condition of employment to encourage or discourage membership in any employees' organization;

(4) discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition or given any information or testimony under this chapter;

(5) refuse to bargain collectively in good faith with an exclusive representative, including a representative recognized under the circumstances of section 7(b) of this chapter; or

(6) fail or refuse to comply with any provision of this chapter.

(b) It shall be an unfair labor practice for an employees' organization or its agents to:

(1) restrain or coerce employees in the exercise of the rights guaranteed in section 2 of this chapter;

(2) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(3) cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section;

(4) refuse to bargain collectively in good faith with an employer, if the employees' organization is the exclusive representative; or

(5) fails or refuses to comply with any provision of this chapter.

[§11,107] Sec. 6. Strikes. (a) It is unlawful for any public employee, public employee organization, or any affiliate, including but not limited to state or national affiliates, to take part in, assist, or advocate a strike against a public employer.

(b) Any public employer may in an action at law, suit in equity, or other proper proceeding, take action against any public employee organization, any affiliate thereof, or any person aiding or abetting in a strike, for redress of such unlawful act.

(c) Where any exclusive representative engages in a strike, or aids or abets therein, it shall lose its dues deduction privilege for a period of one (1) year.

(d) A public employer shall not pay any public employee for any day when the public employee fails as a result of a strike to report for work.

[§11,108] Sec. 7. Collective Bargaining Units. (a) Whenever, in accordance with such regulations as may be prescribed by the board, a petition has been filed:

(1) by an employees' organization alleging that thirty percent (30) of the employees in an appropriate unit wish to be represented for collective bargaining by an exclusive representative, or assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit;

(2) by the employer alleging that one (1) or more employees' organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit; or

(3) by an employee or group of employees alleging that thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the unit, the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing within thirty (30) days. If the board finds upon the record of the hearing that a question of representation exists, it shall direct an election by secret ballot within thirty (30) days and shall certify the results within ten (10) days. The board may also certify an employees' organization as an exclusive representative if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices.

(b) Notwithstanding the provisions of section 7(a) of this chapter, an employer is required to recognize as the exclusive representative of its employees within an appropriate unit an organization which presents to the employer evidence of its

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

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.

elections shall be posted at the request of the commission ten days prior to a hearing in a conspicuous place where the affected employees are employed. [Am. L. 1978, Ch. 562].

The commission, upon receipt of an employer's petition alleging that one or more employee organizations claims to represent a substantial number of the employees in a bargaining unit, or upon receipt of an employee organization's petition that a substantial number of the employees in a bargaining unit wish to be represented by the petitioner, or upon receipt of a petition filed by or on behalf of a substantial number of the employees in a unit alleging that the exclusive representative therefor no longer represents a majority of the employees therein, shall investigate, and if it has reasonable cause to believe that a substantial question of representation exists, shall provide for an appropriate hearing upon due notice. If, after hearing, the commission finds that there is a controversy concerning the representation of employees, it shall direct an election by secret ballot or shall use any other suitable method to determine whether, or by which employee organization the employees in an appropriate unit desire to be represented, and shall certify any employee organization which received a majority of the votes in such election as the exclusive representative of such employees.

Except for good cause no election shall be directed by the commission in an appropriate bargaining unit within which a valid election has been held in the preceding twelve months, or a valid collective bargaining agreement is in effect. The commission shall by its rules provide an appropriate period prior to the expiration of such agreements when certification or decertification petitions may be filed.

Nothing in this section shall be construed to prohibit a stipulation, in accordance with regulations of the commission, by an employer and an employee organization for the waiving of hearing and the conducting of a consent election by the commission for the purpose of determining a controversy concerning the representation of employees.

Any hearing under this section may be, when so determined by the commission, conducted by a member or agent of the commission. The decisions and determinations of such member or agent shall be final and binding unless, within ten days after notice thereof, any party requests a review by the full commission. If a review is requested, the member or agent shall file with the commission and with the parties a written statement of the case. In addition any party may, within ten days from the receipt of such statement, file a supplementary statement with the commission. A review by the commission shall be made upon such statement of the case by the member or agent and upon such supplementary statements filed by the parties, if any, together with such other evidence as the commission may require.

Annotations: During year following certification, employer must bargain with union even if it has lost majority status unless employer presents unusual circumstances that would excuse its legal obligation to bargain [City of Cambridge Hospital House Officers Assn., LRC, 6-13-77].

LRC order to conduct a representation election is not final, therefore it is not subject to judicial review; judicial review is available after a request for review has been denied [Worcester Ind.

Tech. Institute Instructors Assn. Inc. v. LRC (Mass. S. Jud. Ct., 1970) 256 N.E. 2d 287].

LRC can (1) order a representation election to determine whether fire department officers would prefer to be included in a unit with uniformed firefighters; and (2) has the power to order an election to determine the appropriate bargaining unit even though a city had voluntarily recognized a union [City Manager of Medford v. LRC (Mass. S. Jud. Ct., 1968) 233 N.E. 2d 310].

[§11,105 Fair representation; right to present own grievance] Sec. 5. The exclusive representative shall have the right to act for and negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

An employee may present a grievance to his employer and have such grievance heard without intervention by the exclusive representative of the employee organization representing said employee, provided that the exclusive representative is afforded the opportunity to be present at such conferences and that any adjustment made shall not be inconsistent with the terms of an agreement then in effect between the employer and the exclusive representative.

[§11,106 Scope of bargaining] Sec. 6. The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer's budget-making process and shall negotiate in good faith with respect to wages, hours, standards of productivity and performance, and any other terms and conditions of employment, but such obligation shall not compel either party to agree to proposal or make a concession.

Annotations: Union can't bargain away rights that deal with individual opportunities for equal employment and are unconnected with economic matters and bargaining process, such as right to sick pay for pregnancy disability [Sch. Committee of Brockton v. Mass. Commission Against Discrimination (Mass. S. Jud. Ct., 1979) 386 N.E. 2d 1240].

Power to select principals is within school committee's managerial prerogative over educational policy and can't be bargained away [Berkshire Hills Regional Sch. Dist. Committee v. Berkshire Hills Ed. Assn., et al. (Mass. S. Jud. Ct., 1978) 377 N.E. 2d 940].

Requirement that new hires become city residents within one year is a working condition and a mandatory bargaining subject [City of Worcester and Local 495, SEIU, LRC, 11-20-78].

Requirement of continued state residency after hire is a mandatory bargaining subject [Bd. of Trustees of Lowell U. and Mass. Society of Professors, LRC, 5-24-78].

Moonlighting is an item within scope of bargaining [City of

Pittsfield and Pittsfield Permanent Firemen's Assn., LRC, 4-26-78].

Power to abolish supervisory posts is a managerial prerogative of school committee and not bargainable [Sch. Committee of Hanover v. Curry (Mass. S. Jud. Ct., 1976) 343 N.E. 2d 144, Sch. Committee of Braintree v. Raymond (Mass. S. Jud. Ct., 1976) 343 N.E. 2d 145].

Teaching load, class size and number of substitute teachers to be hired are proper subjects of collective bargaining [Boston Tchrs. Union, Local 66 v. Sch. Committee of Boston (Mass. Sup. Jud. Ct., 1976) 350 N.E. 2d 707].

When a school committee and a teacher association have agreed on amendments to an existing collective bargaining contract, a subsequent claim by the committee that it cannot perform one of the amendments, a retirement salary adjustment, because the amendment was not budgeted, will not release the committee's obligation to pay [Fitchburg Tchrs. Assn. v. Sch. Committee of Fitchburg (Mass. S. Jud. Ct., 1971) 271 N.E. 2d 646].

bar such mergers of interest [Lansing Sch. Dist. and Mich. Council 11, AFSCME, ME C, 9-14-78].

Any contract or extension which is offered as a bar to an elec-

tion must be in writing and properly signed by the parties [Crosswell-Lexington Community Schs., Mich. Council 11, AFSCME, and Teamsters Local 214 (MERC, 1976) Case No. R76, II-385].

[¶11,116] Sec. 423.215 Public employer to bargain collectively; definition. Sec. 15. A public employer shall bargain collectively with the representatives of its employees as defined in section 11, and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. [Added L. 1965, No. 379.]

Annotations: Although pension benefits are generally a mandatory subject for bargaining, where a state law has a specific provision governing an aspect of pensions for public employees, the law governs over conflicting provisions in a contract negotiated under PERA [City of Dearborn Heights and Dearborn Heights Firefighters Assn., Local 1355, IAFF, MERC, 9-27-79].

The Governor, or his appointed designee, is the state's bargaining representative in dealing with state trooper's unions [Mich. OAG No. 5430, 1-9-79].

Since faculty evaluations would have a bearing on the terms and conditions of professors' employment—i.e. promotions, tenure and dismissal—a state college couldn't impose a new evaluation policy without first bargaining it with the union [Central Mich. Univ. Faculty Assn. v. Central Mich. Univ. (Mich.S.Ct., 1978) 273 N.W.2d 21].

PERA doesn't require the employer to give time off for employees to bargain. As long as bargaining takes place during convenient times, the employer can insist on bargaining during non-working hours [Birmingham Pub. Schs. and Teamsters, Local 214, MERC, 10-10-78].

The grievance based on a contract doesn't lapse after that contract expires. Once the arbitration of that grievance begins, the arbitrator may make an award even though the old contract's provisions may be made moot by a new contract [Community Coll. Dist. of Parts of the Cnty. of Oakland, Washenaw, Livingston and Lapeer v. Teamsters Local 214 (Mich. Ct. of Apps.) No. 77-5072, 10-6-78].

Since school employee retirement systems are governed by a specific state statute, the school district can't agree to a higher negotiated benefit system than provided by that law [Mich. OAG 5314, 6-14-78].

Where the village had given the union adequate notice and bargained in good faith over the subcontracting of police services, the village wasn't guilty of an unfair practice when it went ahead with the subcontracting plan when no negotiated settlement could be reached [Village of Dundee and IUOE, Local 547, MERC, 3-1-77].

Where a contract doesn't provide a "just cause" provision for termination, the nonrenewal of a probationary teacher isn't arbitrable under PERA [Brown v. Holton Pub. Sch. (Mich. S.Ct., 1977) 258 N.W.2d 51].

Grievance and discipline procedures are mandatory subjects for bargaining. Therefore, a city must bargain over such procedures despite conflicting procedures existing in the city charter. State law prevails over the city charter in the labor relations field [Pontiac v. City of Pontiac (Mich. S.Ct., 1976) 246 N.W.2d 831].

Rules concerning an employee's outside employment affect the employer's terms and conditions of employment and are, therefore, mandatory subjects for bargaining [Mich. OAG No. 4975, 4-26-76].

A city must bargain over grievance arbitration and other disciplinary procedures; this duty to bargain under the act prevails over conflicting provisions of a city charter setting up police

disciplinary procedures [Pontiac POA v. City of Pontiac (Mich. S. Ct., 1976) 246 N.W. 2d 831].

Binding arbitration under the act isn't required for removal of a probation officer; compliance with the earlier and more specific probation officer removal law is sufficient [Council 23, Local 1905, AFSCME v. Recorder's Ct. Judges (Mich. S. Ct., 1976) 248 N.W.2d 220].

A city doesn't have to bargain with a union over nonunion employees and can pay them higher wages where there is no proof that the difference is based on any employer anti-union sentiment [City of Detroit and Council 77, AFSCME (MERC, 1977) Case No. C74, K-262].

It's an unfair labor practice for city to ignore contract seniority provisions in promoting minorities and to refuse to bargain over an affirmative action program [City of Detroit Fire Dept. and Detroit Firefighters Assn., (MERC, 1976) Case No. C76, A-22].

It is an unfair labor practice to refuse to bargain before subcontracting out services done by unionized public employees [Van Buren Public Sch. Dist. v. Wayne Cnty. Circuit Judge (Mich. Ct. of Apps., 1975) 232 N.W. 2d 278].

The city's unilateral change in its formula for determining pension and retirement benefit was unfair labor practice [Mt. Clemens Fire Fighters Union, Local 838, IAFF v. City of Mt. Clemens (Mich. Ct. of Apps., 1975) 228 N.W. 2d 500].

Policy rule requiring school administrators to reside in school district was not unconstitutional [Park v. Lansing Sch. Dist. (Mich. Ct. of Apps., 1975) 233 N.W. 2d 592; review denied (U.S. S.Ct., 1976) 96 S.Ct. 1494].

A bona fide financial inability to afford benefits will excuse an employer from complying with the full terms of a collective bargaining agreement without violating PERA [City of Highland Park and Mich. Dist. Council 77, AFSCME, MERC, 11-13-75].

It's an unfair practice for an employer to refuse to supply the union all relevant information that would expedite collective bargaining, including employees' overtime records and petty cash fund accounts. However, a community college's state Bureau of Budget forms weren't relevant to collective bargaining and were denied from the union [Gogebic Community Coll. and Gogebic Community Coll. Dist. MAHE, MERC, 8-4-75].

When a contract provides that teachers couldn't be deprived of "professional advantage" without just cause, the nonrenewal of a probationary teacher was arbitrable under the contract [Kaleva-Norman-Dickson Sch. Dist. No. 6 v. Kaleva-Norman-Dickson Tchrs. Assn. (Mich.S.Ct., 1975) 227 N.W.2d 500].

Unilaterally imposed residency requirements are valid on the day of hire, but after that they become "conditions of employment," subject to the duty to bargain [Detroit POA v. City of Detroit (Mich. S. Ct., 1974) 214 N.W. 2d 803].

Pension plans are conditions of employment and must be bargained for [Detroit POA v. City of Detroit (Mich. S. Ct., 1974) 214 N.W. 2d 803].

University of Michigan is a public employer and must bargain

collectively with its interns and residents except as to those matters within the sphere of educational policies [Univ. of Mich. v. MERC and Univ. of Mich. Interns-Residents Assn. (Mich. S. Ct., 1973) 204 N.W. 2d 218].

A free-parking privilege was not subject to the contract grievance procedure since, even if it had been a past practice, it was revoked by management and not included in a later collective bargaining agreement [Local 1390 and Mich. Council No. 55 of AFSCME v. City of Lansing (Mich. Ct. of App., 1973) 207 N.W. 2d 479].

Even though a prior statute sets firefighters' maximum hours and minimum time off under the collective bargaining law, they can bargain for fewer hours as the prior statute does not prohibit firefighters and their employers from mutually agreeing to fewer hours [Flynn v. City of Fraser (Mich. Ct. of App., 1973) 206 N.W. 2d 448].

Installation of a time clock is not a condition of employment and does not have to be bargained collectively [Hurley Hospital (City of Flint) and Medical Technologists Organization (MERC, 1973) Case No. C72, G-130].

A county car-use policy is a condition of employment; it is a mandatory subject of bargaining [Genesee Cnty. Bd. of Commissioners and Lodge 145, F.O.P. (MERC, 1973) Case No. CF3A-1].

The opening day of school as well as the entire school calendar is a condition of employment [Westwood Community Schs. and Ed. Assn. (MERC, 1972) Case No. C701-152].

The county road commission was not an employer separate and distinct from the county; the county is the public employer [CSC, Cnty. of Wayne v. Wayne Cnty. Bd. of Supervisors (Mich. S. Ct., 1971) 184 N.W. 2d 201].

Racing Commission is not under the jurisdiction of MERA and thus does not have to bargain collectively with assistant veterinarians employed by the Racing Commission [SEIU, Local 79, AFL-CIO v. State Racing Commissioner (Mich. Ct. of App., 1970) 183 N.W. 2d 854].

An agency is a public employer within the meaning of this act if it hires and/or fires, pays wages, has power to control employees' conduct and controls methods by which employees carry out their work [CSC, Cnty. of Wayne v. Wayne Cnty. Bd. of Supervisors (Mich. Ct. of App., 1970) 177 N.W. 2d 449].

University was a public employer and thus required to bargain in good faith on matters within the scope of bargaining [Regents of the Univ. of Mich. and Bd. of Control of Central Mich. Univ. v. Labor Mediation Bd. (Mich. Ct. of App., 1969) 171 N.W. 2d 477].

[§11.117] Sec. 423.216 Unfair labor practices, remedy; notice, procedure and limitation. Sec. 16. Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the commission in the following manner:

Annotations: MERC has jurisdiction to hear unfair labor practice charges against judges of a judicial district [Judges of the 74th Judicial District v. Cnty. of Bay, MERC, and International Union of Allied and Technical Workers of the U.S. and Canada (Mich. S. Ct., 1971) 190 N.W. 2d 219].

LMB [now MERC] is subject to provisions of the Administrative Procedures Act in unfair labor practice cases [North Dearborn Heights Fed. of Tchrs. v. Sch. Dist. of North Dearborn (Mich. S. Ct., 1969) 168 N.W. 2d 219].

[§11.118 Unfair labor practices; complaint] [§423.216] (a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the commission, or any agent designated by the commission for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the commission or a commissioner thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the commissioner or agent conducting the hearing or the commission, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the commissioner or agent conducting the hearing or the commission, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being sections 24.271 to 24.287 of the Michigan Compiled Laws. [Am. L. 1976, No. 18.]

Annotations: MERC won't defer a matter to arbitration (1) unless deferral is asked for early in the unfair practice proceedings; (2) unless the parties are willing to arbitrate and will waive procedural objections to arbitration; (3) where the dispute involves issues of unit representation or election and hasn't yet been arbitrated; (4) where the dispute concerns an inter-union rivalry; (5) where the issue involves scope of bargaining and not contract interpretation; (6) where the union wouldn't fairly or adequately represent employees bringing the matter to MERC; and (7) where there is no contractual provision for final or binding arbitration. The key is whether the question can be solved through contract interpretation rather than interpreting PERA, and whether the

bargaining relationship is stable [City of Detroit Fire Dept. and Detroit Firefighters Assn., Local 344, IAFF, MERC, 4-4-77].

MERC couldn't refuse to hear objections to a representation election just because employer didn't formally notify union of those objections within 5 days of filing with MERC [Metro. Council 23, AFSCME v. Redford Twnship. (Mich. Ct. of App., 1976) 246 N.W. 2d 156].

MERC refused to hear a charge of unfair practice against a county that had unilaterally withdrawn its car-use policy, since the six month time limit in which the charge must be brought had passed [Genesee Cnty. Bd. of Commissioners and Lodge 145, F.O.P. (MERC 1973) Case No. CF3A-1].

[§11.119 Unfair labor practices; hearing, order] [§423.216] (b) The testimony taken by the commissioner, agent or the commission shall be reduced to writing and filed with the commission. Thereafter the commission upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the commission is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall

Annotation: This provision doesn't violate state constitution (which makes certain state officers independent of executive branch) or R.C.M., Title 82A (which recognizes independence of constitutionally created executive agencies) in granting governor

authority to bargain with public employees. Bargaining is administrative function, not interference with policy [OAG, No. 168, 11-15-78].

[§11,126] Sec. 39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

[§11,127] Sec. 39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed.

Annotation: Teacher selection (renewal of nontenured teachers) isn't negotiable [Wilbaux Ed. Assn. v. Wibaux Cnty. High Sch. (Mont. S. Ct., 1978) 35 St. Rep. 93].

[§11,128] Sec. 39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

Annotations: State law governs sick leave and vacation benefits for nonteaching employees in school districts and vocational schools [MCA 2-18-601 et seq.], so collective bargaining can't vary these terms set out by law [OAG, No. 38-20, 6-14-79].

Provision excludes teacher selection (renewal of nontenured teachers) as matter for bargaining [Wilbaux Ed. Assn. v. Wibaux Cnty. High Sch. (Mont. S. Ct., 1978) 35 St. Rep. 93].

[§11,129] Sec. 39-31-305. Duty to bargain collectively—good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

[§11,130] Sec. 39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

[§11,131] Sec. 39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

found that such dismissal was a retaliatory measure because of the teachers' organizational activities [Bd. of Ed., Central Sch. Dist. No. 1 of the Town of Grand Island, Erie Cnty. v. Helsby (N.Y. App. Div., 1971) 326 N.Y.S.2d 452, affirmed (N.Y. Ct. of App. 1973) 32 N.Y. 2d 660].

[§11,102] Sec. 201. Definitions. As used in this article:

1. The term "board" means the public employment relations board created by section two hundred five of this article.
2. (a) The term "membership dues deduction" means the obligation or practice of a government to deduct from the salary of a public employee with his consent an amount for the payment of his membership dues in an employee organization. Such term also means the obligation or practice of a government to transmit the sum so deducted to an employee organization.

(b) The term "agency shop fee deduction" means the obligation or practice of a government to deduct from the salary of a public employee who is not a member of the certified or recognized employee organization which represents such employee for the purpose of collective negotiations conducted pursuant to this article, an amount equivalent to the amount of dues payable by a member. Such term also means the obligation or practice of a government to transmit the sums so deducted to an employee organization. [Added L. 1977, Ch. 677.]

➡ **EXPIRATION DATE** ➡ The agency shop fee deduction provisions in subsection 2(b) and subsection 4 will expire 7-1-81 [L. 1977, Ch. 677, eff. 7-1-77, as amended by L. 1979, Ch. 618, eff. 7-10-79].

3. The term "chief legal officer" means (a) in the case of the state of New York or a state public authority, the attorney general of the state of New York, (b) in the case of a county, city, town, village or school district, the county attorney, corporation counsel, town attorney, village attorney or school district attorney, as the case may be, and (c) in the case of any such government not having its own attorney, or any other government or public employer, the corporation counsel of the city in which such government or public employer has its principal office, and if such principal office is not located in a city, the county attorney of the county in which such government or public employer has its principal office.

4. The term "terms and conditions of employment" means salaries, wages, hours, agency shop fee deduction and other terms and conditions of employment provided, however, that such term shall not include agency shop fee deduction for negotiating units comprised of employees of the state or any benefits provided by or to be provided by a public retirement system, or payments to a fund or insurer to provide an income for retirees, or payment to retirees or their beneficiaries. No such retirement benefits shall be negotiated pursuant to this article, and any benefits so negotiated shall be void. [Am. L. 1979, Ch. 677.]

Annotations: Though good faith abolition of positions to reduce workforce doesn't have to be negotiated, abolition of jobs in order to subcontract may be a term or condition of employment that does have to be negotiated. Since PERB has discretion to determine terms and conditions of employment and it hadn't abused that discretion, its ruling that school bus contracting must be bargained was upheld [Saratoga Springs City Sch. Dist. v. PERB, et al. (N.Y. App. Div., 1979) 416 N.Y.S.2d 415, App. Den. (N.Y. Ct. of App.) No. 659, 7-10-79].

Demand that employer pay wages to employee facing disciplinary charges and demand for safety clause, including provision that officer not be penalized for refusing to operate unsafe equipment, are mandatory bargaining subjects. Use of various lie detector tests in monitoring unit members' activities wasn't a mandatory subject [PBA and City of White Plains, PERB, 5-8-79].

Practice of giving free tuition to children of teachers who live outside district was condition of employment and its discontinuance was arbitrable because broad arbitration clause satisfied *Liverpool* requirement of clear and unequivocal agreement to arbitrate [Bd. of Ed. of New Paltz Cent. Sch. Dist. v. New Paltz United Tchrs. (N.Y. Ct. of App., 1978) 44 N.Y.2d 890].

Just cause for firing and types of penalties imposed against employees are terms and conditions of employment [Binghamton Civ. Serv. Forum v. City of Binghamton (N.Y. Ct. of App., 1978) 403 N.Y.S.2d 482].

Union demand for contract disciplinary procedure that would modify and supplement procedure in section 75 of Civil Service Law is negotiable [Auburn Police Local 195, Council 82 AFSCME v. Helsby, et al. (App. Div. 3rd Dept., 1978) 404 N.Y.S.2d 396, app. granted (N.Y. Ct. of App., 1978) 408 N.Y.S.2d 1023].

Though minimum manning requirements were management's prerogative, hazardous duty pay, safety committee and favored na-

Courts should liberally construe Taylor Law for purposes of good public employee-employer relationships and protection of public by smooth government operation [CSEA v. Helsby (N.Y. App. Div., 1969) 300 N.Y.S. 2d 424, affirmed (N.Y. Ct. of App. 1969) 303 N.Y.S. 2d 690].

tion's clause (saying salary issue could be reopened if other city unit gained significant increases) were mandatory bargaining subjects [IAFF, Local 189 and City of Newburgh, PERB, 10-19-78].

Agreement between city's central board of education and teacher union to shorten school week by two periods as cost saving measure is legal despite objections from local community boards. Central board has power to establish policies, bargain with teachers and supervise overall educational budget [Matter of NYC Sch. Bds. Assn. Inc., et al. v. Bd. of Ed. of City Sch. Dist. of City of N.Y., et al. (N.Y. Ct. of App., 1976) 383 N.Y.2d 208].

This provision made it illegal for county to unilaterally suspend all employees for 10 days as an economy move [Koenig v. Morin and Monroe Cnty. Legislature (N.Y. S. Ct., Monroe Cnty., 1976) 393 N.Y.S.2d 653].

Though parity clause (requiring salary increases equivalent to those in neighboring cities) isn't expressly forbidden, it's implicitly illegal since Taylor Law arbitration provision [N.Y. §11,111(4)-(c)(2)] allows consideration of wages in comparable communities so far as panel deems applicable [Voigt v. Bowen (N.Y. App. Div., 1976) 385 N.Y.S.2d 600].

Employees are bound by agreement's provision for arbitration of disciplinary matters and arbitration procedure may voluntarily waive due process protection [Antinore v. State of N.Y., et al. (N.Y. App. Div., 1975) 371 N.Y.S. 2d 213].

Class size was not a term and condition of employment and was not bargainable; however, once determined, its impact on teachers and whether benefits should vary with the ultimate size was negotiable [In the Matter of West Irondequoit Tchrs. Assn. (N.Y. Ct. of App. 1974) 358 N.Y.S.2d 720].

Since sick leave rights a general, not personal, a sick leave bank is a fringe benefit and a negotiable term and condition of em-

ployment [Syracuse Tchrs. Assn. v. Bd. of Ed. (N.Y. App. Div., 1973) 41 A.D.2d 73].

Provisions dealing with the reimbursement of teachers for job-related personal property damage, reimbursement for approved graduate courses and salary increments during the last year of service are terms and conditions of employment [Bd. of Ed. of Union Free Sch. Dist. No. 3, Town of Huntington v. Assoc. Tchrs. of Huntington (N.Y. Ct. of Apps. 1972) 282 N.E.2d 109].

Providing for arbitration in cases when tenured teachers are being disciplined by dismissal is a term and condition of employment [Bd. of Ed. of Union Free School Dist. No. 3, Town of Huntington v. Assoc. Tchrs. of Huntington (N.Y. Ct. of Apps.

1972) 282 N.E.2d 109].

Retroactive wage increase is not gift or gratuity contrary to N.Y. constitution [In re AFSCME, Local 788 v. City of Plattsburgh (N.Y. S. Ct., 1971) 340 N.Y.S.2d 18].

Payments to Teamster union health and welfare fund which in turn would purchase insurance for its members is a term and condition of employment which can be collectively negotiated for [Local 456, Teamsters v. Town of Cortlandt (N.Y. S. Ct., Westchester Cnty., 1971) 327 N.Y.S.2d 143].

Pensions, vacations, military and sick leave and similar items are terms and conditions of employment [Tchrs. Assn., Central High Sch. Dist. No. 3 v. Bd. of Ed., Central High Sch. Dist. No. 3, Nassau Cnty. (N.Y. App. Div., 1970) 312 N.Y.S.2d 252].

5. The term "employee organization" means an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees, except that such term shall not include an organization (a) membership in which is prohibited by section one hundred five of this chapter, (b) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin, or (c) which, in the case of public employees who hold positions by appointment or employment in the service of the board and who are excluded from the application of this article by rules and regulations of the board, admits to membership or is affiliated directly or indirectly with an organization which admits to membership persons not in the service of the board, for purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article.

Annotations: The N.Y. State Teachers' Assn., a statewide organization, is an employee organization and thus cannot cause, instigate, encourage or condone a strike [N.Y. State Tchrs. Assn. v. Helsby (N.Y. S. Ct., 1968) 294 N.Y.S.2d 381].

PERB has jurisdiction to determine whether organization is an employee organization within the Act [Potsdam Central Sch. Dist. No. 2 v. Frank (N.Y. S. Ct., 1968) 56 Misc. 2d 605].

6. (a) The term "government" or "public employer" means (i) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission, or public benefit corporation, or (vi) any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state.

(b) Upon the application of any government, the board may determine that the applicant shall be deemed to be a joint public employer of public employees in an employer-employee negotiating unit determined pursuant to section two hundred seven of this chapter where such determination would best effectuate the purposes of this chapter.

Annotations: Water authorities are employers within the Act [Local 930, AFSCME v. Erie Cnty. Water Auth. (N.Y. App. Div., 1972) 330 N.Y.S.2d 695].

Since county sheriff appoints and employs deputy sheriffs, he is a public employer. Since the county fixes and pays the salaries of the deputy sheriffs, the county is also a public employer [Cnty. of Ulster and Ulster Cnty. Sheriff's Office v. CSEA and PERB (N.Y. App. Div., 1971) 316 N.Y.S.2d 706].

Free public library, not county, is public employer of librarians under the Act [Cnty. of Erie v. Bd. of Trustees of Buffalo and Erie Cnty. Public Library (N.Y. S. Ct., 1970) 308 N.Y.S.2d 515].

Whoever controls employee's work, appointments, duties and salary within limits of appropriations is his employer under the Act [Cnty. of Erie v. Bd. of Trustees of Buffalo and Erie Cnty. Public Library (N.Y. S. Ct., 1970) 308 N.Y.S.2d 515].

When public benefit corporation supplies management personnel for city transit system, but city supplies operation personnel and has exclusive control over labor-management relations, city is employer [Regional Transit Service Rochester-Genesee Regional Transportation Dist., Inc. v. Local 282, ATU (N.Y. S. Ct., 1970) 316 N.Y.S.2d 325].

7. (a) The term "public employee" means any person holding a position by appointment or employment in the service of a public employer, except that such term shall not include for the purposes of any provision of this article other than sections two hundred ten and two hundred eleven of this article, persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board in accordance with procedures established pursuant to section two hundred five or two hundred twelve of this article, which procedures shall provide that any such designations made during a period of unchallenged representation pursuant to subdivision two of section two hundred eight of this chapter shall only become effective upon the termination of such period of unchallenged representation. Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

(b) For the purposes of this article, assistant attorneys general, assistant district attorneys, and law school graduates employed in titles which promote to assistant district attorney upon admission to the bar of the state of New York shall

bargain on wages, hours, terms and conditions of employment: Provided, That any individual employee or a group of employees shall have the right ~~at any time to present~~ grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Annotations: County commissioners, not judges, are the management representative for the purposes of bargaining with court clerks [Bucks Cnty. Bd. of Judges v. Bucks Cnty. Commissioners, et al. (Pa.S.Ct., 1978) 388 A.2d 744].

Where contract allowed individual employee to bring grievance through first four steps of contractual procedure but allowed the union alone to initiate fifth step, arbitration, employee was bound by contract and couldn't require employer to submit to

arbitration. Employee's only recourse was unfair labor practice against union on breach of duty of fair representation [McCluskey v. Cmwlth. of Pa., Dept. of Trans. (Pa. Cmwlth. Ct., 1978) 391 A.2d 45].

State employee must base a charge of breach of duty of fair representation upon state law and not upon duty set out in NLRA as amended [Nelson v. Southeastern Transp. Auth. (ED Pa., 1976) 420 F. Supp. 1374].

[§11,114] Sec. 1101.607 Petition for decertification. If there is a duly certified representative: (i) a public employee or a group of public employees may file a petition for decertification provided it is supported by a thirty per cent showing of interest, or (ii) a public employer alleging a good faith doubt of the majority status of said representative may file a petition in accordance with the rules and regulations established by the board, subject to the provisions of clause (7) of section 605.

ARTICLE VII. SCOPE OF BARGAINING

[§11,115] Sec. 1101.701 Matters subject to bargaining. Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Annotations: Residency requirements are mandatory subjects for bargaining. The union didn't waive the right to bargain on the issue when it included contract clause barring reopening contract since residency requirements were never discussed during negotiations [PLRB v. Sch. Dist. of City of Erie (Pa. Ct. of Cm. Pleas, Erie Cnty.) No. 2357-A, 3-8-79].

Fringe benefits are mandatory subjects for bargaining and can't be unilaterally changed or terminated after a contract expires and while negotiations continue [Cumberland Valley Sch. Dist. v. PLRB (Pa. S. Ct., 1978) 394 A.2d 946].

Replacement of teacher aides with unpaid volunteers must be bargained [PLRB v. Mars Area Sch. Dist. (Pa. S. Ct., 1978) 389 A.2d 1073].

Parties can bargain benefits in excess of maximums in other state laws as long as the other law didn't specifically prohibit higher rate [Cnty. of Dauphin v. Pa. Social Service Union (Pa. Cmwlth. Ct., 1978) 382 A.2d 999].

Suspension has a substantial impact on wages, hours and terms of employment. Therefore, a collective bargaining agreement providing for arbitration to decide if suspensions were proper will be enforced [Rylke and Portage Area Ed. Assn. v. Portage Area Sch. Dist. (Pa. S. Ct.) No. 43, 2-28-77].

School district has authority and duty to bargain collectively with its employees on matters relating to wages, hours and other terms and conditions of employment [Pa. State Ed. Assn. v.

Baldwin Whitehall Sch. Dist. (Pa. Cmwlth. Ct., 1977) 372 A.2d 960].

Maintenance-of-membership provision may be proper subject of collective bargaining between public employer and employee organization if such a provision doesn't violate an existing statute [Dauphin Cnty. Voc.-Tech. Sch. Ed. Assn. v. Dauphin Cnty. Voc.-Tech. Sch. Bd. (Pa. Cmwlth. Ct., 1976) 357 A.2d 721].

Bargaining on wages, hours and other terms and conditions of employment is not required if a proposal also involves inherent managerial policy. For this reason, a school board was not required to bargain with respect to 21 disputed items including calendar, class size and preparation periods [State Coll. Ed. Assn. v. PLRB (Pa. Cmwlth. Ct., 1973) 306 A.2d 404].

City had duty to pay disability benefits bargained for by nonuniformed public employees although funds appropriated for this purpose were exhausted. But until city council appropriated sufficient funds, executive officers of city had not duty to continue payment of benefits [Tate v. Antosh (Pa. Cmwlth. Ct., 1971) 281 A.2d 192].

Unskilled and semiskilled employees of State Department of Transportation, who were hired by one state administration for patronage jobs and who were fired by next administration solely because of their political sponsorship or affiliation, had no protected right to their jobs or to notice or hearing before discharge. Governor had power to discharge them at will [AFSCME v. Shapp (Pa. S. Ct., 1971) 280 A.2d 375].

[§11,116] Sec. 1101.702 Matters not subject to bargaining. Public employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel. Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives.

Annotations: Replacement of teacher aides with unpaid volunteers isn't part of inherent managerial policy since it affects terms and conditions of employment. It must be bargained [PLRB v. Mars Area Sch. Dist. (Pa. S. Ct., 1978) 389 A.2d 1073].

Employer not required to arbitrate demotion of employee who was promoted on probationary basis and then returned to original job when things didn't work out [Barroner v. Blair Cnty. Bd. of Assistance, et al. (Pa. Cmwlth. Ct., 1978) 386 A.2d 171].

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Once school board agreed to negotiate matters that were inherently managerial, even though not required by law to do so, it could not later attempt to take a different position [Scranton Sch. Bd. v. Scranton Fed. of Tchrs., Local 1147, AFT (Pa. Cmwlth. Ct., 1976) 365 A.2d 1339].

This section means that if a matter involves wages, hours and other terms and conditions of employment and also involves policy, bargaining is not required, although, upon request, the employer must "meet and discuss." Also an employer is not required to bargain on any policy matter notwithstanding the "impact" it may have on wages, hours and terms and conditions of employment [State Coll. Ed. Assn. v. PLRB (Pa. Cmwlth. Ct., 1973) 306 A.2d 404].

Bargaining on sabbatical leaves for teachers is limited to issues specifically allowed by Public School Code [OAG No. 31, 4-9-73].

Eliminating jobs and subcontracting are matters affecting

wages, hours and terms and conditions of employment [PLRB and City of Clairton (PLRB, 1973) PERA Case No. C-3438-W].

Employer is required, upon request of union, to meet and discuss eliminating jobs and subcontracting [PLRB and City of Clairton, *supra*].

Rearrangement of work week is not a matter of inherent managerial policy since it does not concern redirecting operations or improving quality or work [PLRB and City of Philadelphia (PLRB, 1973) PERA Case No. C-2547-E].

Since rearrangement of work week affected wages and hours, employer was required to fulfill its bargaining obligation by meeting and discussing rearrangement with union [PLRB v. City of Philadelphia, *supra*].

Christmas bonuses are temporary wage increases and are proper subjects of negotiation [PLRB and Borough of Berwick (PLRB, 1973) PERA Case No. C-2778-C].

¶11,117 Sec. 1101.703 Implementation of provisions in violation of, or inconsistent with statutes or home rule charters. The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with or in conflict with any statute or statutes enacted by the General Assembly of the Commonwealth of Pennsylvania or the provisions of municipal home rule charters.

Annotations: Since Municipal Authorities Act [53 P.S. §301 et seq.] doesn't give municipal governments *exclusive* authority to hire and fire, there is no conflict with Act which allows arbitration of dismissals [PLRB v. Franklin Township Munic. Sanitary Auth. (Pa. Cmwlth. Ct., 1978) 395 A.2d 606].

Parties can negotiate terms and conditions of employment in excess of maximums set in other state laws as long as the other law didn't specifically prohibit employer from agreeing to a higher rate. Since County Code's 12¢/mile maximum mileage rate didn't specifically prohibit bargaining a higher rate, PERA will allow bargaining the higher rate [Cnty. of Dauphin v. Pa. Social Service Union (Pa. Cmwlth. Ct., 1978) 382 A.2d 999].

Where the underlying validity of a mutually agreed-upon contract provision is in question, the case can be brought directly to court. Disputes over negotiation and implementation of a contract are labor relations disputes and are under PLRB exclusive jurisdiction. Disputes over the legality of a contract clause itself is a question of general contract law and needn't be brought to PLRB first [Parents Union for Pub. Schs. in Philadelphia, et al. v. Bd. of Ed. of Sch. Dist. of Philadelphia, et al. (Pa. S. Ct., 1978) 389 A.2d 577].

¶11,118 Sec. 1101.704 Bargaining with units of first level supervisors. Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employees covered by this act.

Annotation: The requirement that an employer meet and discuss with first level supervisors doesn't require the employer to enter into a written agreement with those employees [PLRB and

Southeastern Pa. Transp. Auth. (PLRB, 1976) PERA Case No. C-7363-E].

¶11,119 Sec. 1101.705 Dues deductions, maintenance of membership; subjects of bargaining. Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

Annotations: A teacher can't be dismissed for refusing to authorize dues deductions as permitted in this section and as required under the contract. The court ruled that PERA didn't specifically call for dismissal for nonpayment of dues and, therefore, for an employee to be terminated for refusing to authorize the deductions, the contract must specifically provide for it [Dauphin Cnty. Tech. Sch. Ed. Assn. v. Dauphin Cnty. Area Voc.-Tech. Sch. Bd. (Pa. S. Ct.) No. 37, 10-5-78].

Where the maintenance-of-membership clause had as a remedy for noncompliance the termination of professional employee ser-

vices, and where clause was found invalid, it couldn't be used as the basis for an unfair labor practice charge [PLRB v. Uniontown Area Sch. Dist. (Pa. Cmwlth. Ct., 1977) 367 A.2d 738].

Maintenance-of-membership provision may be the proper subject in a collective bargaining agreement between a public employer and an employee organization if such provision doesn't violate an existing statute [Dauphin Cnty. Voc.-Tech. Sch. Ed. Assn. v. Dauphin Cnty. Sch. Bd. (Pa. Cmwlth. Ct., 1976) 357 A.2d 721].



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