HB
130

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: HB 130

Sponsor: GOVERNOR

Date referred to committee: 5/6/85

Synopsis completed:

Fiscal note:

Further referrals: STATE AFFAIRS, FINANCE 4522

CONTACTS: 5/6/86 St. Aff. referral added (by request)
5/7/86 HESS referral waived

FREE

Federation's Role in our Enterprise Economy

file HB 130 NKN

FEB 11 1980

BINDING ARBITRATION IN SCHOOL LABOR DISPUTES

A Position Paper of the Anchorage Woman's Club F.R.E.E.

Binding arbitration is not an acceptable concept in our representative form of government. Local control of schools is a principle which has proven to be a cornerstone of democracy in the United States for over 200 years. American government is designed to be of, by, and for the people, and is our legal basis of government. This freedom, however, which is based on local control, is in danger of being eroded by state federal bureaucracies that continue to extend their power by seeking uniformity, standardization and compliance as they pass laws and allocate funds.

The State Legislature, through titles 14 and 29, has determined that the local school board is an autonomous organization, locally elected and self-determining, subject to federal and state statutes and regulations. The legislature reaffirmed this autonomy a few years ago with the creation of the REEA'S and locally elected regional school boards. We feel that it would be rather ironic if the State should now pass a binding arbitration bill which would dilute that local control.

Our elected representatives, the school board, make decisions and form policies that affect us all. They are held accountable and responsible to us for those decisions. If we disagree with

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A committee of the GFWC Anchorage Woman's Club

those decisions, we have the right to replace them in the next election.

An arbitrator, however, is not responsible or accountable to the public. He does not have the responsibility for living with the solutions he orders, since he usually leaves the scene after making the award. Arbitrators are suppose to be impartial, but they have biases just like anyone else and there is no reason to think they are more knowledgeable or possess more wisdom than the elected representatives of the people.

An arbitrator's job is often complicated by the manner by which both sides choose to present their demands. Under item-by-item arbitration, he may jump from side to side, choosing the union's rate of pay increase, managements insurance benefits, etc., without an overall logic or cohesiveness to the entire program.

With last-best-package arbitration, the arbitrator must choose between the entire program of either the union or management, no matter what implausible clauses may be included in either or both.

On the surface, binding arbitration seems rational and reasonable. Third party arbitration has frequently been used in settling private enterprise disputes. Public sector bargaining, however, is different from the private sector. As an example, in the private sector, management can reduce the work force. This option is not available in the public sector. In teacher-school board disputes, the school board represents the taxpayers. In asking that a third part be empowered to set terms of a contract, the union is in effect demanding that taxes be set by that party. To do so is tantamount to taxation without representation.

People are misled into thinking binding arbitration is a solution to a strike. Binding arbitration does not eliminate strikes, as there is nothing to stop teachers from striking, if they don't like the decision of the arbitrator. A statistical study which was commissioned by the Public Research Council concludes that "with only two exceptions, Florida and Iowa, the passage of a bargaining law did not result in an overall reduction in strike activity.....In most cases, strike activity was notably higher in the period following legislation." The State of Pennsylvania has conducted a ten year study on this issue and has concluded that binding arbitration does not guarantee there will not be teacher strikes. The president of the AFL-CIO Public Employees Department says, "history teaches that laws prohibiting strikes have never worked in America." (Nations Business, September 1980.)

What can we do to provide our public employees a means to air their grievances and yet maintain representative control of government? First of all, we feel finality steps should be defined to shorten the length of negotiations and eliminate uncertainty. Perhaps 60 days should be allowed to reach agreement. The definition of non-negotiable items, however, must be determined to prevent these from being used to lengthen the session; if after that time no agreement is reached, and all impasse procedures are exhausted, continued negotiations should become a matter of public record.

Or, since negotiations directly affect each citizen, perhaps all sessions should be open to the public. It is misleading to guarantee that union demands will not cost the taxpayer more.

Over 80% of the school budget is for salaries and related benefits and any increase in this area will either mean an increase in taxes or a possible decrease in the funds available for other areas. This could mean reductions in the sports programs, textbooks, music, maintenance, etc. With all demands public, we could then cast a vote as to how we wish the budget divided.

Carrying public awareness and responsibility a further step, why not adapt a form of petit jury system as arbitrators of demands by public employees. Much effort and large sums of money are spent educating each of us to be enlightened and useful citizens. The properly negotiable items under scrutiny in the public sector (salaries, fringe benefits, hours of work and leave, etc.) are not complicated. We deal with these details in our own lives daily and have a good basis for comparison. If we are obligated as patriotic citizens to sit on juries which decide life and death criminal matters and complicated social negligence issues, surely we are able to decide the working conditions of our own neighbors, our public servants.

We realize we have made no suggestions regarding strikes. We feel we cannot deny anyone this right, even if such denial were effective. We strongly feel, however, the inconvenience of strikes is preferable to the erosion of control of our governments and lives which is certain with binding arbitration. Though avoiding strikes is important, it is not as important as the responsibility of the school board and teachers' union to engage in direct bargaining and reach satisfactory conclusions. These powers should not be abdicated to arbitration.

Collective bargaining has established the framework for employers and their employees to find solutions to their own problems. This procedure should continue and we should not dilute it with binding arbitration. The Alaska Statutes clearly give the board the bargaining responsibility:

(1) "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." (A.S. 14.20.550.)

(2) "Nothing in sections 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." (A.S. 14.20.610)

Our State constitution states in Article 1, Section 2. "all political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

We believe that binding arbitration is incompatible with our democratic system and further that it is an unconstitutional delegation of the school boards authority to a third party who is not responsible or accountable to the public.

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

1 IN THE HOUSE — BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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.

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 renewal, whichever was later.

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

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

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

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

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

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

1 Conciliation Service to serve as the agency to resolve the dispute.
2 <u>The requesting party shall notify the educational employees labor</u>
3 <u>relations agency that the parties have requested a mediator.</u>
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.
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 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 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. (a) 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

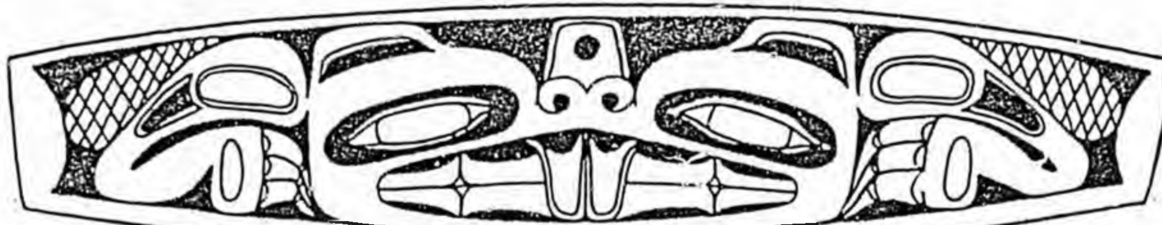
9 educational policies.

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).



ASSOCIATION OF ALASKA SCHOOL BOARDS
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BINDING ARBITRATION

The Association of Alaska School Boards has, for years, maintained strong opposition to the concept of binding arbitration in the collective bargaining process not primarily because binding arbitration is a bad process for the settlement of disputes, but because of the manner in which the law is written. AASB has grave concerns that the proposed manner of implementation of binding arbitration could cause grave inroads into the instructional processes of school districts.

Alaskans are really "babes in the woods" when it comes to binding arbitration. The general assumption is that either we have it or we don't have it. If we have it, we assume that it should merely be added onto the laws we currently have. It should apply to what now is currently negotiated. This notion is wrong.

The problem is that only recently have we even recognized that there needs to be a definition as to what is negotiable. Our state statutes essentially make everything negotiable and the Alaska Supreme Court has limited this to some degree. However, it is still very much the case that collective bargaining in Alaska can and does involve policy as well as working conditions, wages, and hours. Because binding arbitration removes final decisions from the employer and the employees, it would appear to me that it is premature for us to decide with one swoop to grant binding arbitration to teachers before we determine what it is that we are willing to submit to this process.

Binding arbitration legislation in other states provides a wide variety of options for Alaskans to seek guidance from. Some examples are:

Wisconsin

Both parties must agree to binding arbitration. If the parties do not agree, then employees have the right to strike with advance notice.

Maine

Binding arbitration only on non-money items. Advisory arbitration on all others.

Iowa

Binding arbitration on specific categories of items and clear employer

rights section and clear delineation of:
- mandatory items of bargaining
- optional items of bargaining of the parties agree
- prohibited items of bargaining

New York

Strong limitation on items submitted to arbitration and strike prohibition measures, including prohibiting dues collection by employers for strikers and double pay deductions for every day on the picket line.

Sound legislation dealing with binding arbitration should create a balance between the needs and rights of management and those of labor. Management needs a rights statement that clearly spells out the limits to which binding arbitration can infringe upon the responsibility of a school district to make management decisions. The responsibility of the school district is to provide a quality education for every child. Binding arbitration processes should not infringe upon this responsibility.

The Alaskan efforts at binding arbitration correct none of this. Under this Alaskan version, both teachers and students will ultimately suffer.

FY 84, if Governor Sheffield's proposed level of fiscal support to education is sustained in the legislature, will be the first year in over twelve years where there has been the same level of funding for two years in a row, yet school districts with continuing teacher negotiated agreements will be increasing the dollar expenditure for teacher salaries by something in excess of seven to ten percent.

With the state contributing 100% of the operating funds for REAA's and similarly high figures in the majority of city and borough districts, I find it difficult to comprehend the logic of limiting the operating funds to districts on the one hand and providing binding arbitration on the other. The results of this action are obvious: A larger portion of education dollars will go to teachers while programs and kids will suffer.

AASB's opposition to binding interest arbitration is further substantiated by the fact that, in our opinion, current Alaskan statutes regarding the employment status of teachers are not equipped to provide the implementation of a binding arbitration law. Specifically, should a binding settlement be awarded with sufficient financial impact to cause a reduction in force, we find ourselves in conflict with the law. In order to guarantee employer rights to lay off staff resulting from insufficient funds, the following statutes must be revised:

Sec. 14.20.140 Notification of Non-retention
Sec. 14.20.145 Automatic Reemployment
Sec. 14.20.175 Nonretention
Sec. 14.20.180 Hearings
Sec. 14.20.205 Judicial Review

Failure to act on this extremely important problem would be the crux of our opposition to binding arbitration. Failure to provide the ability to reduce certificated staff numbers as a means of restructuring the resource allocation of the district makes all kinds of discriminatory and academically unsound practices necessary. We feel arbitration awards that would require a reduction of classified staff while certificated personnel are protected from the same fate is discriminatory. To protect certificated staff from lay off and thus force reduction in expenditures into the textbook purchase, student activities or maintenance of facilities could be educationally unsound. Binding arbitration, under current legislative proposals will force these conditions upon us eventually.

Given these conditions, elected public officials, the school board, will be prohibited from performing their public charge; that of providing a quality education for every child.

Alternatives to binding arbitration and even alternatives to current negotiating practices, INCLUDING BINDING ARBITRATION, have been proposed in recent years by AASB with little or no success. Teacher unions have argued that the present process is time consuming yet proposals designed to speed up the process have fallen on deaf ears. Proposals to give mediators extra powers over the parties of interest for the purpose of affecting settlements were received with disinterest. Proposals designed after months of serious consideration by a blue ribbon commission created by the Governor have been disregarded. These proposals included the process of binding arbitration on all financial matters. It would appear that only the simplistic approach of adding to what is already in law will be acceptable to teacher groups.

The newest legislative attempt to provide binding arbitration would pattern a process exactly after the process now in effect for public safety personnel in the state. Under that process there is little definition of what is bargainable or what goes to arbitration. There is no built in incentive for negotiating or remaining at the table rather than going to impasse and arbitration. Alaska now has considerable data and a historical perspective relative to the operation of this process with the police negotiations. It has been determined that the collective bargaining process with those groups has been chilled considerably; that the parties spend considerably less time seriously bargaining, and have gone to arbitration every time but once since the law was enacted. It can also be said that, over the long haul, arbitration has increased the salaries and economic benefits of those involved more than increases gained by groups not utilizing arbitration.

Not until the proponents of binding arbitration seriously consider a full fledged mediation process, fact finding complete with the publication of these reports and the limitation of what it is that can go to the arbitrator and other positions expressed in this paper, will AASB be interested in discussing the merits of binding arbitration in teacher collective bargaining laws for Alaska.

NEA - ALASKA

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February, 1983

<u>NEA-ALASKA STATEMENT RE:</u> Problems attendant to AS 14.20.550-610, Negotiations with Certificated Employees in Public Schools.

The public school teacher bargaining law is in urgent need of revision and reform.

Since 1970 Alaska public school teachers have had the right to negotiate on matters pertaining to their employment and the fulfillment of their professional duties under the above referenced law.

While the process has generally served the interests of teachers and school boards the law has a number of deficiencies, some of which have been particularly troublesome in recent years. The three most prominent are:

1) The law does not define an orderly dispute settlement procedure in the event the parties are unable to reach agreement in negotiations.

2) As a result of the above, in many school districts the collective bargaining process is being substantially lengthened, in some cases taking well over a year. This burns up valuable time and energy and creates needless frustration.

3) The most serious problem is the absence of any provision which establishes finality to the process.

The 1979 Anchorage teacher strike brought dramatic emphasis to all of the problems surrounding the current teacher negotiations law. In its August 1982, decision the Alaska Supreme Court held that public school teachers in Alaska do <u>not</u> have the right to strike.

differ from Governor HB 130

p. 4, line 16 - employees released from work day to negotiate

p. 5, line 13 Gov section - "cooling off" period

p. 6, line 9 judicial review to modify/correct

p. 5, line 21 - Gov - arbitrator must be state resident

p. 7, line 11 - Bd. membership - labor relations agency vs. personnel board

p. 5, line 15 - parties may call for arbitration
Gov - parties must submit to arbitration

p. 5, line 17 - total pkg. arbitration (Gov.) vs. item by item

Sandra

14-0664
Cramer
2/15/85

IN THE SENATE

BY FAHRENKAMP, RODEY AND ZHAROFF

Both parties have to agree to arbitration? (Strike?)

Pts. arbitrator must consider.

SENATE BILL NO.

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FOURTEENTH LEGISLATURE - FIRST SESSION

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

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

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

organization, the employees desire to be represented, and shall certify the results of the election. The parties may, in accordance with agency regulations, waive a hearing for a consent election, voluntary certification, or an election in a negotiating unit agreed upon by the parties. The agency shall determine the persons eligible to vote in an election and shall adopt regulations governing the election. In an election in which none of the choices on the ballot receives a majority of the votes cast, the agency shall conduct a runoff election. The ballot in the runoff election shall provide for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. If a bargaining organization receives the majority of the votes cast in the election, the agency shall certify the organization as the exclusive representative of all the employees in the negotiating unit.

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

(d) The parties may, by mutual consent, recognize an organization as the exclusive representative.

(e) In a negotiating unit in which there is in force a valid collective bargaining agreement, the agency may direct an election only during the 90-day period preceding the expiration date of the agreement. However, an agreement does not bar an election upon petition of persons in the negotiating unit but not parties to the agreement if more than three years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

(f) Noncertificated employees or certificated administrative personnel may choose by secret ballot to negotiate independently of other personnel. If noncertificated or certificated administrative

1 personnel seek to negotiate independently, the agency shall review the
2 submitted representation petition and, if 30 percent of the employees
3 in a proper negotiating unit sign the petition, the agency shall
4 conduct a representation election.
5 * Sec. 5. AS 14.20 is amended by adding a new section to read:
6 Sec. 14.20.565. NEGOTIATION MEETINGS. (a) A school board
7 shall, upon the written request of an employee bargaining organiza-
8 tion, meet with the representative of the organization within 20 days
9 after the request, at a time and place to be agreed upon. In the same
10 manner, representatives of an employee bargaining organization shall
11 meet with a school board or its representatives within 20 days after
12 receiving a written request.
13 (b) Notwithstanding AS 44.62.310, a negotiation meeting may be
14 held in executive session upon agreement of both parties, but all
15 final agreements must be made at a public meeting of the school board.
16 added (c) When negotiation sessions are conducted during the employee
17 workday, members of the employee negotiations team shall be released
18 from work assignments without loss of pay or benefits.
19 * Sec. 6. AS 14.20.570(a) is amended to read:
20 (a) Upon [THE] written request for mediation by an employee bar-
21 gaining <u>organization</u> [AGENCY] or a school board, and upon certifica-
22 tion by the requesting party that the parties cannot agree on an
23 independent private mediator and that good faith negotiations have
24 terminated in an impasse, the following <u>procedure shall be followed</u>
25 [OCCURS]:
26 (1) Within seven days <u>after</u> [OF] the certification<u>,</u> the
27 requesting party shall ask the United States Federal Mediation and
28 Conciliation Service to serve as the agency to resolve the dispute.
29 <u>The requesting party shall notify the educational employees labor</u>

relations agency that the parties have requested a mediator.

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

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

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

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

Sec. 14.20.580. ARBITRATION. (a) If 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 for the selection of an arbitrator, the educational employees labor relations agency shall direct the parties to use the services of and comply with the procedures of the American Arbitration Association.

(c) In last-best-offer arbitration under this section, each party shall submit a final offer on each issue in dispute. Each party may submit to the arbitrator oral 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 to take testimony from any interested person on the issues in dispute. The arbitrator shall allow each party to revise

its last best offer on each issue before final submission to the arbitrator for decision.

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

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

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

Sec. 14.20.584. JUDICIAL REVIEW. On application of a party, the superior court under AS 09.43.110 - 09.43.130 shall confirm, vacate, modify or correct an award.

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

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

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

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

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

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

Sec. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (a) There is established in the Department of Administration an educational employees labor relations agency that consists of five members. The three members of the state labor relations agency established under AS 23.40 are members of the educational employees labor relations agency. The governor shall appoint two additional members to the agency. The two gubernatorial appointees to the educational employees labor relations agency serve at the pleasure of the governor.

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

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

Sec. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (a) The educational employees labor relations agency shall perform the functions described in AS 23.40.120 - 23.40.180 to carry out the provisions of AS 14.20.540 - 14.20.610.

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

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

Sec. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. Nothing in AS 14.20.540 - 14.20.600 [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 * Sec. 13. This Act does not modify or terminate a negotiating unit or
2 agreement in existence on the effective date of this Act.
3 * Sec. 14. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).
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(1) WITHIN SEVEN DAYS OF THE CERTIFICATION THE REQUESTING PARTY SHALL ASK THE UNITED STATES FEDERAL MEDIATION AND CONCILIATION SERVICE TO SERVE AS THE AGENCY TO RESOLVE THE DISPUTE. THE REQUESTING PARTY SHALL NOTIFY THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY THAT THE PARTIES HAVE REQUESTED A MEDIATOR.

(2) THE MEDIATOR SHALL CHAIR ALL MEDIATION MEETINGS BETWEEN THE DISPUTING PARTIES AND ATTEMPT TO RESOLVE THE DIFFERENCES BETWEEN THE DISPUTING PARTIES AND REACH COMMON ACCEPTANCE OF TERMS AND CONDITIONS OR OTHER ITEMS IN DISPUTE WHEREVER POSSIBLE.

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

(3) ō(4)ē EACH PARTY TO THE DISPUTE MAY

passed Senate last yr. — died H. L&C

SELECT A TEAM ōOF NOT MORE THAN FIVE PERSONSē TO PRESENT THE EVIDENCE, THINKING, AND POSITION OF THE GROUP THEY REPRESENT ō,ē TO THE MEDIATOR.

* SEC. 6. AS 14.20.580 IS REPEALED AND REENACTED TO READ:

SEC. 14.20.580. CONTINUED IMPASSE. THE MEDIATOR SHALL NOTIFY THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY WHEN THE PARTIES JOINTLY AGREE, OR WHEN THE MEDIATOR INDEPENDENTLY DETERMINES, THAT FURTHER MEDIATION WOULD NOT PROMOTE RESOLUTION OF THE DISPUTE. FOLLOWING MEDIATION, THE PARTIES SHALL OBSERVE A 10-DAY COOLING-OFF PERIOD.

* SEC. 7. AS 14.20 IS AMENDED BY ADDING NEW SECTIONS TO READ:

SEC. 14.20.581. LOCAL OPTION. (A) A SCHOOL BOARD AFTER PUBLIC HEARING SHALL BY WRITTEN RESOLUTION DECIDE WHETHER LAST BEST OFFER MEDIATED ARBITRATION OR THE RIGHT TO STRIKE SHALL FOLLOW THE MEDIATION PROCEDURE DESCRIBED IN AS 14.20.570. THE RESOLUTION SHALL BE ADOPTED BEFORE THE MEDIATION PROCESS BEGINS.

(B) A RESOLUTION ADOPTED IN ACCORDANCE WITH THIS SECTION IS BINDING UNTIL AN AGREEMENT IS REACHED. HOWEVER, THE PARTIES MAY MUTUALLY AGREE TO MODIFY THE OPTION SELECTED UNDER THIS SECTION.

SEC. 14.20.582. EMPLOYEE STRIKES. (A) IF THE BOARD ADOPTS A RESOLUTION THAT AUTHORIZES EMPLOYEES TO ENGAGE IN A STRIKE, THE EMPLOYEES MAY ENGAGE IN A STRIKE IF A MAJORITY OF THE EMPLOYEES WHO ARE MEMBERS OF THE BARGAINING AGENCY ELECT TO DO SO.

(B) IF THE EMPLOYEES ELECT NOT TO STRIKE, THE SCHOOL BOARD IS NOT REQUIRED TO PARTICIPATE IN ARBITRATION. THIS SUBSECTION DOES NOT PROHIBIT THE PARTIES FROM REQUESTING CONTINUED ASSISTANCE FROM THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY IN THE RESOLUTION OF THE DISPUTE.

(C) DURING A STRIKE DESCRIBED IN (A) OF THIS SECTION, AN AGGRIEVED PERSON MAY APPLY TO THE SUPERIOR COURT IN THE JUDICIAL DISTRICT IN WHICH THE STRIKE IS OCCURRING FOR AN ORDER ENJOINING THE STRIKE. A STRIKE MAY NOT BE ENJOINED UNLESS IT CAN BE SHOWN THAT IT THREATENS THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC. A COURT, IN DECIDING WHETHER TO ENJOIN THE STRIKE, SHALL CONSIDER THE TOTAL EQUITIES IN EACH PARTICULAR CASE. TOTAL EQUITIES INCLUDES THE IMPACT OF A STRIKE ON THE PUBLIC AS WELL AS THE EXTENT TO WHICH EMPLOYEE ORGANIZATIONS AND PUBLIC EMPLOYERS HAVE MET THEIR STATUTORY OBLIGATIONS. IF AN IMPASSE OR DEADLOCK STILL EXISTS AFTER THE ISSUANCE OF AN INJUNCTION, THE PARTIES SHALL SUBMIT TO ARBITRATION UNDER AS 14.20.583.

(D) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL ESTABLISH PROCEDURES UNDER WHICH THE BARGAINING AGENT SHALL CONDUCT THE ELECTION DESCRIBED IN THIS SECTION.

SEC. 14.20.583. ARBITRATION. (A) THE PARTIES SHALL SUBMIT TO LAST BEST OFFER MEDIATED ARBITRATION IF THE BOARD ADOPTS A RESOLUTION UNDER AS 14.20.581 THAT PRECLUDES AN EMPLOYEE STRIKE, OR IF ARBITRATION RESULTS UNDER AS 14.20.582(A) OR (C). AN AGREEMENT BETWEEN A BOARD AND AN EMPLOYEE GROUP SHALL INCLUDE A PROCEDURE TO PROMPTLY SELECT AN ARBITRATOR. IF THE PARTIES ARE UNABLE TO AGREE ON A CONTRACTUAL PROVISION THAT PROVIDES FOR THE SELECTION OF AN ARBITRATOR, THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL DIRECT THE PARTIES TO USE THE SERVICES OF AND COMPLY WITH THE PROCEDURES OF THE FEDERAL MEDIATION AND CONCILIATION SERVICES OR THE AMERICAN ARBITRATION ASSOCIATION IN THE SELECTION OF AN ARBITRATOR. AN ARBITRATOR SELECTED UNDER THIS SUBSECTION SHALL BE A RESIDENT OF THE STATE.

(B) IN LAST BEST OFFER MEDIATED ARBITRATION UNDER THIS SECTION EACH PARTY SHALL SUBMIT A FINAL OFFER ON ALL ISSUES IN DISPUTE. EACH PARTY SHALL SUBMIT TO THE ARBITRATOR ORAL OR WRITTEN EVIDENCE IN SUPPORT OF ITS POSITION AND 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. AT THE REQUEST OF EITHER PARTY, OR ON THE MOTION OF THE ARBITRATOR, THE ARBITRATOR MAY CONDUCT A PUBLIC MEETING FOR THE PURPOSE OF ALLOWING THE PARTIES TO PRESENT AND EXPLAIN THEIR POSITIONS AND FINAL OFFERS. THE ARBITRATOR SHALL ALLOW EACH PARTY TO REVISE ITS LAST BEST OFFER BEFORE FINAL SUBMISSION TO THE ARBITRATOR FOR DECISION.

(C) THE DECISION OF THE ARBITRATOR SHALL TAKE INTO CONSIDERATION

(1) THE HISTORY OF NEGOTIATIONS BETWEEN THE PARTIES BEFORE ENTERING ARBITRATION;

ok w/NEA

(2) THE PUBLIC INTEREST AND FINANCIAL ABILITIES OF THE SCHOOL DISTRICT;

(3) THE INTEREST AND WELFARE OF THE EMPLOYEE GROUP;

(4) CHANGES IN THE COST OF LIVING;

(5) THE EXISTING EMPLOYMENT CONDITIONS OF THE EMPLOYEE GROUP COMPARED WITH THOSE OF SIMILAR GROUPS; AND

(6) THE SALARIES, FRINGE BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT PREVAILING IN THE STATE LABOR MARKET.

(D) THE ARBITRATOR SHALL WITHOUT MODIFICATION ADOPT THE LAST BEST OFFER OF ONE OF THE PARTIES AND ISSUE A FINAL AND BINDING DECISION NOT MORE THAN 10 DAYS AFTER THE PARTIES HAVE PRESENTED THEIR LAST BEST OFFER.

(E) THE PARTIES SHALL SHARE THE COST OF THE ARBITRATOR EQUALLY.

SEC. 14.20.584. ARBITRATION AWARD. (A) ON APPLICATION OF A PARTY, THE SUPERIOR COURT SHALL CONFIRM AN AWARD UNLESS GROUNDS ARE URGED FOR VACATING, MODIFYING, OR CORRECTING THE AWARD.

(B) ON APPLICATION OF A PARTY, THE COURT SHALL VACATE AN AWARD IF

(1) THE AWARD WAS PROCURED BY FRAUD OR OTHER UNDUE MEANS;

(2) THERE WAS EVIDENT PARTIALITY, CORRUPTION, OR MISCONDUCT BY AN ARBITRATOR PREJUDICING THE RIGHTS OF A PARTY;

(3) THE ARBITRATOR EXCEEDED ITS POWERS;

(4) THE ARBITRATOR REFUSED TO POSTPONE THE HEARING UPON SUFFICIENT CAUSE BEING SHOWN FOR POSTPONEMENT, REFUSED TO HEAR EVIDENCE MATERIAL TO THE CONTROVERSY, OR OTHERWISE CONDUCTED THE HEARING TO SUBSTANTIALLY PREJUDICE THE RIGHTS OF A PARTY.

(C) THE FACT THAT THE RELIEF ORDERED BY AN ARBITRATOR COULD NOT OR WOULD NOT BE GRANTED BY A COURT IS NOT GROUND FOR VACATING OR REFUSING TO CONFIRM THE AWARD.

(D) AN APPLICATION TO THE SUPERIOR COURT UNDER THIS SECTION SHALL BE MADE WITHIN 90 DAYS AFTER DELIVERY OF A COPY OF THE AWARD TO THE APPLICANT. HOWEVER, IF THE APPLICATION IS PREDICATED UPON CORRUPTION, FRAUD, OR OTHER UNDUE MEANS BY EITHER THE OPPOSING PARTY OR AN ARBITRATOR, IT SHALL BE MADE WITHIN 90 DAYS AFTER THE GROUNDS ARE KNOWN OR SHOULD HAVE BEEN KNOWN.

(E) IN VACATING AN AWARD THE COURT MAY ORDER A REHEARING BEFORE A NEW ARBITRATOR CHOSEN AS PROVIDED IN THE AGREEMENT, OR IN THE ABSENCE OF A PROVISION IN THE AGREEMENT, AS PROVIDED UNDER AS 14.20.583. IF THE AWARD IS VACATED ON GROUNDS SET OUT IN (B)(3) OR (4) OF THIS SECTION, THE COURT MAY ORDER A REHEARING BEFORE AN ARBITRATOR WHO MADE THE AWARD OR BEFORE A SUCCESSOR APPOINTED AS PROVIDED IN THIS SUBSECTION. THE TIME WITHIN WHICH THE ORIGINAL AGREEMENT OF THE PARTIES REQUIRES AN ARBITRATION AWARD TO BE MADE IS APPLICABLE TO THE REHEARING AND COMMENCES FROM THE DATE OF THE ORDER REQUIRING A REHEARING.

(F) IF THE APPLICATION TO VACATE IS DENIED AND A MOTION TO MODIFY OR CORRECT THE AWARD IS NOT PENDING, THE COURT SHALL CONFIRM THE AWARD.

SEC. 14.20.585. MODIFICATION OR CORRECTION OF AWARD. (A) ON APPLICATION OF A PARTY MADE WITHIN 90 DAYS AFTER DELIVERY OF A COPY OF THE AWARD TO THE APPLICANT THE SUPERIOR COURT SHALL MODIFY OR CORRECT THE AWARD IF

(1) THERE WAS AN EVIDENT MISCALCULATION OF FIGURES OR AN EVIDENT MISTAKE IN THE DESCRIPTION OF A PERSON OR REAL OR PERSONAL PROPERTY REFERRED TO IN THE AWARD;

(2) AN ARBITRATOR HAS MADE AN AWARD CONCERNING A MATTER NOT SUBMITTED TO THE ARBITRATOR AND THE AWARD MAY BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION UPON THE ISSUES SUBMITTED; OR

(3) THE AWARD IS IMPERFECT IN A MATTER OF FORM NOT AFFECTING THE MERITS OF THE CONTROVERSY.

(B) IF THE APPLICATION OF A PARTY UNDER THIS SECTION IS GRANTED, THE COURT SHALL MODIFY AND CORRECT THE AWARD TO EFFECT ITS INTENT AND SHALL CONFIRM THE AWARD AS MODIFIED AND CORRECTED. IF THE APPLICATION IS DENIED, THE COURT SHALL CONFIRM THE AWARD AS MADE.

(C) AN APPLICATION TO MODIFY OR CORRECT AN AWARD MAY BE JOINED IN THE ALTERNATIVE WITH AN APPLICATION TO VACATE THE AWARD.

* SEC. 8. AS 14.20.590 IS AMENDED TO READ:

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 TO RESOLVE GRIEVANCES.

* SEC. 9. AS 14.20.600 IS AMENDED TO READ:

SEC. 14.20.600. INDIVIDUAL RIGHTS ōCASESē. (A) NOTHING IN AS 14.20.550 - 14.20.590 PROHIBITS AN EMPLOYEE FROM ADDRESSING A SCHOOL BOARD, AS AN INDIVIDUAL, THROUGH THE REGULAR PROCEDURES OF THE SCHOOL BOARD FOR HEARING INDIVIDUAL CASES.

(B) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY CONSISTENT WITH THE PURPOSES OF AS 14.20.540 - 14.20.610 SHALL SET FORTH PROCEDURES TO SAFEGUARD THE RIGHTS OF NONASSOCIATION OF EMPLOYEES HAVING BONA FIDE RELIGIOUS CONVICTIONS.

* SEC. 10. AS 14.20 IS AMENDED BY ADDING NEW SECTIONS TO READ:

SEC. 14.20.605. EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY. (A) THERE IS ESTABLISHED AN EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY WHICH CONSISTS OF FIVE MEMBERS. THE THREE MEMBERS OF THE STATE LABOR RELATIONS AGENCY (AS 23.40) ARE MEMBERS OF THE EDUCATIONAL EMPLOYEES LABOR AGENCY. THE GOVERNOR SHALL APPOINT TWO ADDITIONAL MEMBERS TO THE AGENCY ONE EACH FROM LISTS OF NOMINEES SUBMITTED BY THE NATIONAL EDUCATION ASSOCIATION OF ALASKA AND THE ALASKA ASSOCIATION OF SCHOOL BOARDS, EACH OF WHOM MUST HAVE AT LEAST THREE YEARS EXPERIENCE IN MATTERS RELATING TO EDUCATION IN ALASKA. THE TWO GUBERNATORIAL APPOINTEES TO THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SERVE AT THE PLEASURE OF THE GOVERNOR.

(B) MEMBERS OF THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT ARE ENTITLED TO PER DIEM AND TRAVEL EXPENSES AUTHORIZED FOR BOARDS AND COMMISSIONS.

(C) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY MAY EMPLOY STAFF ASSISTANCE AS IT CONSIDERS NECESSARY TO IMPLEMENT THE PROVISIONS OF AS 14.20.540 - 14.20.610.

SEC. 14.20.606. POWER TO IMPLEMENT NEGOTIATIONS. (A) THE EDUCATIONAL EMPLOYEES LABOR RELATIONS AGENCY SHALL PERFORM THE FUNCTIONS DESCRIBED IN AS 23.40.120 - 23.40.180 TO CARRY OUT THE PROVISIONS OF AS 14.20.540 - 14.20.610.

(B) THE PROHIBITION OF UNFAIR LABOR PRACTICES, AS DESCRIBED IN AS 23.40.110, APPLIES TO A SCHOOL BOARD AND AN EMPLOYEE ORGANIZATION.

* SEC. 11. AS 14.20.610 IS AMENDED TO READ:

SEC. 14.20.610. LEGAL RESPONSIBILITIES OF BOARDS. NOTHING IN AS 14.20.540 - 14.20.600 ō14.20.550 - 14.20.600ē MAY BE CONSTRUED AS AN ABROGATION OR DELEGATION OF THE LEGAL RESPONSIBILITIES, POWERS, AND DUTIES OF THE SCHOOL BOARD INCLUDING ITS RIGHT TO MAKE FINAL DECISIONS ON EDUCATIONAL POLICIES.

* SEC. 12. AN EXISTING SCHOOL BOARD SHALL MAKE THE LOCAL OPTION DECISION BETWEEN LAST BEST OFFER MEDIATED ARBITRATION OR THE RIGHT TO STRIKE REQUIRED UNDER AS 14.20.581(A) ADDED BY SEC. 8 OF THIS ACT WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS ACT.

* SEC. 13. THIS ACT DOES NOT MODIFY OR TERMINATE A NEGOTIATING UNIT OR AGREEMENT IN EXISTENCE ON THE EFFECTIVE DATE OF THIS ACT.

* SEC. 14. THIS ACT TAKES EFFECT IMMEDIATELY IN ACCORDANCE WITH AS 01.10.070(C).

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

Sandra 12-84

BINDING ARBITRATION
1983-84 session was SB 78. Sen. HESS CS died in H. L&C
1981-82 was HB 174.

1. Who choose strike over arbitration, teachers or board? When is a strike OK? After what amount of negotiation? The issue is how to finalize negotations. Strike, unilateral determination, or binding arbitration? If strike, allow injunctive relief (court order teachers back)?

AK teachers no right to strike

2. Political approval (municipal assembly or legislature if REAA) of arbitrator's award? (Puts local school boards under more direct control of assemblies. Binding arbitration prohibits elected body from exercising its responsibility to constituents.)

unlawfully delegate gov. decision powers to nongov. authority

Undermines public employer's authority to run show.

3. Which employees allowed to collective bargain? Certified vs. noncertified

4. How define grievance?

5. Scope of negotiations? What items must be negotations, which optional, and which prohibited? + Negotiability vs. arbitrability of items.
What is negotiable?

NOTES:
Since 1970 teachers have had right to negotiate, but there is no dispute settlement procedure; no finality.
1979 Anchorage teachers strike - Alaska Supreme Court ruled in 1982 that teachers do not have the right to strike. Rabinowitz's dissenting opinion said if teachers are denied the right to strike, should be given right to compulsory arbitartion.

As of 2/18/83, Juneau, Fb, Anch, Kenai were only ones out of the 54 school districts that have a collective bargaining agreement with a union or association.

PERA (AS 23.40.070-.260) provides orderly negotiation procedures for all public employees except teachers.

QUESTIONS:
How fit with SB 154 Koslosky?
What is the "Kenai case"?

Arbitrator have authority to impose settlement upon parties?
p.6, line 4 - "final & binding decision"

mediate - if can't agree, arbitrate.
strike allowed?

per Bob Manners
2-18-85

conventional arbitration –
arbitrator "fashions" the decision.
(NEA proposal) "last best offer" – selects one position or the other.
Can propose compromises.

NEA –

1. don't want arbitrator to be AK resident
2. item by item vs. package
3. criteria for making decision (from 1984 bill) O.K.
4. AG says don't need to specify judicial review 'cause already in law (AS 09.43.120 -.130)
5. either party cause arbitration to commence vs. both parties having to agree
6. aren't asking for right to strike
7. Kenai case limits negotiable items

SB 78
POSITION PAPER

Collective Bargaining Between School Boards and Their Employees

The Committee Substitute for Senate Bill 78 has recognized three basic fundamentals which the Administration feels are vital in meeting the needs of educational collective bargaining:

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

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

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

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

1. The establishment of an Educational Labor Relations Board composed of the present State Labor Relations Agency plus, an additional two members from the educational community. This coupling of those already versed in Labor Related decisions on the record with the insight of those from Educational Community will save both time and money in implementing the new law change.

2. Overcoming the uncertainty found in AS 14.20.550 by defining "administrators" who may or may not participate in collective bargaining is long overdue. In addition, clarifying the right of non-certificated educational employees to organize, thus making them equal to their counterparts in State service is also looked upon by the Administration as an important step toward equitability in the law.

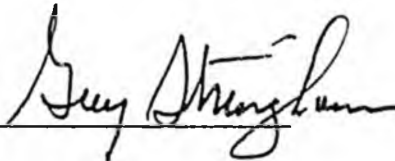
3. The establishment of a series of steps beyond impasse to bring bargaining to a bilateral conclusion by allowing for one of the following. A ten-day cooling off period, followed by the schoolboards' right to choose between unlimited strike followed by mediated arbitration, a limited 45-day strike followed by mediated arbitration, or an immadiate move to mediated arbitration. These choices

preserve the District Schoolboards' opportunity to choose the vehicle it feels best in a given situation, while ensuring the employee groups with a bilateral ending.

As the parties can move to resolution at any point, the pressure of the above actions will spur both parties to seek compromise as quickly as possible.

4. The use of Alaskan arbitrators versed in contract resolution, education and the needs of the public will help alleviate the fears of both Schoolboard and employee representative organizations that they will not get a fair contract under this system.

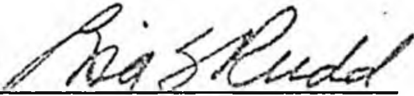
Prepared by:



Guy Stringham
Director
Division of Labor Relations

4/18/83
Date

Approved by:



Lisa Rudd
Commissioner
Department of Administration

4/18/83
Date

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RESOLVING IMPASSES

[¶ 5621] Handling impasses.—The best way to handle impasses is to avoid them by making the negotiation process work. But if the parties are not able to reach agreement in the course of negotiations, what happens? Public sector strikes are generally illegal. So various strike alternatives have been tried and new techniques are constantly being developed to solve this high-voltage problem.

Solutions will probably not be found until there's consensus about the meaningful differences between public and private employment. To what degree are they great enough to make techniques used in the private sector inappropriate? Views about this haven't jelled. Until they do, diversity in methods for settling contract disputes will continue—mediation, factfinding, arbitration and legal and illegal strikes.

Mediation

[¶ 5625] What is it?—Mediation has been defined as "assistance by an impartial third party to reconcile an impasse between the public employer and the exclusive representative regarding wages, hours, and other terms and conditions of employment through interpretation, suggestion, and advice to resolve the impasse" [Haw. ¶ 11,102].

Mediation is generally either the required or authorized first step in an impasse procedure. Although other impasse techniques are often subject to legal attack, mediation is not. Since there is no element of compulsion, there are no problems of unlawful delegation of governmental powers.

A mediator's job is to find common grounds for compromise when the parties cannot, and through informal techniques, promote settlement of contract disputes. In the public sector, a mediator also participates in "preventive mediation" by serving as an educator for negotiators new to the collective bargaining process.

MEDIATOR'S FUNCTION → The advice of the professional mediator is valuable. Experienced mediators have been through the mill. Their advice may seem unpalatable but it may contain a hidden clue to solving a seemingly insoluble dispute. Mediation isn't just a time-consuming process required before going into factfinding. It's a stage of negotiations that frequently results in a settlement.

[¶ 5626] Conciliation distinguished.—The terms mediation and conciliation are often used interchangeably. They are similar but not the same. The mediator comes up with solutions when efforts at conciliation fail. Conciliation essentially involves persuasion. The conciliator meets jointly or separately with the bargaining teams to try to convince them that it's in their own interest to settle. He/she will also stress the public interest.

Mediators don't stop at cajoling or persuasion. They make a determined effort to find a common ground for settlement. Failing that, they give professional advice and make suggestions and recommendations as to how the dispute can be settled. The charge placed upon mediators by the agency employing them is to resolve the dispute, hopefully, short of a strike.

FACTFINDING COMPARED → Mediation differs from factfinding because it is an informal rather than formal procedure. The procedures are similar in that neither involves binding recommendations.

[¶ 5627] Obtaining the services of a mediator.—Labor relations agencies such as public employment relations boards generally act as clearing houses for mediators. In the federal sector, the Federal Mediation and Conciliation Service provides mediation services [See Fed. ¶ 35,550].

The mediator may be a full-time professional or a college professor, an ex-labor relations director or ex-union representative serving on a panel of part-time ad hoc mediators provided by a state agency. He/she may be a neutral official of some other agency or a leading citizen with a reputation for getting things done and is therefore designated by the governor or the mayor to resolve the dispute.

Don't be overly concerned if a mediator has a trade union or management background. Mediators' experience as negotiators for either side helps them develop creative approaches to settlement. A battle-scarred veteran of bargaining may be much more realistic and effective in offering advice than someone who's chosen merely because of the point of view he or she represents.

[¶ 5628] The process.—In the first session, a mediator's usual technique is to have a free discussion in a joint session with both bargaining teams. Then he/she meets privately with the team that has the greater complaints.

What are their *real* concerns? What have they been advocating for trading purposes and what are the real "musts"? Are they willing to effect a compromise on any of their supposed "musts"? Are they aware of the chances they are taking in letting a dubious position go to factfinding?

After exploring issues in private conference, the mediator often urges resumption of direct negotiations. He/she may preside over several bargaining sessions before again separating the parties. He may urge one team or the other to state openly what it has said privately. Negotiators may find it advisable to comply but make their doing so contingent upon acceptance of a counter-proposal or upon the other side's willingness to modify or withdraw certain of its demands. A skillful mediator will explore every avenue in open session that might prove to be the catalyst leading to resolving the impasse.

The mediator may go further. If his or her advice has been rejected in part or in toto, the mediator still may present specific recommendations. These may stem from the neutral's own concept of what it would take to break a deadlock or from mere intuition as to what will be acceptable to the parties.

MEDIATOR IS NOT AN ARBITRATOR → Remember that the mediator isn't an arbitrator with the authority to impose a settlement upon the parties. He or she recommends but cannot mandate. In some states, a mediator's recommendations, if rejected, cannot even be referred to or given any weight in factfinding proceedings.

[¶ 5629] Mediator's techniques.—The mediator is generally free to adopt any technique that will help settle a dispute. One exception is that some jurisdictions do not permit the mediators to make his/her findings public—or even submit them to a factfinder.

The mediator analyzes the power structure, separates "musts" from other items and groups packages. He/she (1) also is a good listener and gets negotiators who've stopped talking to open up; (2) cools things down when necessary; (3) is also adept at finding face-saving solutions and other expedients to generate compromise. The mediator ordinarily tries to convince both negotiating teams that they should choose the known over the unknown. The big unknown in the impasse process is what sort of a factfinder might be assigned if the dispute isn't settled.

YOUR TECHNIQUES → Don't put the mediator on the spot. He or she shouldn't be placed in the position of seeming to violate confidential disclosures. A mediator can't reveal to the other side what has been said in confidence. At the same time, you may want the mediator to intimate to the other side what you're willing to concede. Tell the mediator. But don't irrevocably commit your team to a proposition in a confidential discussion with the mediator. If you do, don't blame him or her for leaking it to your adversaries and urging its acceptance.

[¶ 5630] Mediator's recommendations.—The mediator's recommendations should not be taken lightly. He/she usually has good reason to believe that one side or the other will find them generally acceptable or is convinced that what is proposed would be a fair solution of the issues in dispute. If he/she proposes a contract clause supporting the demand of the other side, this doesn't mean lack of impartiality. It does reflect considered judgment that the clause has merit.

At worst, the mediator's recommendations for porposed contract settlement show how far apart the parties are and set the stage for the next step. At best, they suggest possibilities for narrowing disputed issues or eliminating them altogether.

[¶ 5631] Do you want to go to factfinding?—Before making a decision, consider the implications. They differ from state to state. In *New Jersey*, for example, the mediator's recommendations can't be presented to the factfinder [N.J. ¶ 35,003,19: 12-3.5.]. Of course, if no law controls, the parties are free to decide what pre-conditions, if any, to set for admission of facts, arguments, conclusions or recommendations generated in the mediation proceedings.

DON'T BE TOO QUICK TO DROP A MEDIATOR → Study your position before breaking off relations with the mediator. Which of his or her recommendations, if disclosed to the public, would gain widespread support? Which would strengthen the opposition's hand? Which could be accepted without forfeiting any essential right or prerogative? While the mediator doesn't always know best, his/her advice shouldn't be totally ignored. The mediator may not feel free to disclose any information about the ultimate position of the other side. Look for hints that are often more revealing than outright recommendations.

Also, consider the cost of preparing and presenting the case to the factfinder. Each issue must be researched and the more issues that remain unsettled, the higher the cost of preparation.

⇉ BUT IT MAY BE INEVITABLE → If a truly important principle is involved, the party must go to factfinding regardless of costs.

Factfinding

[¶ 5635] What is it?—Factfinding is often the second step in the hierarchy of impasse techniques used in the public sector. If mediation fails, factfinding begins. Factfinding is the investigation of a public sector labor dispute by an individual, panel, or board that submits a report to the parties describing the issues involved. The report may contain recommendations for settlement and sometimes may be made public.

Factfinding, like mediation, is not usually attacked legally because factfinders' recommendations are not binding on parties. Many state laws authorize or require it. In addition, the parties may agree to submit disputes to factfinding in the absence of a legal requirement to do so.

Factfinding differs from mediation in that it is a formal proceeding. It is comparable to arbitration with one important difference. Factfinding leads to *recommendations* for settlement. Arbitration means a *prescribed* settlement.

⇉ ADVISORY ARBITRATION → Factfinding is similar to advisory arbitration. When the process is used to settle grievance disputes, it's generally called advisory arbitration. When used to settle contract impasses, it's called factfinding.

[¶ 5636] Who serves as factfinder?—Factfinders are generally supplied by labor relations boards. They often are experienced private or public sector arbitrators.

⇉ CHECK THE PROPOSED FACTFINDER → Assume you'll be assigned a competent factfinder but, if you have a choice under your state law, you can check the factfinder's background. Review recommendations made in comparable cases. They are frequently made public.

[¶ 5637] Criteria.—Factfinder's criteria may or may not be set out in the law authorizing the procedure. Generally, the laws do set out the procedure to be followed in detail but do not specify criteria. One exception is the *Indiana* collective bargaining law for teachers [Ind. ¶ 17,113].

The criteria generally relied on by factfinders are these:

- Comparisons of wages and other conditions of employment of the employees with those of others doing comparable work in the public or private sector at nearby locations.
- The employer's traditional rank when so compared.
- The employer's ability to pay.
- Cost-of-living increases.
- The bargaining history of the parties.
- The public interest.

[¶ 5638] What factfinders do.—Factfinders analyze the relevancy of the facts and contentions presented to them. Then it's their job to come up with recommendations. The recommendations are hopefully palatable to both sides. If either side finds them otherwise, unless there's a further step in the impasse procedure, the impasse continues until the force of public opinion produces a change of position by one side or the other.

⇉ UNCERTAINTY OF FACTFINDING → Factfinders, like arbitrators, needn't be consistent. They may stick to "precedents" established by previous arbitration or factfinding awards or they may not. They can also find any number of reasons for deviating from the principles of other cases. The circumstances, in their opinion, may differ or the value of one criterion as opposed to another may vary. For example, ability to pay may be a crucial factor in the current dispute even though in a prior case it was hardly considered.

Some state laws expressly authorize factfinders to use mediation techniques. When laws are silent or nonexistent, factfinders often confer on or off the record before making official recommendations.

⇉ FACTFINDERS NEED NOT MEDIATE → Don't assume that the factfinder will try to mediate. The parties must fully prepare on each issue, regardless of time or cost. If the factfinder does try to mediate, such preparation doesn't hinder the process.

Factfinders perform their function as the law requires or, if there is no law, as their experience dictates. For example, private communications with a factfinder may be taboo. Generally, a factfinder can't even communicate in writing with one of the parties without giving notice to the other and an opportunity for both to comment on the subject discussed.

Acceptability to both parties is the chief object of professional factfinders.

[¶ 5639] The hearing.—Even though factfinders make nonbinding recommendations, they expect and merit professional presentation of the positions of both parties. This is no task for amateurs. The agency's legal counsel may qualify if well versed in the technique of handling grievance arbitrations. If the agency has a labor relations department, its director or a staff member should be qualified. *How* an agency's case is presented may be more important than *what* is presented!

⇛ PUT YOUR BEST FOOT FORWARD → Don't assume that a factfinder is merely going to add two figures and then divide by two. Put forward your best proposals. Don't hold back anything you're willing to concede. How equitable a factfinder's recommendations are depends largely on how persuasively the case is presented.

After both parties have had all the time necessary to present their cases at the formal hearing, the factfinder prepares a report and recommendations on each issue submitted. Occasionally a specific issue will be remanded to the parties for further negotiation.

The factfinder's report is presented initially for private consideration by both parties. After a short period of perhaps a few days, the recommendations, if not accepted by both parties, may be made public. More often than not, direct negotiations are resumed. In some states another super-factfinding panel may hold further hearings.

[¶ 5640] A hypothetical factfinding case.—Assume factfinding is the result of mutual consent by an employer and an employee organization that are locked in impasse. The parties are a municipal government and a union representing the nonsupervisory employees of a public library. Assume that they've fixed no special rules, that no holds are barred. The sole issue, the parties agree, is the amount of the general salary increase in next year's agreement. The factfinder is a lawyer experienced as an arbitrator. After oral discussion of the one issue before him or her, the ground rules are set: (1) Only one spokesman for each side; any other participants can appear only as witnesses and must be sworn; (2) statistical or other exhibits may be introduced; (3) witnesses may testify as to their relevancy; (4) written briefs may be filed at the close of the hearings; (5) the parties will be given 10 days to comment on each other's briefs; (6) court rules of evidence will not be followed.

Argument for the librarians: The librarians are the moving party. Therefore, their spokesman goes first and asks for a 20% across-the-board increase. This increase, he argues, is merely a catch-up to keep the local library salary rates in line with those paid by other libraries in the area. It's obvious to the factfinder that the term "area" has been loosely defined. Information is presented that salary rates in effect in other libraries are much higher than those currently paid in the town. The geographical or other criteria used in making comparisons is a proper question to be considered by the factfinder.

But this isn't the union's only argument. In the broad metropolitan area where the library is located, the regional Consumer Price Index has advanced 9% since the last general wage increase. In addition, evidence shows that the average increase of municipal clerks and unionized employees, including specifically the municipalities' blue collar workers, has amounted to 15% as a result of a 2-year contract entered into in the prior year.

Argument for the city: The city claims its finances are in too rough a shape to permit more than a minimal increase, maybe 2% or 3%. The librarians have picked out the richest cities in the state with which to compare themselves. They even reached out to include an affluent town in an adjoining state. Some of the cities listed as comparable have a big tax base from industry whereas the city involved is rural. The city submits its own list of comparable cities.

In addition, the Consumer Price Index has no relevancy. Librarians are professionals. It is argued that the BLS Consumer Price Index can't be applied to professional and other highly-paid white collar employees. Even if the Index is a proper factor, the city lies outside of the metropolitan area cited. If used at all, it should be the national, not a regional, index.

Finally, librarians in this city are already being paid fairly. Their last increase put them on a par with the rates paid in other comparable cities. In addition, one indicator invariably used by unions to indicate low salaries and low morale is the turnover rate. However, the union hasn't used it inasmuch as the turnover of city librarians has been almost zero.

Outcome: The factfinder prepares a graduated list of the last three years' salary scales from both the city's and the union's lists of comparable libraries. He/she discovers that—on the combined list—the city ranked seventh for two of the three years. This year, however, it fell to ninth. The city's tax rate and base are compared with those of adjoining communities. The factfinder discovers that although the city's tax base is small, its rate is fairly low, so a tax increase isn't out of the question.

The factfinder recommends a two-year contract with an 8% boost in the first year. This increase will bring the city's libraries back into seventh place in salaries. He/she recommends that the increase be broken up into two parts—4% now and 4% in six months—in order to ease the boost's burden on the city. For the second year, a cost-of-living adjustment based on the regional Consumer Price Index is recommended to give the librarians an inflation hedge.

Arbitration

[¶5645] What is it?—Impasse arbitration is a formal adversary hearing presided over by a neutral who determines with finality the terms and conditions of a collective bargaining agreement. The neutral—or arbitrator—may be an individual or the third member of a panel whose other members are partisans of each of the parties.

Arbitration of grievances (sometimes called "rights" disputes) has long been accepted in the private sector and its legality (at least when authorized by statute) and usefulness in the public sector is widely acknowledged. But arbitration of impasses (sometimes called "interest" disputes) is another matter. Its supporters say it's necessary to provide a means for final settlement of impasses where the strike alternative is not available. Others question its legality and object to forced settlements by a stranger to the collective bargaining process.

[¶5646] Arbitration laws.—Some laws authorize the parties to agree voluntarily to impasse arbitration. They have not resulted in a stampede for the services of arbitrators. On the contrary, when arbitration is voluntary, it's rarely used. Other laws *require* arbitration. They usually apply to police and firefighting personnel since there's a special need for strike-substitutes for members of these groups.

Compulsory arbitration of the disputes of other public employees is not common. One notable exception is the City of New York. In an effort to reduce disruptions of public services that have at times approached crisis proportion, the city in 1972 adopted amendments to its bargaining law requiring final binding determination of bargaining impasses [N. Y. ¶25,030 et seq.]. Eugene, Ore. also has an ordinance requiring city employees to arbitrate impasse disputes [Ore. ¶25,021].

Criteria. In some cases arbitrators' criteria are imposed by statute. They are similar to factfinders' criteria. Generally speaking, the criteria require comparisons with employees doing similar work in public and private employment and consideration of the employer's ability to pay and cost-of-living data. They may also include the "interests and welfare of the public" and "such other factors normally taken into consideration in the determination of wages, hours and employment conditions in the public and private sector" [Mich. ¶19,509].

[¶5647] Legality.—Compulsory arbitration laws have been attacked on the ground that they unlawfully delegate governmental decision-making powers to a nongovernmental authority. This is a reflection of the "sovereignty" doctrine, under which only the public employer can establish the terms and conditions of employment of government employees. In practice however, governments do relinquish their "sovereign" rights in many ways, including their participation in the collective bargaining process.

Courts tend to uphold compulsory arbitration laws if they set guidelines for, and impose limits on, the powers of the arbitrator. The Supreme Judicial Court of Massachusetts held that binding arbitration provisions for police and firefighters (Mass. ¶11,117) superseded a town's "Home Rule" decision-making powers under the state constitution. The bargaining law is a general law, the Court said, and applied to all cities and towns; in case of inconsistency or conflict, local laws must yield. The Court also ruled that the legislature may delegate to a panel of private individuals the authority to implement legislative policy, so long as proper safeguards are provided [Town of Arlington v. Bd. of Conciliation and Arbitration (Sup. Jud. Ct., 1976) 352 N.E. 2d 914].

The Washington State Supreme Court upheld the constitutionality of a binding arbitration provision (Wash. ¶13,133) that set guidelines for the arbitration panel and standards for court review as a

safeguard against arbitrary action [City of Spokane v. Spokane Police Guild (S. Ct., 1976) No. 43954, 553 P. 2d 1316]. The Court also pointed out that although a binding arbitration award could result in the need for a city to raise taxes, the arbitration law itself didn't unconstitutionally impose a tax on the city to meet the costs of an arbitration award. But the Supreme Court of Utah held the state couldn't withdraw the power of local elected officials to determine wages, hours and conditions of employment for firefighters and grant it to a panel of private citizens without providing for court review or any other safeguard to protect the public interest [Salt Lake City v. IAFF (Utah S. Ct.) No. 14689, 4-25-77].

The Colorado Supreme Court barred binding arbitration in public sector disputes as an unconstitutional delegation of authority, without considering the issue of safeguards [Greeley Police Union v. City Council of Greeley (S. Ct., 1976) No. 26992, 553 P. 2d 793].

⇛POWER TO TAX → Some laws meet the objection against giving an arbitrator power over the purse strings by providing that an award requiring legislative implementation is not final until that body acts (N.Y. ¶25,043).

[¶5648] OTHER OBJECTIONS.—The basic objection to binding arbitration, legal arguments aside, is that it undermines the collective bargaining process. Collective bargaining is a do-it-yourself technique. An imposed settlement is alien to it. Moreover, parties knowing that they won't have the final say tend to save their best shots for the arbitrator. It's realistic to expect them to hold off on compromises if they expect an arbitrator to split the difference.

Public employers also believe arbitration undermines their authority to run the show. This objection is at least partially answered by limits placed on the arbitrator whose authority is not wider than the scope of bargaining so his/her power may, as a practical matter, be no more than that enjoyed by a powerful union. Nevertheless, compulsory arbitration does mean that the employer is giving up to an outsider its right to say "no" on crucial issues of wages, salaries and conditions of employment. The arbitrator, in turn, doesn't have to live with the results of decisions and will not be called to account for them though court review may overturn them.

⇛EMPLOYEES' VIEW → Employee organizations find arbitration less objectionable than management. Deprived of the strike weapon, they tend to look with favor on any procedure that deprives management of some of its trump cards.

[¶5649] Possible solutions.—Some localities are experimenting with various methods to soften objections to arbitration. These include final offer arbitration (on a total package or issue-by-issue basis) and "Med-Arb."

⇛A DRAWBACK → A drawback of the total package technique is that it completely ties the arbitrator's hands. What if the wage package of one of the parties is reasonable and its proposals on working conditions are out of line? While the total package technique does encourage negotiation and compromise, it can force the arbitrator into a difficult position and result in an unreasonable award.

The Wisconsin legislature has experimented with the total package, final offer technique for its law enforcement (except those in Milwaukee and small towns) and firefighting personnel [Wisc. ¶13,124]. The law requires total package, final offer arbitration unless the parties agree to submit to traditional arbitration.

Final offer arbitration. With this method, the arbitrator is usually asked to choose the more reasonable *total package* final offer of one party. This, unlike conventional arbitration, encourages negotiation and compromise since a party is not likely to submit a package to an arbitrator if it sees a likelihood that the adversary's total package may be deemed more reasonable than its own. What happens, though, if both offers seem unreasonable to the arbitrator? Some final offer procedures have attempted to avoid such potential problems by allowing the arbitrator to select the better offer on individual *issues*, rather than the complete package. So the arbitrator may, as an example, find the employer's wage offer more reasonable and the union's proposed change in leave of absence provisions a fairer solution. In this way, both sides get a settlement that is a truer compromise. Final offer selection on an *issue-by-issue* basis is an alternative offered under New Jersey's compulsory arbitration law for police and firefighters [¶19,505]. New Jersey and Massachusetts [¶11,117] also permit a factfinder's recommendations as one of three total packages from which an arbitrator may choose (the other two being the final offers of the parties).

Med-Arb. A hybrid in the arsenal of public sector impasse techniques is called "Med-Arb." Under this technique, the arbitrator takes on the dual role of an arbitrator and mediator. He/she attempts to encourage

settlement by finding common grounds of agreement, meeting privately with each of them and making recommendations. If mediation efforts fail, the neutral arbitrates the dispute, and all decisions are final and binding.

Authorities are divided on the value of this technique. Those objecting claim that taking off a mediator's hat and putting on an arbitrator's hat is easier said than done. They believe it is impossible for a neutral to participate as a mediator without undermining one's authority as an arbitrator. Both the New York City arbitration law [N. Y. ¶25,034] and the Eugene, Oregon, ordinance [Ore. ¶25,011] specifically authorize impasse panels to mediate.

Strikes

[¶5651] What is a strike?—A strike is the concerted refusal of employees to perform all or part of their work as a pressure tactic for improving working conditions. It has been defined by law as "concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment" [Pa. ¶11,103].

Job actions. A definition such as the one used above could also cover job actions such as slow-downs. Authorized employee acts such as sick-calls and work-to-rule tactics could also be included. The employer's problem is one of proof. If firemen suddenly take advantage of their right to go off duty to have a physical checkup immediately after a fire, the city must show this was a pressure tactic and part of a concerted plan if it wants to prove it's a strike.

MASS RESIGNATIONS → Mass resignations pose a special problem. If employees have resigned, they're no longer employees. Anti-strike laws apply to "employees." The problem for the employer is whether it *can* prove a job action was a strike and, more importantly, whether it *wants to.* Its basic objective is probably to get the "plant" running again under terms it can live with. Sometimes it needs court actions to accomplish this; other times negotiations will dispel the need to find out whether a particular job action was a strike.

[¶5652] Legality.—Public sector employees do not have a constitutional right to strike [National Association of Letter Carriers v. Blount, 305 F. Supp. 546 (D.D.C. 1969); appeal dismissed 400 U.S. 801 (1971)]. The federal and state governments are therefore free to impose this restriction on their employees and they have freely done so. Strikes by federal employees are unlawful under federal law [5 U.S.C. §7311] and are an unfair practice under E.O. 11491 [Fed. ¶11,141], and many state laws are in accord. When laws are silent on the legality of strikes, courts have ruled public employee strikes are illegal [See Cal. & N.J. ¶10,100]. In both of these states, however, firefighter strikes are specifically prohibited by law. New Jersey law also prohibits police strikes [See N.J. ¶19,500 and Calif. ¶14,100].

PENALTIES → Many laws impose penalties on strikers. Under federal law they are subject to $1,000 fine and a year and a day imprisonment [18 U.S.C. §1918]. State laws also impose penalties. For example, under New York's Taylor Law an employee may be penalized two-days pay for each day on strike and may be placed on probation for a year. An employee organization loses its dues check off privilege [N.Y. ¶11,113]. Strikers may also be subject to fines or imprisonment for violating anti-strike injunctions.

Legal strikes.—Some states do permit *some* strikes. Laws in Alaska [¶11,124], Hawaii [¶11,125], Pennsylvania [¶11,134] and Vermont [¶13,110] permit strikes that do not endanger the public health and safety. Public sector nurses in Montana may also strike in some circumstances [Mont. ¶18,109].

The *Alaska* statute is unique in establishing different rules for different employee groups. Thus, police and fire protection employees, correctional employees and hospital employees are not permitted to strike. For these groups arbitration is the final-step impasse procedure. Public utility, snow removal, sanitation and public school employees may strike after mediation. However, once the strike "has begun to threaten the health, safety or welfare of the public" a court may issue a back-to-work order. All other employees may strike if a majority of the employees in the bargaining unit vote to do so.

[¶5653] Should public employee strikes be allowed?—For many years there was near total agreement that anti-strike laws were needed because the feeling was that acts against the "sovereign" are akin to

treason, government employment is a privilege and not a right, and strikes run counter to the public interest. There is still near total agreement that many strikes cannot be tolerated. Mass walk-outs by police and fire officers can have disastrous consequences. Extended walkouts by others such as sanitation workers can also seriously endanger the public health and welfare.

ON THE OTHER HAND → There's a growing awareness that public employment isn't the sole factor in determining whether services are essential. For example, are strikes by public sector clerks and park attendants more serious than those of private sector utility workers? Or strikes by public sector bus drivers more disruptive than strikes by private sector bus drivers?

Reappraisals. These considerations have made a small but growing number of policy-makers conclude that blanket strike bans are not justified (permissive laws in Alaska, Hawaii, Pennsylvania, Vermont illustrate this). Moreover, they don't work. Public employees have not abandoned and are not likely to abandon a successful technique when the issues are big enough to make the risk worthwhile. Strike penalties are not a deterrent if they're not enforced and many strike settlements include an agreement for amnesty.

AN EXAMPLE → The illegal postal strike of 1970 resulted in commitments for sizable wage and salary increases, the eventual resolution of inter-union rivalries and coverage of postal workers under the National Labor Relations Act. Moreover, no one went to jail.

From the employee view, the strike or the threat of it provides needed leverage. But the employer may also prefer a strike, in some instances, to the alternative of a settlement imposed by a third party such as an arbitrator. At least management retains its right to say "no."

NEA - ALASKA

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May 4, 1983

TO: Senator Joe Josephson, Chair
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RE: SB 78; NEA-Alaska and AASB Meeting

At the request of the Committee we met on 3 May to discuss and explore options attendant to a mutually acceptable collective bargaining bill to be used as a substitute for SB 78.

While the discussions proved insightful and revealed some areas of commonality of thought on collective bargaining generally at least five (5) basic concepts continue to be deterrents to a mutually acceptable bill.

a) Scope of Negotiations:

- AASB prefers a specific list of items which would be subject to collective bargaining, especially if arbitration is to be the final step in the bargaining process.

- NEA-Alaska prefers that the current definition continue, incorporating with the "Kenai Decision". It is our opinion that a specific and limiting list unnecessarily constrains the parties in resolution of problems.

b) Negotiability vs Arbitrability:

- AASB feels that all of the items subject to negotiations should not necessarily be included in the issues which may be placed before an arbitrator.

- NEA-Alaska feels that any unresolved item which is legitimately included as part of a collective bargaining process should be subject to arbitration.

c) Management Rights:

- It is the position of AASB that the presence of an arbitration provision necessitates the inclusion of specific management rights statements.

- NEA-Alaska feels that the presence of 14.20.610 clearly reserves to a school board its rights, responsibilities, and authority and gives the board substantial latitude on matters attendant to policy.

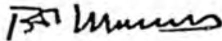
d) Finality through:

- conventional arbitration, last best offer arbitration, strike, unilateral determination.

e) AASB concern for effect of financial exigencies vis a vis reducing program and staff.

With a major share of the time being devoted to a, b, and c and not producing a bilateral understanding, items d and e were not fully discussed.

Respectfully submitted:



Robert Manners
Executive Secretary

RM:jc

d) "Arbitration lengthens the process."

- Again, quite the contrary! The data shows that the mere presence of an arbitration procedure enhances the potential for a negotiated settlement short of its actual use. When the parties know that the issues in a dispute will be subject to third party scrutiny and determination, the tendency is to take more reasonable and defensible positions in the interest of reaching bilateral agreement.

It should be noted that Alaska has had for over ten (10) years the statutory requirement of binding arbitration on grievance disputes. The track record in this arena clearly shows that the vast majority of grievances do not get to arbitration in that the parties are generally able to reach agreement on their resolution and that the arbitration decisions which have been rendered have not been particularly burdensome for either party.

Finality in teacher negotiations is essential. Too much time, energy, and human resource is currently being spent by both sides in the teacher collective bargaining process as a result of negotiations impasse disputes which would be better spent on the task of education.

Jenkamp, Zharoff, Kodey - from Bob Manners

SECTION ANALYSIS
2/5/85 Draft

"An Act relating to Public School Employees Collective Bargaining"
Amends 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. It also establishes release time without loss of pay or benefits for employees when negotiations are conducted during the normal workday.

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

Section 7: Repeals and reenacts AS 14.20.580 to provide for last best offer, item by item arbitration on those issues not resolved in mediation. If the parties are unable to agree on a procedure for the selection of an arbitrator they are directed to utilize the procedures of 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.

Adds a new section, 14.20.584 which provides for judicial review of an arbitration award consistent with AS 09.43.110 - 130.

Section 8: 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 9: 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 10: 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 11: Legal Responsibilities of Boards: Amends AS 14.20.610 to clarify authority of a school board relative to its legal responsibilities.

Section 12: Provides grandperson protection to current recognized negotiating units and collective bargaining agreements in existence on the effective date of the Act.

Section 13: Effective date clause: immediate.

L85:04

DOA

POLICY PAPER
on
COLLECTIVE BARGAINING
BETWEEN SCHOOL BOARDS AND THEIR EMPLOYEES

The intent of SB 78 is fully understood by reading the proposal in Section 7 of the bill which repeals AS 14.20.550 - 14.20.610. These sections are concerned with school board procedures relative to labor negotiations, mediations and grievance handling. This amendment would move the labor relations procedures of Title 14 to Section 23.40.070 - 260, the Public Employment Relations Act. At first reading this proposal appears to have validity in that a single statute would control procedures in the area of labor relations. However, SB 78 fails to address the unusual circumstances and political sensitivity of the educational views of the many communities of the state which are operative in labor disputes between school district administrators and educational associations. As found in SB 78 the proposal is to classify certificated employees of school districts as Class 1 participants as defined in PERA for the purpose of denying or limiting strikes. Class 1 employees are barred from striking and are immediately subjected to AS 09.43.030 which allows for court ordered interest arbitration. This proposal would appear to ensure labor harmony; in fact, it would limit attempts to find true areas of compromise, thereby forcing the parties to make non-negotiable demands rather than seeking settlement that reflects the interests of all parties, including the community.

Placing certificated employees within AS 23.40 of PERA opens a broader question of whether the present non-negotiable items found in the decision of the Supreme Court in the Kenai case could now be considered negotiable within the PERA definitions of terms and conditions.

All school-related employees should be spoken to under Title 14. The amendment proposing to view non-certificated school employees as Class 2 PERA employees has some validity when considering health-related activities such as trash removal. However, this group of employees when placed in a classification under Title 14 should be limited in their right to strike, similar to those employees presently classified as Class 2 within PERA.

While the above discussion on certificated and non-certificated employees is important, the proposal to force all school boards into accepting AS 23.40.070 - 260 can only disturb the regional needs to address all issues, including labor management, that impacts their lives.

The proposed amendments under SB 78 which attempt to define all public employees and public employers is a shotgun approach to creating a broad class of individuals within the AS 23.40 series. This issue should be examined more fully in another position paper.

As noted in other overviews on this subject an amendment to AS 14.20.580 "C" to include several options to school district administrators and employees such as:

A. limited strike;
B. interest arbitration;
C. 30-day cooling off, mediation, limited strike, and finally interest arbitration

will provide the relief proposed in SB 78 without forcing educational labor needs into a purely unrelated labor bill. Community needs in the area of education and labor relations is an inherently different set of issues than the general non-education labor market concerns.

Guy Stringham
Director
Division of Labor Relations
Department of Administration

Lisa S. Rudd
Commissioner
Department of Administration

Senate Bill 78 effectively addresses the entire question by placing teachers in the PERA in the "essential services" category. In so doing, it eliminates the ambiguity regarding the procedures - and absence of same - in the current teacher bargaining law.

PERA has a positive labor relations track record in Alaska and its arbitration procedure is sound and provides the statutory parameters necessary to insure the interests of government.

Recent surveys in the Anchorage community by Senators Colletta and Kelly and Representative Phillips showed an overwhelming sentiment (nearly 80%) that teacher negotiations disputes should be settled through arbitration rather than strike.

In his dissenting opinion in the recent Supreme Court decision on the 1979 Anchorage Teacher Strike, 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."

In his public statements over the past two years Governor Sheffield has spoken strongly on the need for finality in the teacher negotiations process and indicated support for the Senate Finance Committee Substitute for CS for HB 174 in the Twelfth Legislature.

Opponents of arbitration of teacher negotiations disputes, while sincere in their opposition to the concepts of arbitration, generally have not accurately represented the facts of the process.

a) "Erosion of statutory authority of school boards."

- Through application of the Uniform Arbitration Act under PERA, arbitrators are constrained from excessive awards and cannot diminish the Statutory responsibility of a school board.

b) "Arbitration is not constitutional."

- Again, the Alaska Uniform Arbitration Act meets the constitutional test by establishing criteria for the arbitrator to use in reaching a decision.

c) "Arbitration doesn't prevent strikes."

- Quite the contrary! The record is clear in those states which have compulsory interest arbitration. There are not strikes as a result of negotiations disputes when arbitration is the final step in the dispute settlement procedure.

This decision combined with the absence of finality through arbitration puts teachers at a distinct disadvantage as they attempt to negotiate their terms and conditions of employment. Nothing in the present law creates an urgency or even a real need for a school board to negotiate in good faith and reach agreement. Parity and equity in a collective bargaining relationship derives from the parties each having some means of exerting pressure on the other in support of their position. Absent the ability or right to strike, teachers as employees do not have an equitable posture in the negotiations process.

In the public sector an answer which is being used by an increasing number of states is interest arbitration for "essential service" employees such as teachers, police, fire, and hospital employees. This is becoming the most effective method of preventing strikes while settling negotiations disputes in a fair and effective manner.

Alaska has a unique opportunity to resolve the teacher bargaining law problem through the Public Employee Relations Act. PERA, as it is known, has been in place for 10 years and has provided an orderly negotiations procedure for all public employees except teachers. The legislative purpose as stated in PERA, applied to public school teachers, would establish uniform labor relations procedures for all public employees in the State.

Sec. 23.40.070. Declaration of policy. — The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

(1) recognizing the right of public employees to organize for the purpose of collective bargaining;

(2) requiring public employers to negotiate with and enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment;

(3) maintaining merit system principles among public employees.

Sec. 23.40.080. Rights of public employees. — Public employees may self organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

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YEAR = 84

BILL SB0078
PAGE 02476
DATE 03/27/84
CHAMBER SENATE
TEXT The question being: "Shall Amendment No. 2 be adopted?" The roll was taken with the following result:

CSSB 78 HESS AM AM 2

Yeas: 7 Faiks, Fischer Paul, Gilman, Halford, Mulcahy, Pettyjohn, Ziegler

Nays: 12 Bennett, Eliason, Fahrenkamp, Ferguson, Fischer Vic, Josephson, Kelly, Kerttula, Moss, Ray, Sackett, Sturgulewski

Excused: 1 Rodey

and so, Amendment No. 2 failed.

Senator Ray moved and asked unanimous consent that (CS FOR) (SENATE BILL NO. 78 (HESS) am) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 78 (HESS) am was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 78 (HESS) am (teachers' collective bargaining agreements; efd) pass the Senate?" The roll was taken with the following result:

CSSB 78 HESS AM 3RD

Yeas: 15 Bennett, Eliason, Fahrenkamp, Ferguson, Fischer Paul, Fischer Vic, Gilman, Halford, Josephson, Kelly, Kerttula, Moss, Pettyjohn, Ray, Sturgulewski

Nays: 4 Faiks, Mulcahy, Sackett, Ziegler

Excused: 1 Rodey

and so, CS FOR SENATE BILL NO. 78 (HESS) am passed the Senate.

Senator Ray moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. Without objection, it was so

TEXT OF ALASKA SUPREME COURT DECISION ON SCOPE OF BARGAINING UNDER TEACHER NEGOTIATIONS STATUTE

IN THE SUPREME COURT
OF THE STATE OF ALASKA

KENAI PENINSULA BOROUGH
SCHOOL DISTRICT and KENAI
PENINSULA BOROUGH

v.

KENAI PENINSULA EDUCATION
ASSOCIATION,
Appellee.

File No. 2470

ANCHORAGE BOROUGH EDUCATION
ASSOCIATION,
Appellant,

v.

GREATER ANCHORAGE AREA BOROUGH,
ANCHORAGE BOROUGH SCHOOL DISTRICT,
Appellee.

File No. 2492

MATANUSKA-SUSITNA SCHOOL DISTRICT,
Appellant,

v.

MATANUSKA-SUSITNA EDUCATION
ASSOCIATION,
Appellee.

File No. 2563

[No. 1537 - December 9, 1977]

Appeals from the Superior Court of the State of Alaska, Third Judicial District, at Kenai, No. 2470, James A. Hanson, Judge; at Anchorage, No. 2492, Victor D. Carlson, Judge; at Anchorage, No. 2563, C. J. Occhipinti, Judge.

Appearances: Allen McGrath and John R. Snodgrass, Jr., of Graham & James, Anchorage, for School Districts. John R. Strachan, Anchorage, for Education Associations.

Before: Boochever, Chief Justice, 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 other.[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 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

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[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).

[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."

their participation in good faith collective bargaining labor negotiations is an attempt by the legislature to provide professional advice to school boards on the management of the schools. They assert that this is a legislative policy judgment, in no way inimical to the Alaska Constitution. Also relying on labor cases, they discount the importance of any "management prerogative" to determine educational policy under AS 14.20.610, and assert that labor's concerns with working conditions override any management prerogative as to basic policy.

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

II. *Scope of the Duty to Bargain*

If we were to look to the law concerning bargaining between labor unions and private employers, we would conclude that the scope of negotiable issues is broad. The law relating to the private sector has always contained, and still does contain, uncertainties. But the general trend has been to require that employers bargain in good faith on a wide range of items with respect to wages, hours, and other conditions of employment, without regard to whether the employers consider the items bargained for to be within the prerogatives of management.[5] Moreover, some cases hold that for an employer or a union to avoid being found to have bargained in bad faith, the parties must make some reasonable effort to compose their differences. While the good faith standard of collective bargaining does not compel either party to make concessions, intransigent positions, adopted in an effort to avoid any agreement, are disfavored.[6] Thus a legal determination that a matter is subject to good faith collective bargaining may narrow the policy-making powers of an employer by curtailing any absolute directives on his part.

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

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

"A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are they tend to be regarded as in some sense 'essential' and therefore are often price inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public sector union is correspondently less concerned that high prices due to costly wage demands will decrease output and hence employment.

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

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electroate, which for this purpose can be viewed as comprising three overlapping classes of voters — taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electroate, 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 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, qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its ob-

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[5] Fibreboard Paper Products Corp. v. N.L.R.B., 379 U.S. 203 (1964) (management decision to subcontract out the work of some employees must be bargainable); International Ladies' Garment Workers Union v. N.L.R.B., 463 F.2d 907 (D.C. Cir. 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., 470 F.2d 422, 425 (D.C. Cir. 1972) (decision to sell part of business not bargainable).

[6] Sign and Pictorial Union Local 1175 v. N.L.R.B., 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 (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. 887 (1953) ("the employer is obliged to make *some* reasonable effort in *some* direction to compose his differences with the union"; emphasis in original); Majure v. N.L.R.B., 198 F.2d 735 (5th Cir. 1952). *See generally* Swerdlow, Freedom of Contract in Labor Law, 51 *Tex. L. Rev.* 1 (1972).

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

jective 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." 52 L.Ed.2d at 298.[*]

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 (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 (1939) (cooperative marketing program from agricultural products); *Agricultural Prorate Comm'n v. Superior Court*, 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*, 1 K. Davis, Administratiuve Law Treatise §2.14 (Supp. 1970) (collecting cases). *See also* 1 *Id.* §2.15 (1958).

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

The cases in other states rejecting the argument that collective bargaining with teachers' unions is an unconstitutional delegation of power, all involve statutes which fairly narrowly constrict either the scope of bargainable issues, or the school boards' duty to accede to union proposals, on both. *Chicago Div. of Ill. Ed. Ass'n v. Board of Ed.*, 222 N.E.2d 243, 251 (Ill. App. 1966); *Joint School Dist. No. 8 v. Wisc. Emp. Rel. Bd.*, 155 N.W.2d 78, 83 (Wisc. 1967); *State v. City of Laramie*, 437 P.2d 295, 300 (Wyo. 1968) (firemen).

In this opinion, we similarly construe the Alaska statute. A statute defining the scope of collective bargaining as broadly as the union would have us do, might well present a more troubling constitutional question. But we find no constitutional infirmity in AS 14.20.550 and .610. The delegation of power problem still bears upon our task of statutory interpretation, however, for in interpreting the relevant statutes we will not readily assume that the legislature intended to divest the school boards of their power to determine matters of educational policy and school system management.

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

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

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

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:

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[*] 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.

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

[*] The teachers' unions in the case at bar argue that *Dunellen* was overruled by later legislation. The statute in question dealt with only a limited aspect of bargaining; and *Dunellen* has been followed by the courts despite the statutory amendment. *See*, *e.g.*, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 343 A.2d 133 (N.J. Super. 1975).

"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*

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.

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

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

In the 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. Helsby*, 315 N.E.2d 775, 777-78 (N.Y. App. 1974); *School Dist. of Seward Ed. Ass'n v. School dist. of Seward*, 199 N.W.2d 752, 759 (Neb. 1972); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387, 403 (Maine 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 page 7-10 *supra*, we conclude that the other specific items listed on page 17 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.

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.

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.

APPENDIX

LIST OF NEGOTIABLE AND NON-NEGOTIABLE ITEMS

Those items which are non-negotiable are as follows:

1. Relief from Non-Professional Chores
2. Class Size and Teacher Load
3. Ombudsman
4. Evaluation of Administrators

[10] Or 5 U.S.C. §7512(a) under the Veterans Preference Act.

5. Teacher Aides
6. Para-Professionals
7. PTR Formula
8. Specialists
9. Calendar

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

HB 130
coll bargain

SITKA SCHOOL DISTRICT

ACCREDITED BY THE NORTHWEST ASSOCIATION OF SECONDARY SCHOOLS & COLLEGES

P.O. BOX 179 SITKA, ALASKA 99835

February 14, 1985

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

Dear Governor Sheffield:

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

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

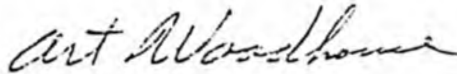
Coleman Young was always strongly backed by labor as a Senator. He pushed hard and succeeded in getting mandatory binding arbitration (Act312) into Michigan law. Now, as you read his speech, remember that he is black, a Democrat, labor backed and a long-time Mayor of Detroit.

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.

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: Legislators
State Board of Education

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

Mayor Young was one of the prime sponsors of Act 312 when he was in the Legislature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are many people who claim that if we are going to prohibit strikes then we must 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.

Co[illegible]ive 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 4545.

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 employe-compensation cost problems and *have in fact directly accounted for more than half of the present deficit.*"

The arbitration award for the police-fire contract beginning in 1977 cost the city $79 million more than raises for all of the city's other employes, 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 act to suspend the law as an absolutely necessary part of the city's survival plan. The marketability of the bonds depends on it.

What lender or investor, surveying the damage already inflicted by Act 312, would gamble on the outcome of yet another arbitration?

The Detroit News
615 Lafayette Boulevard
Detroit, Michigan 48231

222-2000

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222-2000

Richard,
This is where it started.
[signature]

POSITION PAPER ON PUBLIC EMPLOYMENT LABOR RELATIONS POLICY FOR MICHIGAN

By Louis D. Beer
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A Prescriptive Analysis Prepared On Behalf of the Michigan Municipal League

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THE LAW OF PUBLIC EMPLOYMENT LABOR RELATIONS IN MICHIGAN

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Synopsis

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

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

I BACKGROUND:

Until 1965, Michigan operated under a statute commonly known as the "Hutchinson Act" which effectively reduced public employment labor relations to what union adherents contemptuously referred to as "collective begging". While public employee unions did exist they were not widespread, and relied for what little support they had on their powerful private sector brethren who were able to wield political influence with the public employer. Public Act 379 of that year, known as the Public Employment Relations Act, changed all of that. It provided for a system of regulation of public employee unions roughly parellcling 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 enjoinable, but rather required a full "due process" hearing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 desparate enough position, replace strikers, will be sufficient in many cases to modify union demands. By the same token, a union leader anxious to shore up a failing strike by sending some of his workers back to work and suddenly pulling a few of them out again, thereby disrupting the employer's operation but still providing paychecks to his members, might well be deterred if he knew that this could result in the discharge of some of his members.

III BARGAINING PROCESS

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

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

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 ha he 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 h. been classified as general employees by MERC.

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

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

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

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

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

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

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

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

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

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

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

IV DISPUTE RESOLUTION IN THE ABSENCE OF AGREEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d) Political realities sometimes require an employer to espouse a public position which cannot be maintained through negotiations. If the city 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.

file HB 130

Anch Daily News 2-2-86

Teachers rally for arbitration bill

By RICHARD MAUER
Daily News reporter

More than 300 Alaska teachers spent their noon hour Saturday in a noisy outdoor demonstration in support of a bill requiring binding arbitration in contract disputes.

The teachers, attending the NEA-Alaska delegate assembly in Anchorage, called on the Alaska Senate to move the measure to a vote. It has already passed the House.

Boosted by a band, a telephone call from Gov. Bill Sheffield relayed from Juneau to the crowd, and a speech by Sen. Joe Josephson, D-Anchorage, the teachers cheered for House Bill 130 at a rally in front of the Legislative Information Office. They said the law would close a gaping hole in the resolution of collective bargaining disagreements.

"This issue needs to be settled," said Jean Krause, president of NEA-Alaska. The organization is the statewide affiliate of the National Education Association, one of two national teacher unions. NEA locals bargain for contracts in about 50 of the 54 school districts in Alaska, Krause said.

In an interview after the rally, Krause said the bill would eliminate a major cause of friction between school boards and teachers. As the law now stands in Alaska, teachers have little ammunition to fire at school boards when they refuse to bargain in good faith, Krause said.

In Kotzebue, where negotiations for a contract

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Teachers rally in support of a state binding arbitration bill

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dragged on for two years, teachers had to resort to a major public relations campaign, Krause said, while in Ketchikan, teachers engaged in "work to rule," the nit-picking observance of every contract provision. In each case, the disputes took away from time and attention for classroom instruction, she said.

Ever since the state Supreme Court ruled in 1982 that teachers don't have the right to strike, school boards have been increasingly taking advantage of the situation, Krause said.

"This year, we started the school year with 16 districts not having contracts with their teachers," Krause said.

With contract negotiations coming up this year for bargaining units governing 80 percent of the teachers in the state, the union wants to ensure its members have the same power to force good-faith collective bargaining as other workers.

House Bill 130, introduced on behalf of Sheffield last year, would require unresolved disputes to be submitted to an arbitrator for a ruling that would be binding on both sides.

Other public employees who are forbidden to strike — police and fire fighters, for instance — have similar protections, Krause said.

The bill would also extend collective bargaining rights to clerical and blue-collar school employees, she said.

The march and rally came in conjunction with a meeting of the NEA-Alaska Delegate Assembly, the policy-making body of the statewide organization. The organization had been meeting since Thursday under the cloud of the space shuttle Challenger disaster, which claimed the life of school teacher Christa McAuliffe among its seven victims.

Fairbanks social studies teacher Susan Stitham, Alaska's representative to the national NEA board, was still wearing a black band on her left arm Saturday and said she remained stunned by the event. McAuliffe held a special place in her heart, she said, not just because she was a teacher and an NEA activist, but because she demonstrated the best human qualities found in the profession.

Stitham eulogized McAuliffe in a convention address, and later offered some thoughts about why the disaster was felt so deeply by so many people.

"I've been a teacher for 20 years, and going to these meetings for 15, and I've never seen anything like that," she said. "It's a remarkable simultaneity of reactions. She was a friend to all of us.

"It's the fact that she was a teacher that made it so different. People have a connection with teachers, despite all the mud we've had slung on us lately by the right wing." McAuliffe proved that to be brave or a hero, "you don't have to be Rambo — you can be a social studies teacher. That's very important for our kids."

She said she still chokes when she thinks of the reaction of one young child, quoted by a wire service, who said, "The rocket blew up. The teacher is dead."

FEB 20 1986

file HB 130

Teacher arbitration bill floundering in Senate

By RONNIE CHAPPELL
Daily News reporter

A House bill requiring binding arbitration in contract disputes between Alaska teachers and school districts is dead in a Senate committee unless union and school officials can agree on a workable compromise.

State Sen. Mitch Abood, R-Anchorage, chairman of the State Affairs Committee which has had the bill since last session, said he was not rushing to action despite a teacher rally Saturday calling for quick action.

"I'm doing my best to have them understand their differences. I'm only asking that they sit down and work them out. Until that happens there will be no movement on any bill on binding arbitration. I'm not even going to schedule hearings," Abood said.

The bill, HB 130, passed the House last year.

Introduced by Gov. Bill Sheffield, the bill calls for contract disputes on issues of wages and working conditions to be referred to an arbitrator when contract talks break down. The arbitrator would have the power to dictate a settlement.

More than 300 delegates at a National Education Association-Alaska assembly in Anchorage last weekend called on the state Senate to move the measure to a vote. They see binding arbitration as a fair way to settle contract issues that have gone to impasse.

Union officials also say that it will force school districts around the state to engage in good faith collective bargaining. Teachers in Alaska do not have the right to strike. As a result, they complain, school districts have little incentive to compromise on sticky issues.

School officials oppose binding arbitration. They say it will drive up the cost of education and place financial control of local school districts in the hands of non-elected arbitrators with no ties or responsibilities to local taxpayers.

"I think it's a bad piece of legislation at a time of (state budget) retrenching," said Bob Green, executive director of the Alaska Association of School Boards. "I don't think we should give outside arbitrators a chance to spend Alaska's money."

The laws proposed to date have been too simplistic, Green said. The union "wants all the benefits it now has with binding arbitration on top of that. That's not the way it's done."

The "seven or eight states" that have extended binding arbitration to teachers have also adopted "lots of checks and balances," he said. If binding arbitration becomes a reality in Alaska, then school districts must have authority to determine the size of their work

See Page C-3, BINDING

Binding arbitration bill hits impasse in Senate committee

Continued from Page C-1

force.

"Under current Alaska statutes we cannot terminate a tenured teacher just because we have no money," Green said. If an arbitrator comes in and orders a salary increase that exceeds the ability or the willingness of the community to pay, "we could be in trouble."

Similar situations have arisen in other parts of the nation, according to Peter Denholm, president of the Public Service Research Council, a Washington, D.C.-based citizen's lobby that opposes collective bargaining for public employees.

"It's extremely rare for a community to reject an arbitrator's decision," Denholm said. "But there is a sense of helplessness about it. People believe they've elected a school board to make these decisions. Then they find out responsibility has been handed over to a third party."

Sen. Mitch Abood

On occasion, a community will refuse to raise taxes or cut services in order to fund a pay increase mandated by an arbitrator.

"The court review of these cases is mixed," Denholm said. "At first, the courts found binding arbitration statutes to be an unconstitutional delegation of legislative authority."

The defective laws were amended, Denholm said, "and recently the courts have been upholding them." Communities have been ordered to honor arbitrators' decisions and some have been forced to raise taxes in order to do it.

"It comes down to the issue of local control and the ability of local school boards to have the final say on what's going to happen in their schools," said Steve McPhetres, superintendent of the Haines Borough School District and president of the Alaska Association of School Administrators. "We're searching for some other way" to settle contract disputes. "Some compromises are in existence."

San Francisco uses "referendum arbitration" to settle labor disputes. Under this process, the last best offer made by the city is put into effect, while the last best offer made by the union is placed on the ballot. If voters approve the union offer, it is written into the contract.

"We've certainly thrown (referendum arbitration) out as a discussion point," McPhetres said. "We are also looking at other alternatives."

Dale Sandahl, personnel director for the Kenai Peninsula Borough School District, questions the need for changes in state law. Aside from a 1979 Anchorage teacher's strike, teachers and school districts have had little difficulty reaching fair settlements, he said.

Even with a 25 percent cost of living differential factored into the comparison "we have the best paid teachers in the country," he said. "Next year the average teacher in Minnesota will earn under $30,000." The average teacher on the Kenai Peninsula will take home $47,000 in salary and benefits.

Please vote against AB 224 if it comes to a vote. Teachers in Alaska do not need binding arbitration or collective bargaining. They are protected and overpaid. Their present salaries and benefits testify to this fact. Priscilla Donovan

Binding arbitration ignores democratic ideals

Binding arbitration in public sector collective bargaining is a dangerous and repugnant assault on our democratic values.

Binding arbitration is a serious public policy issue that unfortunately does not receive the thoughtful analysis it deserves. Rather, it has become the rallying cry for the teacher's union as it attempts to erode one of the pillars of our Constitution, representative government.

Binding arbitration can be an acceptable method for two private parties to settle a dispute through the use of a third party who resolves the issue for them.

This concept, when applied in the public sector, however, has an entirely different dimension.

In the public sector, we citizens are the source of the power of our government. Through the democratic process we delegate some of our power to persons we elect to represent us.

We hold them accountable for their decisions and we maintain control through elections where the public can exercise its ultimate control.

In Alaska, most state and local governments and school district employees are represented by unions. Since wages and benefits represent the major operational cost of government, the outcome of union negotiations has a profound effect on public policy.

Binding arbitration turns the tables on representative government by delegating the most important decision, the terms and conditions in union agreements, to a third party who is not elected by the public, may not even be a resident of the community and is not accountable for any public policy ramifications.

Elected officials and the public are required to observe the decision of this non-elected person just as though we had a totalitarian form of government.

In our constitutional system, when you want to go over the head of elected officials, you're supposed to amend the Constitution, not bring in a hired gun.

The teacher's union argues that binding arbitration adds finality to the negotiation process and forces school boards to negotiate in good faith.

millett keller

They deliberately ignore the fact that the current process already has finality. The real issue bothering the union is who gets to make the final decision.

We're also told that without binding arbitration, school boards will not negotiate in good faith. This argument ignores the fact that our courts exist to provide redress if a union is subjected to bad faith negotiations. What the union really wants is the authority to control the entire negotiation agenda, including the ability to set public policy regarding school management.

In our constitutional system, the union already has a method available for changing public policies it doesn't like. Through democratic elections, it can and has made changes.

For example, each year at least two members of the school board stand for re-election. If a school board is not bargaining in good faith or is adopting policies which are injurious to the employees, the union can promote candidates who will change policies.

Sen. Mitch Abood has vowed to hold the House-passed binding arbitration bill in his Senate committee. You can expect to see enormous pressure brought on him by the teacher's union that believes a majority of the Senate support the bill. Gov. Bill Sheffield has already indicated his support for binding arbitration.

Hopefully, reason, courage, and commitment to democratic ideals will be an adequate defense to this assault on representative government.

□ Millett Keller is a business and public affairs consultant and a former member of the Anchorage School Board.

Please give serious consideration to this article. I am hoping you will vote against Binding Arbitration SB 224

Betty Cuddy

(over)

In forming coalitions with other groups and organizations NEA-Alaska members will be reaching out in their communities throughout the State to coordinate the effective effort to bring finality to negotiations through arbitration.

HOW LONG??? HOW MANY???

A recent analysis of teacher negotiations in Alaska over the last five years reveals that the process is taking longer and longer each year. During the last two years it has become the norm for negotiations to be at impasse and unsettled well into the new school year.

In some cases, this has been 12 to 18 months after the commencement of bargaining and 6 months or longer after the expiration of their previous contract.

Frustration and emotional turmoil are frequent by-products on both sides of the bargaining table when the negotiations process is unnecessarily lengthened due to the absence of a fair and equitable dispute settlement mechanism.

$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$ PUBLIC SCHOOL FUNDING $$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$

After three long years of interim ADM (average daily membership) funding accompanied by three years of study, analysis, deliberation, discussion and debate by various combinations of consultants, contractors, Legislators, parties of interest, and a wide cross-section of the Alaskan education community, the Department of Education is about ready to present to the Legislature a revised funding formula which is theoretically designed to address the inequities of the previous formula.

While conceptual agreement on the components of the formula itself may be close among the groups mentioned above the real test of support for the implementation of such a formula will be predicated on the actual amount of funding each school district is to receive.

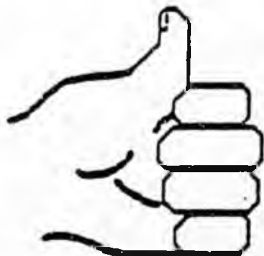
A maximum funding ceiling will significantly diminish the ability of any funding formula, no matter how carefully it is constructed, to adequately address the inequities as they have existed in the past.

NEA-Alaska is strongly encouraging that the funding levels for the 1986-87 school year be well in excess of the current level of funding and that there be serious consideration given to the concepts of forward funding.

$$

DELEGATE ASSEMBLY January 30 - February 1; Anchorage

FLY-IN April 3 - 6; Juneau



H.B.
130
PROJECT RESOLVE

TOGETHER WE CAN!!!

LEGISLATIVE NEWSLETTER

NEA · ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

VOLUME 30, NUMBER 1 JANUARY 24, 1986

The Second Session of the Fourteenth Legislature convened on Monday, January 13, 1986 with an aura of cooperation and commitment to resolution of the major issues. Leadership in both the House and Senate has expressed a desire to complete the business of the Legislature on or before the 120th day which is May 12, 1986.

House Bill 130 ARBITRATION

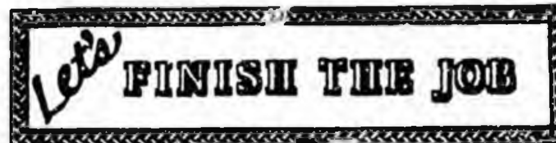
Having passed the House late in the First Session, CSHB 130 (HESS) am, is now in the Senate and ready for committee work. In State Affairs Committee at this time, it must go to Finance and the Rules Committees before being calendared for a floor vote.

State Affairs: Chair, Senator Mitch Abood
Members: Senators Edna De Vries, Vic Fischer, Tim Kelly, Bill Ray

Finance: Co-Chairs, Senator John Sackett, Jan Faiks
Members: Senators Jay Kerttula, Dick Eliason, Frank Ferguson, Paul Fischer, Rick Halford

Rules: Chair, Senator Tim Kelly
Members: Senators Jack Coghill, Jan Faiks, Don Bennett, Joe Josephson

PROJECT RESOLVE

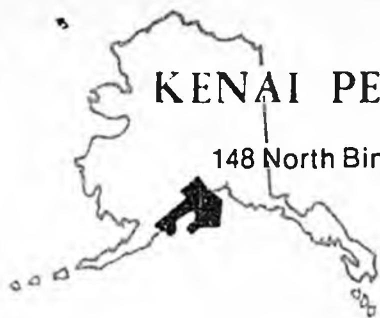


At the June 1985 NEA-Alaska Board of Directors meeting nearly all of the agenda was devoted to analysis, discussion, and planning for the task of getting HB 130 through the Senate and signed into law before the end of the Second Legislative Session.

Since August, NEA-Alaska members have been busy meeting with Legislators, reaching out into their communities to inform concerned voters of the nature of the issue and need for resolution. Additionally they have been working with the labor community in their effort to provide for finality through arbitration and to insure that non-certificated employees of school districts have a statutory right to negotiate.

The reality of support by the general public for arbitration over strike was confirmed by a Hellenthal survey in Anchorage commissioned by the Anchorage School District in 1983. It has been reconfirmed by a recent Statewide survey done by Hellenthal and Associates in December 1985 which again showed the public overwhelmingly in favor of arbitration by over 85%, thus making HB 130 genuinely a public interest issue. This same Survey revealed that the public was also in strong support of the right of non-certificated employees to negotiate. Likewise a significant majority felt that public education should be the highest spending priority.

HB 130 oppose robo FEB 21 1986 HB130



KENAI PENINSULA BOROUGH SCHOOL DISTRICT

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

Sent 2/24/86

February 19, 1986

Senator Bettye Fahrenkamp
Alaska State Senate
Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Attached please find a copy of a resolution which was passed by the Kenai Peninsula Borough School District Board of Education at its February 17, 1986 meeting.

The position of the Board of Education in response to HB 130 is clearly set forth in this resolution.

We respectfully request that HB 130 or any similar legislation not be passed by the Senate during the current legislative session.

Thank you for your assistance.

Sincerely,

Fred Pomeroy bj

Fred Pomeroy
Superintendent
7496

bj

enc.

RESOLUTION 85-86-1

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

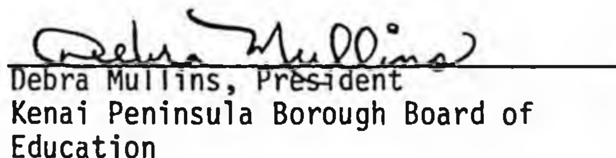
WHEREAS, the Kenai Peninsula Borough School District Board of Education believes that binding arbitration has proven to be nonproductive in other states, i.e., Michigan; and

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;

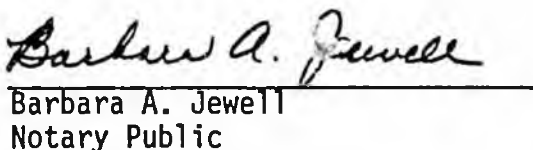
NOW THEREFORE BE IT RESOLVED that the Kenai Peninsula Borough School District Board of Education opposes all legislation that mandates binding arbitration as a part of the collective bargaining process.

ADOPTED THIS 17TH DAY OF FEBRUARY, 1986.



Debra Mullins, President
Kenai Peninsula Borough Board of Education

ATTEST:



Barbara A. Jewell
Notary Public

file HB 130

Teachers push binding arbitration bill

By DAN JOLING
News-Miner Bureau

JUNEAU—Fairbanks educators were out in force Tuesday night urging passage of House Bill 130, a proposal to require binding arbitration when contract talks between school boards and teachers stall.

However, Senate President Don Bennett as much as pronounced the measure dead because there's no sign of movement on it in the Senate State Affairs Comittee and little chance it would clear the additional hurdle of the Senate Finance Committee.

Fairbanks teachers have been regularly showing up at the weekly teleconference sessions to urge support for binding arbitration. Tuesday, it was supported by Carole Evans, Dennis Lee and Kathy Alton.

Alton said 7,500 Alaskan teachers would profit by installing finality in the bargaining process and that Gov. Bill Sheffield supports it. She said the bill requires that the arbitrator be an Alaskan, relieving worries that a settlement would be imposed by an Outside negotiator unfamiliar with community conditions.

Lee said the bill provides for "last best offer" arbitration, where the arbitrator makes a choice between one of the two positions, not new factors that he chooses.

However, the arbitrator can also pick between individual parts of packages submitted by each side, Lee said. Alton said the risk of not having their positions picked would make both sides work harder at bargaining.

The bill has passed the House and Lee urged Bennett and Sen. Bettye Fahrenkamp, D-Fairbanks, to push it out of the Senate State Affairs Committee, chaired by Sen. Mitch Abood, R-Anchorage.

"I know you have the power to do that," Lee said.

"I wish that you would show me the way to do that," Bennett replied.

He said he has talked to Abood at least 10 times about the bill, but that the rules of the Legislature prohibit pulling out bills from committee over the objection of the chairman.

"I think your NEA (National Education Association) representative is sending you some very erroneous information," Bennett said.

Bennett said after the meeting that NEA formal lobbying had been "inept." Bennett said NEA lobbyist Bob Manners failed to win support for the bill among members of the comittees of referral and now, "He's trying to squeeze his friends" into overriding their colleagues.

"It's just not done. It's not acceptable. You could break an entire organization doing that," Bennett said.

"For one reason or another, they don't even want to hold hearings on the bill," Bennett said.

HB 130 also would give school employees who do not need teaching certificates, such as secretaries, nurses and maintenance workers, the right to bargain.

Representatives of the Fairbanks Classified Personnel Organization Janet Patterson and Gary Patterson spoke in favor of the bill.

"I would like equity with other public employees," Janet Patterson said.

Bennett said he's been told by Senate Finance Committee Co-chairwoman Jan Faiks, R-Anchorage, that the bill would go nowhere in her committee.

"Even if it got out of State Affairs, it's not getting out of Finance," Bennett said.

STOP RUSTY WATER AT YOUR WATER
SOFTENER

Binding Arbitration and Public Sector Labor Disputes

Published by The Public Service Research Council

THE PUBLIC SERVICE RESEARCH COUNCIL

The Public Service Research Council is an independent organization devoted to non-partisan research and education about public sector unionism and its effects upon the nation's governmental institutions and their services to the country's citizens.

PSRC was founded in 1973 by citizens concerned with this problem. The Board of Directors is responsible for the activities of the Council, relying in large measure upon the advice and counsel of an advisory committee of outstanding citizens from publishing, business, education and the public sector.

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BINDING ARBITRATION AND PUBLIC SECTOR LABOR DISPUTES

The major labor relations phenomenon of the last two decades has been the spread of unionization and collective bargaining in the public sector. Presently, thirty-seven states have mandated a form of bargaining for at least some types of employees at the state and/or local government level. The latest report by the Bureau of the Census indicates that in 1979, 47.9 percent of full-time state and local government employees were organized into unions. The significance of this is more apparent when it is recognized that less than 20 percent of the private sector work force belongs to unions.

With only slight modification, it is the private sector collective bargaining model that has been transplanted to the public sector. Experience with labor relations in government employment is demonstrating that certain critical differences between the two employment sectors make private sector labor relations practices incompatible with our traditions of democratic governance and, therefore, unsuited for use in the public sector. One particularly troublesome area is the increased advocacy and use of binding arbitration as a disputes resolution mechanism in the public sector.

WHAT IS ARBITRATION?

Although the use of arbitration is increasingly common in public sector labor relations and demand for its increased use grows, there is widespread lack of understanding of the process and what it entails. This is true for many public officials as well as the public at large. An excellent capsule description of the process has been provided by Myron Lieberman in _Public Sector Bargaining_.

> Basically, arbitration is a procedure whereby an impartial third party makes a decision in a labor dispute. Arbitration may be _voluntary_ (the parties have agreed to it) or _involuntary_ (it is imposed on the parties by law). Arbitration may also be _advisory_ (the arbitral decision is recommended) or _binding_ (the parties are bound by the decision). Binding arbitration is sometimes further divided into two additional categories: _final_ (the parties cannot appeal the decision to the courts), and _binding but not final_ (the arbitral decision is binding but can be appealed to the courts.)

> Essentially, two kinds of labor disputes may be subject to arbitration. One type is commonly referred to as "interest disputes," that is, disputes over what the terms of a labor contract should be. A situation in which the employer and union union were at impasse over salaries for the coming year and agreed or were required by law to turn the dispute over to an arbitrator would be an interest dispute. Suppose however, that the employer and union already have a contract covering salaries, but a dispute arises over what X should be paid pursuant to such a contract. If X files a grievance alleging that he was not paid in accordance with the contract and if the grievance is ultimately carried to arbitration, then that procedure would be called "rights arbitration," that is, arbitration over the meaning, interpretation and/or application of a labor contract.

Both types of arbitration are of concern for each has serious implications for our system of governance. This discussion will address interest arbitration and its attendant problems before moving on to rights or grievance arbitration.

For the purposes of this analysis, the term arbitration will mean binding arbitration. It is the ability of an outside third party to impose a binding settlement on the parties that is of concern. Although the compulsory nature of involuntary arbitration make it more onerous, the consequences of participating in the arbitration process are the same whether the parties voluntarily or involuntarily entered into it. Furthermore, a nonfinal form of arbitration is preferable to the final form which does not provide for judicial review of the arbitration award. However, experience with the courts has shown that in most cases, an arbitrator must have acted in an extremely capricious manner or significantly exceeded his statutory authority before an award will be overturned.

INTEREST ARBITRATION

The rapid increase in public sector collective bargaining in the last twenty years has been accompanied by an attendant rise in the level of public sector strike activity. Whereas strikes against government were rare in the early 1960's (28 in 1961, for example) they have become commonplace. According to data compiled by the Bureau of Labor Statistics, there were a record 593 public sector strikes in 1979 and 536 in 1980. The decade of the seventies averaged in excess of 400 government work stoppages per year.

The heightened public awareness of, and experience with public sector strikes makes it unnecessary to provide an enumeration of the dangers and disadvantages of such activity. Suffice to say that these strikes are generally held to be undesirable in that they pose a threat to the public welfare.

The increased resort to the strike by unions of public employees, despite the undesirability and general illegality of such actions, has spawned a search for a means of preventing strikes. Increasingly binding interest arbitration is advocated as that preventive device. It has been reasoned, and public sector unions have argued, that the only fair substitute for the strike is a process in which a neutral party arrives at a decision that is binding on both parties.

To date, nineteen states have accepted this reasoning and mandated arbitration to settle bargaining impasses most commonly those involving public safety employees. In addition, several other statutes permit interest arbitration upon the agreement of both parties. The overwhelming majority of these statutes were enacted in the 1970's.

OPPOSITION GROWS

Public officials and public sector unions increasingly find themselves on opposite sides of the arbitration question. As experience with interest arbitration mounts, more and more public officials see less harm in weathering a strike than in submitting negotiations impasses to arbitration. The Seattle Post Intelligencer reported on March 7, 1976:

> Mayor Wes Ulman said yesterday he'd rather go through a strike by public employees than wind up with a binding agreement made by an "irresponsible" arbitrator whose decision could bankrupt the city.

Mayor Uhlman's concern about the deleterious fiscal effect of binding interest arbitration is an all too unpleasant reality for Detroit Mayor Coleman Young. An original sponsor of Michigan's compulsory police and fire arbitration statute when he was a member of the state legislature, Young now considers the vote a mistake and the legislation responsible for much of the financial difficulty now facing his city. The February 7, 1981 National Journal reported:

> The mayor said he will urge the state legislature to repeal Michigan's compulsory arbitration law, a statute, ironically, that he co-sponsored in 1969. "We know that compulsory arbitration has been a failure," he said. "Slowly, inexorably, compulsory arbitration destroys sensible fiscal management," and the arbitration awards, he added, "have caused more damage to the public service in Detroit than the strikes they were designed to prevent."

Officials of the Washington D.C. Metropolitan Area Transit Authority have approached the legislatures of Maryland, Virginia and the District of Columbia City Council seeking repeal of the statute providing for binding arbitration of disputes with the transit system's unions. Metro argues that arbitration awards have been so generous as to threaten the financial solvency of the system. Some local jurisdictions, citing costs disproportionate to levels of service, have withdrawn from the regional transit system, and other local governments are threatening to do the same. The February 2, 1981 Washington Star reported:

> It is arbitration awards, handed down by the professional arbitrators who don't live in the Washington area, which Metro officials feel are responsible for the cost of living clause that yearly costs Washington area taxpayers millions of dollars.
>
> While it is one of those battles that rarely excites public interest, the stakes are high. In 1980, every man, woman and child in the Washington area paid $4 toward the $12.3 million in cost-of-living increases granted Metro's 5,000 union employees.

Many arbitration statues stipulate that the arbitrator must consider the government's ability to pay in forming his decision, but this may provide little protection from overly costly awards. John Baker, former Assistant City Manager of Oakland, California, who has described that city's experience with arbitration as "disastrous," made this observation in a speech reported in the October 23, 1981 Government Union Critique:

> Although Oakland's arbitration ordinance states that the city's ability to pay is a factor the arbitrator must consider when in reaching a decision, Baker felt that it was rarely an important consideration. He personally queried arbitrators about three of Oakland 's cases as to the importance of the ability to pay in their decision-making. In only one case did the arbitrator indicate he had included it in his considerations. In one case, the arbitrator replied it had occurred to him as an "afterthought," and he hadn't given it much weight. The other arbitrator replied that ability to pay did not matter, because the city could take the money from other programs.

Support for interest arbitration, though, has continued to grow among unions active in the public sector. Originally advocated for public safety employees who were denied the ability to strike, arbitration is now sought for all types of public employees. This advocacy reflects the changing nature of public sector labor relations. From a tactical perspective, the strike weapon is not as effective as it once was, particularly for employee groups providing non-critical services. As public sector management has become more experienced in labor relations, they have become better able to weather a strike. Some actually realize budgetary savings as a result of not having to meet payroll during a work stoppage.

In addition, participants in illegal strikes are frequently fined and occasionally dismissed from their jobs. Penalties are also assessed against unions that lead illegal strikes. President Reagan's response to the air traffic controllers' strike is graphic illustration of this, and many unions fear other public officials may emulate the President's action.

From the union's point of view, the potential for relief from the legislative branch is not bright. Attempts to legalize strikes have not been well received in state legislatures, and opinion polls point to a growing dissatisfaction with strikes against government. The President, for example, has received high marks for his handling of the PATCO strike.

These realities have not been lost on union officials. Robert Chanin, former General Counsel of the National Education Association, addressed this point at a January 15, 1981, conference on public sector labor relations jointly sponsored by the Labor Management Relations Service of the U.S. Conference of Mayors and the American Arbitration Association. Chanin said:

> During the 1960's teacher strikes were something new. They got lots of attention and had an effect. But now the novelty has worn off, and school boards have learned they can take a teacher strike. After all, people generally recognize that teacher strikes do not pose an immediate threat to the health and safety of the community.
>
> The courts are turning tough. The fines are getting big. But more than money, teachers have begun to see the insides of jail cells. . . .
>
> So there's an increasing recognition on the part of the (National Education) Association that strikes are not the answer. The Association is looking at alternatives to strikes, and binding interest arbitration is one of them.

In addition, many public sector unions have come to view the arbitration process as a "no lose" situation. The arbitrator's tendency is to issue an award that falls between the final positions of both parties. After negotiating the maximum concession from management, the union can declare an impasse and invoke binding arbitration with the certain knowledge that the arbitration award will not be any less than what has already been negotiated.

Some may view this debate as merely part of the normal, on-going struggle between labor and management. On surface examination, compulsory binding interest arbitration does seem to embody the proverbial "Wisdom of Solomon." What could be more reasonable than having an impartial third party settle a labor relations dispute, particularly if it will prevent an undesirable strike? However, this rather simplistic view fails to take into account the long-range effect of arbitration on both the bargaining process and the special relationship that exists between a government and its citizens in a democratic society.

DISTORTION OF THE BARGAINING PROCESS

There is a growing body of evidence to indicate that the availability of compulsory binding arbitration as an impasse resolution procedure results in a distortion of the collective bargaining process. Instead of negotiating to agreement, the union, seeing minimal risk in arbitration, is more likely to declare an impasse and allow the arbitrator to make the decision. A two and one-half year study funded by the New York State Public Employee Relations Board and the National Science Foundation and conducted by Cornell University found "a 16 percent increase in the probability of an impasse occurring in negotiations" when compulsory arbitration was available.

The April 1978 issue of the U.S. Conference of Mayors Labor Management Relations Service (LMRS) Newsletter reported:

> The new Wisconsin law amendments giving city and school employees the right to interest arbitration in impasses results in 44 petitions filed in the first 44 days of the new provisions, Morris Slavney, Chairman of the Wisconsin Employment Relations Commission, disclosed.

Wisconsin school board officials complained that union leaders believe arbitrators will tend to be more sympathetic to public workers than taxpayers in awarding settlements.

Eugene F. Berrodin, Assistant Director of the Michigan Municipal League, in a paper entitled, "What's Wrong With Compulsory Arbitration?" stated similar concerns. He wrote:

> In entering arbitration, most of the risk is assumed by the employer, who is subject to a costly award. It is rare to the point of non-existence, for the union to risk any decrease in current wages, salaries or working conditions. Therefore, experience to date indicates that many unions consider arbitration to be a non-risk or low-risk venture. Employers may urgently seek to arrive at a settlement in order to minimize their risk in arbitration. This combination of forces under Michigan labor law leads to the conclusion that there has been an inflationary bias in compulsory arbitration which has led some employers to grant wage increases and benefits in excess of what would have been granted in the absence of compulsory arbitration.

Mayor Don Johnston of Coeur d'Alene, Idaho, writing in the November 1977 issue of Idaho City Magazine, noted the tendency of arbitrators to more frequently accept the union's position. Mayor Johnston wrote:

> Public employee unions and associations have nothing to lose and, frequently, a great deal to gain by holding out for binding arbitration. In Massachusetts, as of March 28, 1977, arbitrator's awards have favored union's proposals 28 times as opposed to favoring management's proposals only 13 times. On three occasions both parties submitted indentical last best offers.

Philadelphia's experience with Act 111, Pennsylvania's statute mandating arbitration of police and firefighter impasses, graphically illustrates the chilling effect of arbitration. Writing in the December 1980 LMRS Newsletter, Ellis M. Saull, Assistant City Solicitor, and William Grab, Personnel Technician for the City of Philadelphia, describe what now passes for collective bargaining in the City of Brotherly Love.

> From 1956 to 1968, collective bargaining was informal. In June of 1968, Pennsylvania Act No. 111 was enacted by the State Legislature, providing for binding compulsory arbitration for interest disputes involving police and fire employees of the Commonwealth and its political subdivisions. . . .
>
> Beginning with fiscal year 1971 (7/1/70 to 6/30/71), to present, every police and fire contract has been determined through binding arbitration under Act 111 . . . .

> There have been no police or firefighter strikes since the inception of arbitration. However, since Act 111 went into effect, the negotiating process has been chilled to the extent that, in most years there have been five or less negotiating sessions prior to reaching of impasse and the invocation of arbitration, with little serious movement from the parties' initial positions. In all of these cases, the impasse has been declared and arbitration requested by the Unions.
>
> During the 1980 negotiations, for the first time (since 1969) a tentative negotiated agreement was reached with one of the employee representation organizations. Local 22's executive board and the City reached an agreement for a four year pact in February 1980. However, the rank and file membership, hoping to do better in arbitration, overwhelmingly rejected the pact.

The arbitration process also entails certain administrative costs. The California Department of Finance, in January of 1976, prepared an estimate of the costs of extending compulsory binding arbitration to disputes involving fire and public safety employees. The study estimated there would be 300 negotiations per year. Based on research done by James L. Stern and others in Final Offer Arbitration, it was calculated that 30 percent of all negotiations would go to arbitration. It was further calculated that, on average, an arbitration process would cost the government involved an amount in excess of $12,000. This meant California taxpayers would be paying some $1,089,000 per year in arbitration costs. In his earlier cited speech, John Baker noted that it cost the city of Oakland from $25,000 to $90,000 to prepare for a single arbitration case.

DEMOCRATIC PROCESS THWARTED

More important than these fiscal and administrative costs associated with the use of compulsory binding arbitration are the political costs involved in its use. Dr. Sylvester Petro in his March 1974 Wake Forest Law Review article "Sovereignty and Compulsory Public Sector Bargaining" wrote: "Compulsory arbitration of public sector bargaining impasses is, if possible, even more destructive of governmental -- and -- popular sovereignty than are public sector bargaining and strikes."

Harry H. Wellington and Ralph K. Winter, Jr. in their 1971 Brookings Institution study The Unions and the Cities, noted that strikes by public sector

unions may be so effective a weapon as to "distort 'the normal American political process.'" This is one of the considerations that spawned the search for an alternative to strikes. However, it must be recognized that the alternative, binding arbitration, also possesses the power to distort the political process.

Compulsory public sector collective bargaining diminishes citizen control of government by requiring elected officials to share what had been unilateral decision-making authority with unions. Compulsory binding arbitration completely destroys the concept of citizen control by turning over absolute decision-making power to third parties who are in no way accountable to the citizens of any governmental unit.

In "Final-Offer Arbitration and Teacher Contract Bargaining" published in The Journal of Collective Negotiations in the Public Sector, Vol 7, No. 4, Dr. Richard A. King wrote:

> The costs of teacher bargaining include not only potential fiscal losses by both parties and the disruption of a necessary service to the public, but also the potential destruction of local fiscal control . . . .
>
> By establishing a procedure for deciding one offer or another by a private, non-elected board, legislators are in effect delegating governmental decision-making power in a manner that might be unconstitutional. By mandating school boards to accept a binding award that must then be funded by the public, legislators may be instituting a form of taxation without representation.

This very concern has been echoed by public officials and labor relations experts of varying philosophies and approaches to public sector bargaining problems. Paul R. Soglin, former Mayor of Madison, Wisconsin, wrote in an article in the November 1977 LMRS Newsletter: "By requiring compulsory, final, and binding arbitration, the responsibility of administering government is taken away from elected officials." It follows that, if decision-making power is taken from elected officials, it is taken from the citizens.

Former Massachusetts Governor Michael S. Dukakis, in a statement vetoing reenactment of compulsory binding arbitration for public safety employees in his state, wrote:

> By imposing binding arbitration on all communities - no matter how willing and able the given city or town has been to negotiate in good faith with its employees - the law has made normal collective bargaining irrelevant. It has taken the responsibility of determining the financial future of the city or town, at least insofar as the cost of public safety services affect that financial future, from the local elected officials and given that responsibility to an unelected arbitrator who may not even live in the community. I do not believe that this broad delegation of local fiscal powers is consistent with any reasonable notion of home rule . . . .

Perhaps the most damning indictment of the process comes from an arbitrator. In a 1972 *Columbia Law Review* article entitled, "Binding Arbitration of Contract Terms: A New Approach to the Resolution of Disputes in the Public Sector," Joan McAvoy quotes a member of a three-man arbitration panel which resolved a dispute between the City of Marquette, Wisconsin, and its police union. This somewhat disenchanted arbitrator stated:

> . . . Who elected the arbitration panel of which I am a part? To whom is this panel responsible or responsive? What pressure can the citizens of the City of Marquette bring to bear on the panel? How do they express their satisfaction or dissatisfaction with the panel's decision?
>
> . . . With no reflection on their integrity intended, it is a simple fact that the two panel members who endorse the majority decision are not citizens of the City of Marquette nor even of Marquette County. And yet their decision, which has very far reaching implications, and will ultimately, no doubt, result in increased taxes for the people of the City of Marquette, is final and binding upon those people, their government and its employees.

VIOLATION OF ONE-MAN, ONE-VOTE

In addition to the previously stated concerns, it is also charged that arbitration suffers a constitutional flaw.

> Compulsory arbitration statutes have been attacked as violating the Equal Protection Clause of the Fourteenth Amendment, via the one-man, one-vote principles enumerated by the United States Supreme Court in *Gray v. Sanders*, 372 U.S. 368 (1963) and *Reynolds v. Sims*, 377 U.S. 533 (1964). The argument is that the selection of an arbitrator by each party, and appointment of a third arbitrator by the first two, not only deprives citizens of an equal voice in selecting the panel, but removes from the public their right to equal representation in the decision-making process as well.

> The one-man, one-vote argument has been generally rejected on the theory that an arbitration panel's responsibilities are not purely legislative in character. City of Amsterdam v. Helsby, supra. Using the argument discussed above that arbitration panels can only affect spending, and not actually determine costs, courts have generally regarded arbitration panels as non-legislative in nature and, therefore, isolated from the one-man, one-vote principles.
>
> (Helsby, Wayne L., "The Constitutionality of Legislatively Mandated Binding Interest Arbitration: A Guide for the Practitioner," The Review, Spring 1980, Center for Employment Relations and Law, College of Law, Florida State University, Tallahassee.)

The question, then, is whether arbitrators perform a legislative function and whether their decisions affect policy matters. Although the courts in previous cases have not accepted this contention, there is growing evidence that arbitrators do wander into legislative areas and do shape public policy.

The February 23, 1981, Government Employee Relations Report (GERR) includes an account of a recent Ohio case relating to arbitration. Judge Daniel B. Quillian of the Summit County Court of Common Pleas in Local 330, Akron Fire-fighters Association v. City of Akron overturned an arbitration award. GERR reports his reasons for doing so:

> The power to fix the compensation of municipal employees is "one of the basic functions of municipal government," he finds. "It is not a mere incident of government but goes to the heart of the purpose of municipal government, that is to provide services to its citizens," the court finds.
>
> Whether firefighters should work eight-hour shifts and 40 hours per week or 24 hour shifts and a 52 hour week is a "subject about which there can be honest debate." Judge Quillian finds changing the fire fighters' schedules is a "fundamental change in city policy which should not and cannot be brought about by the un-reviewable decision of a single arbitrator purporting to con-strue an ambiguous clause in an agreement.' (emphasis added)

Robert Chanin, former General Counsel of the National Education Association, has acknowledged the link between public sector collective bargaining and strikes and public policy matters. In an interview published in the February 28, 1981, Political Action Report, Chanin said, "the purpose of many strikes is not to

pressure governments into running higher debts, but rather to determine the priority of allocations - how available funds should be spent." If bargaining and strikes influence policy matters, then an arbitrator whose function is to resolve bargaining disputes and prevent strikes must surely deal with and issue binding decisions on policy matters.

In a February 1978 Labor Law Journal article entitled "Interest Arbitration in Public Employment: An Arbitrator Views the Process" Tim Bornstein, a practicing arbitrator, provided a clear and concise statement of the critique of binding arbitration.

> Elected officials and political scientists warn that interest arbitration is inconsistent with the fundamental tenents of self-government. They perceive the interest arbitrator as one who has not been elected by the citizenry and is not accountable to them, who has not been appointed by the governor, and is not accountable to him, who is probably not a citizen of the community over whose fiscal fortunes he presides, and who may not even be a citizen of the same state; yet this stranger has the authority to fix wages, hours, working conditions for the community's employees and indirectly influence its tax rates and allocation of its resources.

Bornstein's comments include a remarkably candid recognition of the fact that this criticism has merit.

> An interest arbitrator is no longer basically a judge, instead, his role is legislative. While it is sometimes thinly veiled in judicial guise, compulsory interest arbitration involves policy choices, a legislative function which requires the arbitrator to fashion a wage and benefit package for the parties based on his judgement of what is fair, reasonable and appropriate. (Emphasis added)

There is another force at work which increases the likelihood of an arbitrator exercising authority over policy matters - that is, performing a legislative function. As a bargaining relationship evolves, matters of policy are more likely to be decided at the bargaining table. A February 1979 Rand Corporation study, Organized Teachers in American Schools, noted this phenomenon.

> The phase one analysis indicated that collective bargaining gains by teachers follow a distinct pattern. Teacher organizations first bargain over and obtain increases in salary and fringe benefits; they then move on to working

> conditions and job security and only lastly, to issues of educational policy. Although noncompensation gains have not been universal, teachers have significantly improved their working conditions and increased their influence over school and classroom operations. Regulation of class size may be one of the most dramatic gains, but negotiated provisions covering assignment and transfer policy are another important collective bargaining achievement. At the same time, organized teachers now play a major role in the decisions about the length and composition of the school day, how teachers are evaluated, and how supplementary personnel are used in the schools. (Emphasis added)

If these policy issues are brought to the bargaining table and cannot be resolved there, they will be placed in the hands of an arbitrator for resolution. There now arises a situation in which an unelected, outside third party is rendering binding decisions on staffing requirements, class size, or any number of policy matters directly and significantly affecting the operations of a public enterprise.

Furthermore, to assert that arbitration has no policy implications, it is necessary to assume that an arbitration award affects only that group of employees and that bargaining unit at which it is directed and not any other program in the wide range of governmentally provided services and benefits. This view is, at best, naive. The public sector negotiation and arbitration processes do not occur in a vacuum. An arbitrator's decision on the wage and benefit package for one group of employees can have an immediate effect on other departments and other services, possibly forcing a reduction in the level of service or an alteration in their method or quality of delivery.

LEGAL CHALLENGES

The constitutionality of compulsory binding arbitration provisions have been challenged before state supreme courts fourteen times. In ten cases, the challenges were denied. Pennsylvania's police and fire arbitration statute was upheld because the state constitution had been amended to specifically provide for such provisions. In Michigan, only four of the seven Supreme Court Justices heard the challenge to that state's arbitration law. The Justices split two-two, and therefore, a lower court decision upholding the statute was allowed to stand. Connecticut's arbitration law was declared unconstitutional by the

Hartford County Superior Court, but the Supreme Court reversed the decision. The Connecticut Supreme Court did not address the constitutional questions raised in the lower court opinion, but reversed on the grounds that the plaintiffs, eight municipalities and an individual taxpayer, lacked standing.

The supreme courts of four states - South Dakota (1975), California (1976), Colorado (1976), and Utah (1977) - have held compulsory binding interest arbitration to be unconstitutional. In all of these cases, the courts have handed down remarkably similar decisions, finding arbitration to be an unconstitutional delegation of authority to an unaccountable third party.

The Colorado Supreme Court stated:

> The trial court ruled that the amendment provisions concerning compulsory binding arbitration constitute an unlawful delegation of legislative power. This is an issue of first impression in Colorado. We are persuaded that this view is correct. . . . A contrary holding in our view, would seriously conflict with basic tenets of representative government. Fundamental among these tenets is the precept that officials engaged in governmental decision-making (e.g., setting budgets, salaries and other terms and conditions of public employment) must be accountable to the citizens they represent. Binding arbitration removes these decisions from the aegis of elected representatives, placing them in the hands of an outside person who has no accountability to the public. (Greeley Police Union and Donald O'Leary v. City Council of Greeley, et al; Colorado Supreme Court, Case No. 26992, Aug. 23, 1976)

In the previously mentioned Connecticut case, Judge Joseph H. Goldberg of the Hartford County Superior Court wrote:

> The Court concludes that the Act's compulsory arbitration provisions, which delegate legislative power affecting municipal affairs to a politically unaccountable body without appropriate safeguards against arbitrariness, are so unreasonable and capricious as to violate the due process clauses of both the Connecticut and United States Constitutions. (Town of Berlin, et al v. Frank Santaguida, et al; Hartford County Superior Court, June 26, 1978)

SUMMARY

In summary, one of the most succinct enumerations of the deficiencies of compulsory binding arbitration was authored by Sam Zagoria, well-known labor

relations expert, supporter of collective bargaining in the public sector, and former director of the U.S. Conference of Mayors' Labor Management Relations Service. In the April 1977 LMRS Newsletter, Zagoria listed the problems associated with the use of arbitration:

> (1) It discourages honest, good-faith collective bargaining. As long as this extra step is available, there is a possibility that a party will hold back on the compromise-making accommodations on which effective bargaining relies. . .
>
> (2) It places far-reaching power in the hands of a person, not elected, not accountable to elected officials and not necessarily a resident of the community or even the state involved. He is unlikely to be trained or experienced in municipal finances or administration. Yet his decision constitutes, nonetheless, a mandate on the community leadership, which can force substantial changes in taxation, public policy priorities and the ability to manage the work force . . .
>
> (3) The arbitrator is an ad hoc appointee with no continuing responsibility to make an award that is workable as well as just. There is no year-round accountability, contrary to the principles of representative government and sound public administration . . .
>
> (4) It is probably impossible to make an award for one group of workers without affecting other groups of municipal workers, yet an arbitrator has neither the authority nor responsibility to examine their situation. The 'ripple' affect of his decision could have a tidal wave effect on the city administration.
>
> (5) Contracts are not negotiated in isolation from past or future arrangements. It is difficult to make an award for one contract without dealing with how it fits generally into long-term labor relations, into future city plans, some of which are not yet formulated or expressed . . .
>
> (6) The process is unbalanced since it makes a no-risk or low-risk step available to a union or employee organization. Rarely will an arbitrator even consider awarding a union less than what management has already offered.
>
> (7) Arbitrators . . . tend to provide something for each side in their award regardless sometimes of the actual merits involved. Some cynics suggest this may be part of an arbitrator's job-preservation program . . .

(8) Arbitration is an expensive add-on to the bargaining process. There are the steadily rising fees of arbitrators and now a growing use of economic consultants to prepare a case and accompanying exhibits, and as one side goes down this path, the other almost has to follow in self-defense.

(9) It is a time-consuming process. . . . The Massachusetts League of Cities and Towns found the average length of time consumed in the arbitration phase alone was more than a full year.

(10) There are serious questions of constitutionality . . . .

RIGHTS OR GRIEVANCE ARBITRATION

Rights or grievance arbitration, as was noted earlier, is a process for resolving disputes over the interpretation, meaning or application of an existing collective bargaining contract. The typical grievance procedure involves several progressive steps through an agency's hierarchy. The final or terminal step would be binding arbitration. As is the case with interest arbitration, a third party neutral -- grievance arbitration usually employes a single arbitrator -- renders a decision that is binding on both parties.

It is the grieving party, the union, which controls the decision to pursue a grievance through the various steps, including the decision to submit to arbitration. As with interest arbitration, it is the union rather than the employer which will invoke arbitration.

There are two ways by which arbitration is provided as the terminal step of a grievance procedure -- by statute or as part of the negotiated grievance procedure found in the contract. Many public sector collective bargaining statutes mandate arbitration of grievances.

EARLY CONCERN UNHEEDED

As the private sector bargaining model was put to use in the public sector, grievance arbitration was generally accepted as part of the process. Gerald M. Pops, in his book Emergence of the Public Sector Arbitrator, has noted that this transfer was accomplished with little questioning:

> The process of transferring their function from the private to the public sector has, on the whole, been undertaken with little forethought as to the difference between private and public employment. In fact, the transition has occurred almost automatically as the institution of collective bargaining has taken root in public employment. There has been an implicit assumption that, although the institution of collective bargaining and the employment relationship have a somewhat different character in the two environments, the grievance arbitration process -- and the arbitrator -- would and should perform the same function in the same way.

There were some who raised questions relatively early in the development of collective bargaining in the public sector. Pops quotes arbitrator Peter Seitz, speaking before a 1967 seminar:

> Arbitration, I am persuaded, is a more sensitive plant than is generally appreciated. Its utility as an institution can easily be impaired or even destroyed by freighting it with missions it is ill-equipped to discharge; by making it an instrument of national, state or local public policy; or by diluting its special private and voluntary character. Yet there are many well-intentioned persons who believe that if arbitration worked well in adjudicating private grievances, it should be a nostrum and cureall for a variety of other diseases. This gives me serious concern.

In their 1971 Brookings Institution study The Unions and the Cities, Wellington and Winter expressed concern over the importation of grievance arbitration to the public sector:

> One of private management's major complaints about grievance arbitration is that, because it tends to accommodate interests as well as adjudicate rights, unions frequently gain what they have not been able to win at the bargaining table....
>
> How frequently arbitrators in fact do what employers say they often do is difficult to judge. But it does happen, because unions press for it and because grievance arbitration involves, to some extent at least, the accommodation of interests as well as the adjudication of rights. Nor, in the private sector, is there much check on the arbitrator. The scope of judicial review has been sharply limited by the Supreme Court.
>
> Whatever one's judgement on the wisdom or unwisdom of accomodation in private sector grievance arbitration, it is dangerous business in the public sector. Because the scope of bargaining has vast social implications in public employment, arbitrators should not be allowed to extend the area of union control through the settlement of grievances.

Yet these warnings went unheeded by legislators and public officials or were deftly parried by the unions that sought the extension of grievance arbitration

to the public sector. The defense of the process was a simple and, initially, a convincing one: the arbitrator does not create the terms of a contract but merely interprets language previously agreed to by the parties:

IMPLICATIONS FOR POLICY DETERMINATION

As the collective bargaining process has evolved in the public sector, it has become apparent that the grievance process involves matters of public policy. For one thing, the collective bargaining agreement is a statement of public policy having the force of law. This is a point the unions concede. In fact, they have used this argument when seeking judicial enforcement of contract terms.

The previously cited Rand Corporation study of collective bargaining by teachers pointed out that, as the process develops, the scope of bargaining -- those items which are included as part of the contract -- broadens to include more and more matters of public policy. It can safely be assumed that this same evolutionary pattern would occur in other areas of public employment. As contract language expands in this fashion, arbitrators will increasingly be put in the position of rendering decisions on issues of public policy.

Defenders of grievance arbitration, however, will argue that the arbitrator's role remains interpretative rather than formulative. If there is a problem here, it is with the scope of bargaining not the grievance procedure. The arbitrator is still only interpreting contract language not making policy.

But as the grievance arbitration process is examined further, this defense begins to lose credibility. For one thing, Wellington and Winter's concern about the grievance arbitrator's tendency "to accommodate interests" appears to have been well-founded. Many public officials feel the unions seek, often successfully, to use grievance arbitration as an extension of the negotiating process. One school board official with long experience in public sector labor relations has observed, "Unions have probably gained more through grievance arbitration than they have at the bargaining table."

At the bargaining table, unions seek to expand the number and types of items that are grievable and, hence subject to arbitration. A reason for doing this, it may be argued (as did Wellington and Winter), is to create a situation "through which the union extends its area of control over issues that belong to the political process."

TO INTERPRET IS TO FORMULATE

A bargaining demand that surfaced recently in Oregon provides illustration. A teacher union sought contract language that would have made alleged violations of school board policy subject to grievance arbitration. Fortunately, the Oregon Employment Relations Board refused to require negotiations on the demand. In rejecting the union position the Board pointed to the policy implications. The majority opinion stated:

> We emphasize that a proposal's effect in restricting educational policy is not significantly changed by whether the proposal would require the two parties to bargain those policy matters or whether it would require the policy maker to submit its decisions to the scrutiny of a third party after they are made. In either case, the effect is to restrict the policy making role which the employer was elected to fulfill...
>
> Could such a third party "review" affect the substance of these permissive matters? We believe it not only possible, but probable. An arbitrator cannot "rule" on an alleged policy/rule violation without first deciding what the particular policy or rule does, or does not require (i.e., without determining the substance or content of the language at issue). In so deciding, the arbitrator gives a policy its meaning -- a meaning which might well be at variance with the district's own interpretation.

At the crux of this issue is an inescapable point of procedural reality: the act of interpreting a law or contract language has the ultimate effect of formulating that law or language. Myron Lieberman, in Public Sector Bargaining, makes this point:

> In a general way, policymaking in grievance arbitration is analagous to judicial legislation. Judges frequently have to interpret and apply legislation. When this happens, the judges are in effect acting as lawmakers. The argument over whether they are merely interpreting the law or formulating the law is largely a semantic issue... The fact is, however, that the power to interpret the law is also the power to formulate the law.
>
> By the same token, the power to issue binding interpretations of collective agreements is also the power to formulate such agreements... And since such agreements constitute public policy for their duration, the power to make binding interpretations of them is a de facto power to make public personnel policy. A crucial difference, however, is that arbitrators instead of judges are making the policy.

Placing this kind of decision making power in the hands of an individual with no political accountability does violence to the concept of democratically constituted representative government.

CONCLUSION

In summary, the overwhelming weight of evidence holds binding arbitration, both interest and grievance, to be an unsatisfactory method of resolving labor disputes in the public sector. The process is inordinately expensive to governments both in terms of eventual settlements and administrative costs. Arbitration contains a built-in-bias toward the union position.

Most importantly, compulsory binding arbitration does violence to the concept of representative government. Turning over decision making authority to an outside third party accountable to no one, deprives citizens of their right to a voice in the running of their government. In a democratic society, this is intolerable.

APPENDIX I

The following nineteen state have compulsory binding arbitration legislation:

1. ALASKA - compulsory for police, fire, correctional and hospital unions which are denied the right to strike. Unions granted limited strike rights are also subject to compulsory arbitration when those strikes are enjoined.
2. CONNECTICUT - compulsory for municipal and teacher unions. For municipal unions a three-member panel engages in issue-by- issue final offer arbitration 90 days after expiration of current agreement. For education unions, a three-member panel selects between last best offers of both sides 20 days before school budgets are due at local boards of finance.
3. HAWAII - disputes involving firefighters are submitted to compulsory arbitration if differences persist 15 days following declaration of an impasse. A three-member panel selected in the traditional manner shall render a binding decision on a total package final offer basis.
4. IOWA - binding arbitration for all public unions at the request of either party if an impasse persists following fact-finding. The parties may use a single arbitrator or a three-member panel. The arbitrator or panel may choose on an issue-by-issue basis from among the final offers of each party or the fact-finder's recommendation.
5. MAINE - statutes in Maine cover state unions, municipal unions (including teachers) and University of Maine employees. They provide for arbitration of unresolved issues remaining after mediation and fact-finding. If both parties can agree, a single arbitrator may be used. Otherwise, a three-member panel picked in the traditional manner will resolve the dispute. The award is advisory on economic matters and binding on all others.
6. MICHIGAN - binding arbitration covers police, firefighters, state police and certain emergency medical personnel unions. Impasses not resolved by mediation or fact-finding within 30 days are submitted to a three-man arbitration panel. A decision is rendered on an issue-by-issue final offer basis.
7. MINNESOTA - arbitration for all public unions. Upon declaration of an impasse, parties submit final offers of unresolved items to a single arbitrator if they so choose or to a three-member panel. To select a panel, the parties alternately strike names from a list of seven arbitrators until three remain. Teacher unions are granted a choice between striking or arbitration. The remaining public unions are permitted to strike only if the employer refuses to submit unresolved items to arbitration or refuses to abide by an arbitration award.
8. MONTANA - legislation in 1979 applicable to firefighters and some state employee unions. Either party may request last best offer, issue-by-issue arbitration.
9. NEBRASKA - all public employee unions covered with a unique impasse resolution device. A Court of Industrial Relations considers all disputes and issues a binding decision. The court is a permanent body whose members are employed by the state.
10. NEVADA - covers local government employee unions, including teachers and state nurses unions, and provides that the parties may agree in advance to make all or parts of a fact-finder's report binding.

11. NEW JERSEY - police and firefighters unions are covered by compulsory arbitration. The parties have a choice on the form of arbitration to be used, either a single arbitrator or a panel. Arbitration can be conventional or final offer, and final offer may be issue-by-issue or total package.

12. NEW YORK - police and firefighters unions are covered by compulsory arbitration with a conventional, three member panel. These provisions are renewable on a two year basis. The present extension expires July 1, 1983.

13. OREGON - compulsory arbitration for police, firefighters, and prison guard unions who are legally prohibited from striking. The parties may choose a single arbitrator or a panel of three selected by striking names from a list of seven. Arbitration is conventional. In cases where otherwise legal strikes are enjoined, remaining unresolved issues must be submitted to arbitration.

14. PENNSYLVANIA - compulsory arbitration for police, firefighters, guards at prisons and mental hospitals and court employees. Each party selects one member of the three-man panel, and these two select the chairman. Arbitration is conventional and is invoked at the request of either party or if no agreement is reached after 30 days of negotiations.

15. RHODE ISLAND - several statutes provide for arbitration for all public unions. In the case of police and firefighters, all issues unresolved after 30 days of negotiations are submitted to a three-member panel for conventional arbitration. Arbitration is instituted for others if mediation fails to settle all impasses. For state employee unions this is compulsory. For municipal employees and teachers unions it is instituted at the request of either party.

16. VERMONT - compulsory arbitration for municipal employee, police, and firefighter unions on a local option basis. Municipalities may opt by a referendum vote to provide the binding procedures. Arbitration is instituted if an impasse persists 20 days following a fact-finder's report. The three-member panel engages in conventional arbitration.

17. WASHINGTON - compulsory for uniformed personnel if an impasse persists 45 days after mediation and fact-finding commences. A three-member panel engages in conventional arbitration.

18. WISCONSIN-compulsory binding arbitration for municipal unions. At the request of either party, disputes involving police and firefighters unions are submitted to compulsory binding arbitration. A single arbitrator is selected by each party alternately striking names from a list of five. Unless conventional arbitration is specified by the parties, the decision will be rendered on a total package final offer basis. Compulsory binding arbitration for municipal employees created by 1979 legislation allowing parties to agree to binding arbitration or strike option. A single arbitrator, selected as above, decides between final offers. The statute will expire July 1, 1987.

19. WYOMING-the firefighter bargaining statute provides for compulsory arbitration if no agreement is reached within 30 days. Arbitration is by a three-member panel.

APPENDIX II

Compulsory arbitration statutes were overturned by the supreme courts of the following states:

CALIFORNIA-*Barry Bagley, et al. v. City of Manhattan Beach, et al.;* Supreme Court of California, Case No. L.A. 30523, September 16, 1976.

COLORADO-*Greeley Police Union and Donald O'Leary v. City Council of Greeley, et al.;* Colorado Supreme Court, Case No. 26922, August 23, 1976--and later in *City of Aurora v. Aurora Firefighters' Protective Association, et al.;* Colorado Supreme Court, Case No. 27227, August 2, 1977.

SOUTH DAKOTA-*City of Sioux Falls v. Sioux Falls Firefighters Local 814, Fraternal Order of Police, Lodge No. 1, et al.;* South Dakota Supreme Court, Case Nos. 11406, 11411, and 11424, October 9, 1975.

UTAH-*Salt Lake City, et al. v. International Association of Firefighters Locals 1645, 593, and 2064;* Utah Supreme Court, Case No. 14689, April 25, 1977.

Uhlman: Rather a Strike Than . . .

BY MARIBETH MORRIS
P-I Labor Writer

Mayor Wes Uhlman said yesterday he'd rather go through a strike by public employes than wind up with a binding agreement made by an "irresponsible" arbitrator whose decision could bankrupt the city.

Uhlman, speaking here at a forum discussion on the right of public employes to strike, emphasized he wasn't supporting workers' walkouts by any means.

"If the rules are right, binding arbitration is the answer," the mayor said, "but only in cases where the public's health and safety is at stake."

Uhlman cited a case involving a California city which tried to reduce the firefighters' force by 36. An arbitrator not only cut the work week but added 66 additional men.

"This cost the city $3 million more a year and other services had to be cut back because of this irresponsible decision."

Uhlman referred often to the 100-day City Light strike this winter after which, he said, neither side came out the "clear and total winner."

The mayor termed prohibition of public employe strikes as "not reasonable, paternalistic and unfair."

At the same time, however, Uhlman said cities cannot afford to give in to "outrageous demands."

"New York City found that the chaos of a strike was nothing compared to the chaos of a pending bankruptcy," Uhlman said.

A gentlemen's debate on public employe strikes preceded Uhlman's presentation at the forum, co-sponsored by the American Arbitration Association and the Seattle-King County Municipal League.

George Masten, executive director of the Washington Federation of State Employes, defended the "inherent right" of public employes to strike.

"Public employes have a right to withhold their services to pursue their goals," Masten said. "There is the hue and cry that the people will suffer.

"The suffering is no different if a strike is called by private doctors or public doctors."

Seattle management consultant C. Carey Donworth took the opposing side saying public employes shouldn't have the legal right to strike because the public ends up being the principal victim.

Legalizing public employe strikes will increasing strike activity and the public will suffer even more, Donworth said.

"If you legalize murder, you will have more murders," Donworth said. "It's that simple."

Seattle Post-Intelligencer March 7, 1976

"Best Last Offer" Referendum – A Viable Alternative

By Joseph H. Weil

In late 1975, before his appointment as Secretary of Labor, W. J. Usery, Jr., then director of the Federal Mediation and Conciliation Service, anticipated a crucial year in 1976 for labor relations when he said, "In the public sector, we are sitting atop a tinder box."[1] He referred to the difficulties in labor relations in the public sector and added, "Such ingredients are a recipe for chaos." The potential for conflict in public sector labor relations during 1976 was also pointed out by representatives of both labor and public management.[2]

In June of 1976 the United States Supreme Court conclusively dealt with the question of the Federal Government's power to regulate the relationship between state and local governments and their public employees, as raised by the challenge to the 1974 amendments to the Fair Labor Standards Act by the National League of Cities.[3] A majority opinion specifically receded and overruled the Court's prior opinion which upheld earlier FLSA provisions as they applied to schools and hospitals,[4] stating that the earlier decision in *Wirtz v. Maryland* may no longer be regarded as "authoritative."

Joseph H. Weil, Miami, received B.A. and LL.B. degrees from the University of Florida. He has been special counsel to the United States Senate Committee on Aging, a member and chairman of the City of Miami Building Board of Appeals and the Metropolitan Dade County Charter Review Board, and city attorney for North Bay Village. He has written an article on collective bargaining, published in the May 1976 Florida Municipal Record and reprinted in the August 1976 Municipal Attorney. He is also a member of the National Institute of Municipal Law Officers and a member of the executive committee of the Local Government Section of The Florida Bar.

Mr. Justice Rehnquist, speaking for the majority, held

> that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, §8, cl. 3.

and further stated:

> We agree that such assertions of power, if unchecked, would indeed allow "the National Government [to] devour the essentials of state sovereignty."

The broad language of this decision in placing a real limit on the power of Congress to control state and local government employee relationships effectively blunts the drive in Congress for a federal public employees labor relations law and "may bring states and cities additional benefits in their labor-relations battle with public-employee unions."[5]

It now appears that neither labor nor public management is satisfied with the existing formulas that are presently provided by most state laws.[6] Although several states have yet to enact legislation dealing with labor relations in the public sector,[7] most have adopted either "meet and confer" laws such as Missouri,[8] local option plans such as California,[9] or compulsory bargaining schemes such as the Florida law[10] which contains complex provisions for impasse resolution that ultimately leave final determination as a unilateral decision of the public employer.[11] A few states have experimented with the concept of compulsory arbitration in public sector collective bargaining,[12] or the possibility of permitting strikes and job action on a limited basis within the public sector.[13]

George Meany and the Public Employees Department (PED) of the AFL-CIO take the position that strikes should be legalized in the public sector,[14] although Jerry Wurf, president of the American Federation of State, County and Municipal Employees (AFSCME), the AFL-CIO's largest union of public employees, stated in a recent interview:

> As for all the other fields of public employment, our Union is willing to agree in advance that if we get into bargaining impasse we will go to arbitration voluntarily, rather than be forced into it as a matter of law.
>
> I think the wage-arbitration system in the steel industry offers an excellent example that can be followed in the public services.[15]

The validity of binding compulsory arbitration laws in the public sector is presently in a state of confusion and somewhat in doubt.[16]

The Florida law, Part Two of Chapter 447, Florida Statutes, known as the "Tucker Act" is illustrative of the approach taken by a great man of states in regulating collective bargaining in the public sector.[17] This law provides an illusory equality of bargaining by introducing the concept of a special master,[18] whose function is that of both fact-finder and arbitrator, but whose recommendations are without real force or effect. The recommendations of this special master must be considered by the legislative body of local government at a public hearing.[19] Compliance by the legislative body with this statutory requirement has not engendered any great interest on the part of the general public, and as a result, such a hearing has no effect on the parties except perhaps to encourage indirect political pressure which does not serve the public interest.[20]

Most state laws provide some prohibition against "strikes" or "job actions," such as the Florida law which states:

> No public employee or employee organization may participate in a strike against a public employer by instigating or

supporting, in any manner, a strike. Any violation of this section shall subject the violator to the penalties provided in this part.[21]

Such "no strike" provisions do not prevent labor disruptions in the public sector, for if the employee organization remains dissatisfied, even after the impasse is resolved, it may still resort to the "illegal strike."[22] Generally when such "illegal strikes" are settled, one of the conditions demanded by the employee organization is that the public employer take no retaliatory action against the union for participating in an illegal strike.[23] Thus, the statutory prohibition against strikes has little apparent impact on the incidence of strikes in the public sector[24] and the question of how such "no strike" provisions of the law should be enforced has recently been addressed in Florida by the appellate courts in the litigation that resulted from the alleged illegal strike of Broward County school teachers in late 1975.[25]

Disregarding the problem of the "illegal strike," it now appears that the majority of the general public supports the position taken by most public employers that strikes in the public sector should not be permitted since the concept of "public service" of the government, employees and the plight of the cities has been a strong factor in the current taxpayers' revolt.[26] Therefore, in view of the unacceptability of "strikes," "job actions" or other disruptions of service in the public sector, labor, management and the public have all sought some alternative procedure for impasse resolution.[27]

Public employers are almost unanimous in their opposition to legally binding compulsory arbitration for impasses in the public sector.[28] They take the position that such arbitration is really only binding on the public employer, as the employees may still resort to "illegal strikes" or "job actions" if they are not satisfied with the arbitrators' award.[29] The principal objection of the public employer to compulsory binding arbitration is that public officials lost control of policy making and their ability to determine the priorities in dealing with the problems of local government.[30] Thus when compulsory binding arbitration is used as the method for impasse resolution, decisions affecting the needs of local government are made by "labor experts" rather than by elected public officials, and the decisions result from adversary proceedings rather than from the political process.[31]

Best Last Offer Concept

This objection would apply to both conventional arbitrational awards, as well as "best last offer" arbitration.[32] The "best last offer" concept has been introduced recently as a variation of traditional arbitration proceedings. Since the arbitrator is "frozen" and must accept either one of the two "best offer" proposals that are submitted to him, it places pressure on each of the parties to place before the arbitrator his most reasonable proposal.[33]

As an alternative to either illusory collective bargaining, compulsory arbitration, or "strikes and job action," the newest approach appears to be a referendum election to resolve the issues. Such a procedure has been promulgated recently by one of the outstanding experts[34] in public sector collective bargaining. The proposal is to give

either party by law the right to take the contested issue to public referendum, hitching the fact-finders' recommendation on the next regular or special election ballot, whether it is for choice of municipal officials, a decision on bond issues, selection of state officials or similar public referendum.[35]

A related new concept recently adopted by the City of Englewood, Colorado, provides:

RESOLUTION OF IMPASSES
COMMISSION RECOMMENDATIONS
VOTER APPROVAL

If the appropriate city representative and the representative of a certified employee organization reach an impasse, the matter shall be submitted to the commission for fact-finding and mediation. The commission may at its discretion appoint or employ one or more mediators or fact-finders to assist the commission or the parties involved.

Within thirty (30) days after submission to the commission for fact-finding and mediation, the commission shall render its findings and recommendations to both the city and to the affected employee representation unit.

Should either the city of the employee representation unit decline to accept the recommendation of the commission, or to otherwise agree, then either of said parties shall within thirty (30) days notify the council of its decision.

Within thirty (30) days after written notice to the council by either party of its refusal to accept the recommendations of the commission, the council shall call a special municipal election by ordinance or resolution, submitting the recommendation of the board to a vote of the qualified electors of the city for their approval or disapproval. Furthermore, if requested to do so by the appropriate employee unit, the city council shall submit the proposal of the employee unit at the same election. The city council may, at its discretion, submit its proposal at the same election.

The proposal receiving the highest number of votes, if approved by a majority of the qualified electors voting thereon, shall be deemed approved.

Said election shall be held consistent with the provisions of Article II, Section 14 of this charter.

Expenses of any special municipal election called under this section, shall be borne by the city. All fees and expenses by the board of its appointees incurred hereunder shall be shared equally by the city and the appropriate employee representation unit.

The city shall furnish meeting space and recording and transcribing services when requested for such proceedings.[37]

A unique flexibility is available under such a "best last offer" referendum provision, not only to the employee organization and public management, but also to the general public. Under the terms of such a provision, the public must, by its election, determine a choice, which should be binding on both of the parties. Both sides can attempt to influence the result of the referendum through the traditional political process of education and campaigning. Ultimately, the taxpayer who pays the bill will have the right to make the choice.[38]

More recently, in San Francisco, "a citadel of trade-unionism for four decades ... the old alliance between city hall and the building trades came undone in a strike by ten craft unions that brought many city services to a halt and prompted labor leaders to threaten a general strike by all union members."[39] However, it was clear that the elected officials were facing a taxpayers' revolt and they were seeking new solutions.

In November of 1975 the electorate amended the city charter by rescinding the automatic "prevailing wage" for craft unions, removing from the mayor the authority to unilaterally negotiate with city employees and authorizing future salaries and benefits to be negotiated by the board of supervisors.[40] In the face of the strike by the craft union, the board of supervisors used its new authority to regain control by

considering the "best last offer referendum" concept.

When public sector labor disputes reach an impasse, 'last best offer referendum' offers an alternative to strikes and compulsory binding arbitration...

When An Impasse Occurs

A draft charter amendment which was presented before the board of supervisors would enable a majority of the board to submit the question to the voters if the employees and public management are unable to agree.[41] This proposed amendment provides that in the event of an impasse:

> If prior to April 15, a majority of the board of supervisors request that the schedule of compensation based on the aforementioned last demands of recognized employee organizations be submitted to the voters, a special election shall be called for said purpose and shall be held not less than 30 days from the date of the call. At the special election the ballot shall contain the following two alternatives:
>
> 1. Approval of the schedule of compensation based upon the employee organization's last demands.
> 2. Disapproval of the schedule of compensation based upon the employee organization's last demands.
>
> If a majority of the valid votes cast in said special election favor paying the additional rates set forth in the schedule of compensation based upon the last demands of the recognized employee organizations which engaged in the meet-and confer process, it shall be the duty of the board of supervisors to amend the salary standardization ordinance for the ensuing fiscal year to reflect said increased rates and the same shall be in lieu of said annual compensation and notwithstanding any other provisions of this charter to the contrary. Said rates shall become effective at the beginning of the succeeding fiscal year.[42]

The strategy of the San Francisco Board of Supervisors was to place on the June 1976 primary election ballot two propositions which would provide "a small cost-of-living increase" to the striking craft unions over a two-year period and embody the "last best offer" of the Board of Supervisors.[43]

The pressure of the impending June 8, 1976, referendum election proved sufficient to force unions to give up the strike and submit the issues to a fact-finding board of 11 members, consisting of five labor representatives and five appointed by the supervisors and the mayor.[44] The settlement was reached on Saturday, May 8, 1976, the last day the supervisors could remove the referendum questions from the ballot. It resulted in victory for the Board of Supervisors.[45] Although in removing the issues from the ballot, the supervisors did not in the final analysis use the "best last offer referendum," the action did prove a most effective deterent in allowing management to successfully conclude the strike.[46]

Advantages of Best Last Offer

Although nothing contained in the proposal itself will prevent "illegal strikes or job action" by employee organizations that are dissatisfied with the result of the referendum, as a practical political matter, it will be mandatory that they abide by the result in order to preserve their future political credibility. A condition precedent for placing the "last best offer" of the employees upon the ballot would be an agreement to be bound by the result of the referendum. Another advantage of the proposal is that each of the parties would be able to "frame" his own question, as opposed to a referendum on a special master's or arbitrator's recommendation which could possibly cause the parties to contest the language in which the question was presented.[47]

The most telling argument against this procedure is that the public, as the ultimate taxpayers, will refuse to approve any proposal, no matter how reasonable. Our experience, at least in the City of North Bay Village, proves that this is not the case. In 1974, a proposed two-year contract between the city and the Fraternal Order of Police was tied to a referendum election involving an increase in the millage in order to fund the agreement.[48] After a spirited public debate, but with the support of both the political leadership of the community and the employee organizations, the agreement was ratified and a millage increase was authorized by the voters at a special election.[49]

As the legislatures of many states, including Florida, will be addressing the problem of impasse resolution of public sector labor disputes in the very near future, it is suggested that there is a viable alternative to strikes and job actions on the one hand and compulsory binding arbitration on the other hand. This alternative, last best offer referendum, seems to be molded for public sector collective bargaining and should be given a long and thorough look by the law makers. □

FOOTNOTES

[1] *Big Drive Ahead for Payraises*, U.S. News & World Report, January 5, 1976, at 62.

[2] *Id.*, where a spokesman for AFSCME stated: "We're girding ourselves, and developing strategies to assist our locals as they go into negotiations," and Sam Zagoria, labor relations consultant for the National League of Cities and Director of the Labor Management Relations Service, who stated that 1976 will be "Not better but worse" for government bargaining.

[3] National League of Cities v. Usery, ___U.S.___, 48 L.Ed. 2d 245, 96 S.Ct. 2465, 44 U.S.L.W. 4974 (1976).

[4] Wirtz v. Maryland, 392 U.S. 183 (1968) upholding the validity of earlier amendments to the Fair Labor Standards Act.

[5] The Wall Street Journal, June 25, 1976, at 3.

[6] *See*, *Backlash Against City Workers*, U. S. News and World Report, December 22, 1975, at 31 and *Public Workers Under Fire*, Interview with Jerry Wurf, President AFSCME, U. S. News & World Report, December 29, 1975, at 49 and an interview with John Dunlop, former Secretary of Labor, U.S. News & World Report, December 15, 1975, at 78.

[7] "Whatever the diminution of bargaining prospects in New York City, we have seen the enactment in 1975 of additional statutes, which bring to over forty the number of states that by statute, judicial determination, or local ordinance, authorize some form of collective bargaining. Thirty of those states have fact-finding procedures, and twenty states have legislated arbitration for some or all of their public employees: Alaska, Connecticut, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin and Wyoming. In seven states the strike, subject to limitation, is legalized or authorized: Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont. Thus, we see that collective bargaining in public employment is here to stay and is likely to survive the current fiscal and political crisis."

Quoted from Anderson, *New York City Fiscal Crunch Rattles Labor Relations*, Labor-Management Relations Service (LMRS) Newsletter, Vol. 7, No. 1, January 1976.

[8] Vernon's Annotated Missouri Statutes, *Public Officers*. §105.500 *et. seq.* Provisions of statute excluding police officers from Collective Bargaining upheld Vorbeck v. McNeal, 407 F. Supp. 733, (E.D. Mo. 1976); *Aff'd* ___U.S.___49 L.Ed 2d 1180, 96 S.Ct. 3160 44 U.S.L.W. 3734 (1976).

[9] Chapter 10 Wests Annotated California Codes; Government Vol. 32 §3504.5 *et seq.* is basically a "meet and confer" law with an additional local option provision contained in §3500 as follows:

"Nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter."

Thus under the California law there are numerous and varied statutory plans for dealing with public employee labor relations established by almost every individual public employer. The law should be designated as "authorization to negotiate."

[10] Fla. Stat. Ch. 447, Part II, originally enacted as Chapter 74-100, Laws of Florida.

[11] Fla. Stat. §447.403(c).

[12] *Report of the Labor Relations Committee*, 39 NIMLO Municipal Law Review 11.16 (1975).

[13] An example of this type legislation is found in the 1972 Alaska Public Employment Relations Act; A.S. 23.40.070-23.40.260 (1972).

[14] LMRS Newsletter, Vol. 6, No. 11, November 1975:

"The AFL-CIO, after a floor fight at its annual convention, last month endorsed Federal Legislation to provide collective bargaining rights for all public employees, including the right to strike. A lone effort was made by Jerry Wurf, president of the American Federation of State, County and Municipal Employees, to substitute compulsory arbitration in disputes involving police and firemen, but the amendment was 'resoundingly defeated, according to the New York Times. Wurf urged that failure to adopt such an amendment would doom federal or state legislation since legislative bodies would not vote to give public safety employees a legal right to strike. He said "The time has come to recognize some harsh realities. What we are in effect doing by insisting that there is an unlimited right to strike by public safety officers is in effect saying we don't want a Federal collective bargaining law."

The President of the AFL-CIO, George Meany, and others, responded Meany: "I hope I never see the day that the AFL-CIO, sitting in convention, will ask Congress to impose compulsory arbitration on anybody, anywhere, at any time." The President of the Service Employees International Union, George Hardy, said, "We must always have the right to strike. Without it, you have no freedom. The right to strike is basic, fundamental to the labor movement."

[15] Interview with Jerry Wurf, U. S. News & World Report, December 29, 1975, at 50, and note 14, *supra*.

[16] Compulsory binding interest arbitration statutes have been upheld in New York City of Amsterdam v. Helsby, 37 N.Y. 2d 19, 371 N.Y.S. 2d 404, 332 NE 2d 290 (Ct. App. 1975), Rhode Island City of Warwick v. Warwick Regular Firemen's Ass'n. 106 R.I. 109, 256 A.2d 206 (1969), Wyoming State v. City of Laramie, 437 P.2d 295 (1969) and Maine City of Beddeford v. Beddeford Teachers Ass'n. 304 A.2d 387 (1973). The Wyoming and Maine cases, do not really deal directly with the "delegation of power" issue directly as the New York and Rhode Island cases do. The most recent pronouncement of the Michigan Supreme Court is not conclusive, Dearborn Fire Fighters Etc., v. City of Dearborn, 394 Mich. 299, 231 N.W.2d 226 (1975). The majority of the court cast a cloud upon the validity of the Michigan law MCL §423.321 §17.455 (31) *et. seq.* Mich. Stats Anno. based upon its failure to require political accountability of the arbitrators. The 1976 Michigan Legislature enacted Public Act No. 84 amending the Compulsory Arbitration Law to meet the requirements of the criteria established by the court; *see* Mich. Stats Anno; Current Material, Stats p. 416. Pennsylvania validated the concept of binding arbitration by a 1967 amendment to the state constitution that is now incorporated into Article III, Section 31 which specifically authorized that such arbitration findings were binding. The South Dakota Supreme Court held that compulsory binding arbitration was unconstitutional and struck down the entire law providing for arbitration of police and firefighters labor disputes in City of Sioux Falls v. Sioux Fall Firefighters, 234 N.W. 2d 35 (1975).

[17] The Tucker Act was originally adopted as Chapter 74-100, Laws of Florida, and is now contained in Fla.Stat. §§447.201 -.607 (1975).

[18] Fla. Stat. §§447.403 -.407 (1975).

[19] Fla. Stat. §447.403(b).

2. The employee organization may submit to such legislative body its recommendations for settling the dispute:

3. The legislative body or duly authorized committee thereof shall forthwith conduct a public hearing at which the parties shall be required to explain their positions with respect to the report of fac-finding board; and

4. Thereafter, the legislative body shall take such action as it deems to be in the public interest including the interest of the public employees involved.

[20] "From the standpoint of fostering a viable collective bargaining system, bypassing is undesirable in several respects. Initially, it evidences a breakdown in the bargaining system and, by shifting the attention of the parties from bargaining to political involvement, it makes future negotiations more difficult. On the union side, if lobbying meets with greater success than negotiation, the union will be encouraged to abandon bargaining entirely and rely solely on political action. On the management side, bypassing is perceived as highly unfair, particularly if management has made important concessions to achieve what it thought would be a final settlement. This preceived unfairness in turn, destroys the relationship of trust between management and union needed to cement a continuing bargaining relation. Finally, bypassing at the state level can result in demands being placed on local government that it cannot easily meet, thereby further straining relations between union and management. For instance, enactment of a maximum hours law for firemen will necessitate the hiring of additional firemen. But if the hours proposal were rejected at the local level for that reason, the result could well be that other services provided by the local government would have to be curtailed." (Citations and footnotes omitted) as quoted LMRS Special Report entitled *The Role of Politics in Local Labor Relations* (1973 excerpted from *Project: Collective Bargaining and Politics in Public Employment*, 19 UCLA Law Review 887 (1972).

[21] Fla. Stat. §447.505 (1975).

[22] Alley, *Checklist for Preparation for Strikes in the Public Sector*, 48 Fla. B. J. 7, at 578, (September 1974).

[23] This problem was recently the subject of proceedings before the Florida Public Employees Relations Commission (PERC) where such an agreement between the School Board and the Broward County Classroom Teachers Association was challenged by the PERC staff. PERC Case No. 8H-SC-754-1001, and *see* Note 25 *infra*.

[24] Burton and Crider, The Incidence of Strikes in Public Employment, (1976.

[25] Broward County Classroom Teachers Association Inc., v. Public Employees Relations Commission, 331 So.2d 342 (1st D.C.A. Fla., 1976).

[26] *Backlash Against City Workers*, U. S. News and World Report, December 22, 1975, at 31-33

[27] *Chances for Labor Peace in '76 and the Price*. Interview with former Secretary of Labor, John T. Dunlop, U. S. News & World Report, December 15, 1975, at 78; *see also* interview with Jerry Wurf, (Note 15, *supra*), and Zagoria, *The U.S. Cities Tackle Impasses* (Note 29, *infra*)

[28] *See* excerpts of testimony of Eugene Berrodin, former executive director of the Internal Personnel Management Association to Michigan Senate Committee, reprinted in LMRS Newsletter, Vol. 6, No. 5 (May 1975) and report of National Commission for Industrial Peace; for a contrary view see *Final Offer Arbitration*, the effects on public safety employee bargaining published by D.C. Heath & Co., Lexington, Massachusetts 02173, and the article by Professor James L. Stern appearing in LMRS Newsletter, Vol. 6, No 9 (September 1975)

[29] "Other objections are that the process has diminished actual bargaining and that the implicit and explicit assurance that an award will mean 'no strike' has been violated on occasion:" Zagoria, *The U.S. Cities Tackle Impasses*, Proceedings Industrial Relations Research Association 25th Annual Meeting, (September 1973) reprinted LMRS Newsletter, Vol. 4, No. 9, at 50-55; Witt *The Public Sector Strike, Dilemma of the Seventies*, 8 Cal. West. L. Rev. 102, 116 (1971)

[30] This was expressed by former Labor Secretary, John Dunlop in a recent interview where he responded to the question: "Is Arbitration the answer to bargaining with public employees?" as follows:

"I have some reservations about that. First of all, if people are compelled to arbitrate, you don't really get the support of both sides for a settlement. It isn't their settlement; it's the arbitrator's settlement. And they don't have the same interests in carrying it out. They didn't have a part in shaping it. They don't know quite what it means and they have become more anxious to litigate to fight in court or otherwise over the fine points instead of trying to work it out.

The problem that worries me philosophically is that the government - the management side - is yielding to an arbitrator a very major component in the setting of taxes and charges in the public sector. I think that it is the responsibility of the elected representatives rather than of the arbitrator." (*See* Note 27, *supra*).

[31] *See* Notes 28, 29 and 30 (*supra*)

[32] The three basic forms of interest arbitration are distinguished by the treatment by the arbitrator of the final last positions of both parties to the dispute. Under the procedure termed conventional arbitration parties submit their final offers to the arbitrator who hears the evidence and fashions an award based on his best

judgement. The arbitrator is n confined by the final offer of either party in making his decision, although the offers of the parties generally serve as perimeters to the arbitrator. The second form is referred to as final last offer on the package arbitration. Under this procedure the arbitrator must choose either the employer's or the union's offer totally and without deviation. The third form is final last offer issue by issue arbitration whereby the arbitrator must choose either the employers position or the union's position on each individual issue presented for arbitration by the parties. While there are variations on these three basic models, most legislated interest arbitration in the United States adheres fairly strictly to one of these forms. Mulcahy and Smith, *Last Best Offer, How to Win and Lose, Special Report*, LABOR MANAGEMENT RELATIONS SERVICE 1976 at 3.

[33] *Final Offer Arbitration*, the effects on public safety employee bargaining, (Note 28, *supra*) And even arbitrators are beginning to recognize this problem. Public sector arbitrators are under serious attack for lack of concern or understanding of municipal government's arguments on ability to pay, Muriel M. Morse Personnel Director for the City of Los Angeles, told the annual meeting of the National Academy of Arbitrators.

She said state and local negotiators "find relatively few arbitrators with expertise in, or understanding of governmental processes." According to the Government Employee Relations Report, she hinted that arbitrators might find themselves subject to the check of voters' referenda on their decisions, but conceded that this approach would pose serious logistical and other problems.

A similar view about the inadequacy of public sector arbitrators and/or fact-finders has been expressed publicly by Mayor Henry W. Maier of Milwaukee, Wisc., on several occasions. LRMS NEWSLETTER Vol. 7., No. 7, (July 1976) at 1.

[34] Sam Zagoria, Director of Labor Management Relation Service, a former member of the National Labor Relations Board; he has had experience in many aspects of labor relations. At various times he has represented management of labor, assisted in drafting legislation, served as a neutral mediator and as an adjudicator. He has appeared on many platforms as a speaker and trainer and has written numerous articles, edited a book PUBLIC WORKERS AND PUBLIC UNIONS and led a series of national and regional discussions for the American Assembly.

[35] Zagoria, *The U.S. Cities Tackle Impasses*, at 53 (Note 29, *supra*).

[36] Adopted as an Amendment to the Home Rule Charter of Englewood, Colorado on November 7, 1972.

[37] The background of implementation of the Englewood plan is interesting. This is not a true "Last Best Offer Referendum" provision (*see* Note 47, *infra*):

"So far our historical data is brief. In the past two years we have gone only so far as the impasse hearing and decision. One in 1974 was for the Fire and in 1975, the Police. Both times the impasse decision followed exactly the cities' proposal and neither group was willing to test the election process. The impasse decision was therefore accepted by both sides. We have found that the unions have a fear of trying to sell to the public on an election basis a greater package than decided by the mediator. They also fear receiving less if the city decides to put on the ballot a low package that could be acceptable to the taxpaying public." Extracted from a letter to the author, dated December 19, 1975 from Richard A. Lorig, Personnel Director City of Englewood, Colorado.

[38] "A final alternative for dealing with the problem of union power might be to make bargaining settlements subject to voter approval by referendum. This would give the public a direct and controlling voice in labor relations matters. It is reported that in San Francisco, where the city charter permits wage rates to be submitted to a referendum, the threats of the Chamber of Commerce to use the referendum device are the substantial restraint on the ability of the public employee unions to achieve their demands through political pressure. Requiring referendum approval of every settlement, however, would incorporate needless uncertainty and expense into the bargaining process. In addition, it might prove too effective a restraint on the unions. Experience in several cities indicates that even justified cost increases in government are likely to arouse a great deal of opposition where the specific items are subject to voter approval. To avoid these problems and still retain the beneficial aspects of the referendum procedure, the availability of the referendum could be conditioned on the gathering of a sufficient number of voter signatures on a petition calling for the referendum." (citations omitted); *The Role of Politics in Local Labor Relations* LMRS SPECIAL REPORT (Note 20, *supra*).

[39] *Where City Workers Ran Into a Taxpayers Revolt*, U.S. NEWS AND WORLD REPORT, April 19, 1976, at 79-80.

[40] *San Francisco Voters Indicate Unhappiness*, LMRS NEWSLETTER, Vol. 6, No. 12 (December 1975) at 5 *San Francisco Voters Indicate Unhappiness.*

[41] Letter to Author from Honorable Dianne Feinstein dated April 29, 1976.

"Attached please find a copy of a draft Charter Amendment, now pending in Committee, which enables a majority of the Board of Supervisors to submit to the voters the additional rates of compensation above that adopted by the Board of Supervisors in the event it is not possible to reach an agreement through the meet-and confer process.

"The intent of the Charter Amendment is to provide a mechanism whereby additional rates of compensation beyond a 'last best offer' by the Board of Supervisors can be submitted to the electorate for a 'yes' or 'no' vote."

[42] Extracted from proposed Charter Amendment, presently pending before the California Board of Supervisors.

[43] Argument in support of proposition K, material prepared by Supervisor, Dianne Feinstein, enc. in letter to author, April 29, 1976.

[44] LMRS NEWSLETTER, June 1976, at 6

[45] Wall Street Journal, May 10, 1976, at 7

In what was hailed as a victory for the city's board of supervisors, some 1,700 striking municipal craft workers agreed early Saturday morning to go back to work after the supervisors withdrew two antilabor measures from the June 8 ballot. One would have given the city the right to fire city employees who strike and the other would have allowed voters to decide on specific wage proposals for the craft workers who struck. Yesterday was the last day the measures could have been removed from the ballot.

[46] Letter to author dated June 3, 1976 from Supervisor Dianne Feinstein.

"I agree the Propositions "E" and "K" were important bargaining tools. In this way, we could use these propositions as negotiable items rather than relying on economic issues.

[47] Such a procedure is contained in the Englewood, Colorado Charter Provision:

"(At) the referendum election 'best last offer' is not necessarily on the ballot. Actually three proposals could appear, which are: (a) Unions proposal not necessarily 'last best'; (b) Impasse decision of career service board, which is step one in the impasse process; and (c) an offer by the City not necessarily the 'last best'. Part of the reasoning behind the above is to put the union in the position of losing perhaps considerable fringes and wages if the electorate decide (c) and the city decides to use only a minimal package on the ballot."

Extracted from letter to author; *see* Note 37, *supra*.

[48] Resolution No. 2292 adopted by the City of North Bay Village, Florida on April 27, 1974, provided a referendum election on the question of whether the City of North Bay Village should be permitted to increase millage for fiscal 1974-75 one additional mill.

[49] The results of the special election held June 25, 1974, in the City of North Bay Village were set forth in Resolution No. 2295, adopted June 26, 1974, as follows:

In favor of the increase:	490
Against the increase:	416

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by Britt L. Polley

Binding Arbitration

Many local communities are losing, or are about to lose, more control of their public education systems. Legislatures are enacting impasse resolution legislation (binding arbitration, for example) which in effect removes school boards and other government officials from their decision-making roles.

The genesis of this movement is a sincere legislative response to the increasing number of strikes by public employes. Legislators hope that the enactment of binding arbitration will eliminate labor unrest. **Arbitration is erroneously seen as a trade-off for the right to strike.**

The reasoning behind compulsory binding arbitration is basically as follows:

- Public-sector bargaining impasses often result in strikes, legal and illegal.
- Strikes in the public-sector are generally undesirable, and therefore, an alternative to them must be found.
- Reliance upon an outside, neutral, third party who decision is binding on both parties is an equitable solution to this problem.[1]

As a rationale, this all works nicely. **As a reality,** the ramifications call for **alert and immediate reaction** by all school board members and other local government officials to assure that binding arbitration **does not** displace their responsibility to govern.

No one faults the goal sought by mandated binding arbitration (i.e., the end to teacher strikes); however, it is erroneously assumed that teacher strikes are the worst outcome of collective bargaining. **They are not!**

The central concern and most damaging aspect of binding arbitration is its **removal of responsibility and authority** from local school boards. How is this so? When an arbitrator comes onto the school scene, the board no longer has the authority to determine the educational, fiscal, and other public policy issues that will fall within the purview of the arbitrator's authority. By the time the arbitrator has arrived, it is too late for school boards to consider their responsibilities in representing the community by determining what kind of educational program they're going to provide. The arbitrator will do this for them.

The arbitrator's authority may be exercised in such a way as to transfer the board's power and responsibility to the teachers' unions through language in the contract. Thereafter, it will be extremely difficult, **if not impossible,** for the community to regain control lost through arbitration awards. **The rate of transfer of community control has been swift in areas where school boards have been caught unaware of the ramifications of binding arbitration.** In the future, the ability of the local citizenry in such situations to influence changes in policies, rules, or procedures may be more difficult and more costly to the public than to endure strikes.

While there is obvious merit in the desire to ensure labor peace, it appears that legislators are responding in an overly simplistic manner when they mandate binding arbitration as the best solution to the problem. Such judgment is not based upon the larger and more serious ramification that binding arbitration has regarding public schools. That comes back to the title of this article: 'They're Answering the Wrong Question.''

''They'' are the advocates or proponents of binding arbitration who think this is a central answer to the question of how to ensure labor peace. And while that is a **very** important question, the **relevant** question that must be asked is a more basic question: **Do local communities want their public schools to continue to reflect the values, ideals, goals and quality of education desired by those whose children are in the public schools and by those who pay the bill?** Or, do local communities want special-interest groups and disinterested outsiders, such as unions and arbitrators, usurping more and more decision-making responsibility in local school districts, thereby reflecting goals, values and educational programs for which those who impose them are not answerable for financing or implementing? The legislating of binding arbitration will more nearly guarantee the latter situation.

The form, substance and procedure of binding arbitration varies with the ''creativity'' of every legislature that has followed this path. Some use a single arbitrator, others use a panel, and still others offer a choice. Some arbitrators are allowed a ''free ride;'' that is, to make whatever awards they wish. Others must make awards on an issue-by-issue basis, accepting one of the advocates' positions or forging one of their own; or one may have last, best offer or final-offer selection in which the arbitrator selects the last, best offer of one of the parties, either on an issue-by-issue basis, or on a complete package basis. **Regardless of the variety of the form and process of**

Proponents of binding arbitration are answering the wrong question

binding arbitration, the basic concern of informed school officials remains the same: Does the school board (community) want to give up its control over deciding its position on issues which are bargained at the table? Translated into other terms, the question becomes: **Do we want to significantly alter one of our most directly representational forms of government, namely school boards? Is binding arbitration worth it? Do the facts justify it?**

The history of binding arbitration in the public sector is rather brief. At the present time, at least 20 states have binding arbitration for some of their public employes. (Pennsylvania has such legislation for police and firemen.) At least seven states now require some form of binding arbitration which affects public school employes. Proposed legislation is at various stages of consideration in several other states.

After a relatively brief experience with compulsory binding arbitration, **more and more officials are seeing less and less harm in weathering a strike rather than going to binding arbitration.** There is little evidence to refute that strikes diminish, at least temporarily, when binding arbitration is instituted as a part of impasse resolution. No one is surprised that binding arbitration will resolve disputes; the fallacy, however, is that the results are called an "agreement" or a "settlement." More accurately, it is a **forced compliance** arrangement thrust upon the local citizenry by an outsider; a disinterested, third party representing no one and responsible to no one.

Michigan's experience with binding arbitration is best expressed by **Mayor Young** of Detroit. He said that he has "become painfully aware, based upon bitter experience, that Act 312 (affecting Michigan police and fire personnel) has not worked, will not work, and very possibly could bankrupt the very cities it was established to serve." Mayor Young, who once voted for the enactment of compulsory arbitration when he was in the state legislature, is now aggressively opposing Act 312 as its impact continued to strangle the public sector.

Eugene F. Berrodin, Michigan Municipal League, said of his state's expereince with binding arbitration:

- There has been a loss of public management control of local police and fire forces.
- There has been a severe reduction in free collective bargaining among police and fire departments.
- Compulsory arbitration has resulted in significantly higher wages and fringe benefits for public employes and higher cost to the taxpayer than would have otherwise resulted from free collective bargaining. This conclusion was based upon a tabulation of 177 last-offer compulsory arbitration cases that indicated bias in favor of the unions' last offers as compared to those of the employers.
- Compulsory arbitration is procedurally costly and a time-consuming process. (Berrodin says that the average time from filing arbitration to the issuance of an award is about 12 months. Adminsitrative fees to attorneys and to arbitrators commonly range upwards of $50,000 and more per case.)

Berrodin concludes his arguments against compulsory binding arbitration by pointing out that arbitrators routinely ignore the public in fashioning their awards; they are insulated from the taxpayers.[2]

Last year Governor Milliken in his "State of the State" message called for a reexamination of compulsory arbitration and the costly impact of the arbitration awards in Michigan.

Other critical evaluations of binding arbitration come from Rhode Island, Wisconsin, Montreal and Australia.

A report on police/fire arbitration in Rhode Island indicates that "salary rates have gone up more rapidly since the institution of compulsory arbitration in 1968. Even if the two parties have agreed on many, if not most of the issues, they may both return to their initial position when the arbitration board is appointed. As a result, an expensive time-consuming process begins. A further problem in Rhode Island is that the entire collective bargaining process is so time-consuming that when compulsory arbitration is added, proceedings must continue almost all of the time in the case of a one-year contract."[3]

A report on the Wisconsin experience with compulsory arbitration (final offer on the package, not on each issue) includes the observation that "it is apparent that arbitration is causing the wages of the

(continued on page 14)

Dr. Britt L. Polley is associate executive director of the Indiana School Boards Association. This article was based upon comments made by Dr. Polley to the Pennsylvania School Boards Association at its 1980 summer program at Bucknell University.

Binding Arbitration

(from page 13)

public employes to increase more than they would have under fact-finding."[4]

The widely publicized Montreal policemen's strike occurred in spite of that dispute's having been subject to binding arbitration. The Connecticut School Boards Association found in its research that in Australia, where public-sector binding arbitration has existed since 1904, there is a proportionately greater incidence of strikes than has occurred in Connecticut without binding arbitration. Obviously, binding arbitration does **not** guarantee labor peace.

It is also interesting to note one union's point of view on binding arbitration. Gordon Cole writes in the *AFL-CIO American Federationalist,* "Arbitration has taken away the initiative of trade unions. It has made it easy for union officials to escape responsibility. Arbitration has been a crutch and a scapegoat. With it, union and management have avoided responsibility. They are able to avoid new approaches. In compulsory arbitration, labor disputes become cases to be argued in legal form in a courtroom atmosphere, there are long delays to ascertain the facts...it has failed to achieve its primary purpose"[5]

After considering the problems with binding arbitration, school boards are probably concerned because it places far-reaching power in the hands of a person not elected, not accountable to elected officials, and not necessarily a resident of the community or even the state.

Because this transfer of power contravenes the fundamental nature of our democratic government, in several states binding arbitration legislation has been contested. In at least five such states, binding arbitration has been declared unlawful.

It is apparent that compulsory arbitration offends the equal protection clause of the U.S. Constitution when the right of voters to cast effective ballots is violated because governmental decisions are made by politically unaccountable individuals — arbitrators.

The Colorado Supreme Court noted that the Colorado law would seriously conflict with basic tenets of representative government. The fundamental concern in this litigation is that officials engaged in governmental decision-making **must** be accountable to the citizens they represent.

Another concern that was alluded to earlier is that binding arbitration discourages honest, good-faith collective bargaining. Interest arbitration awards generally attempt to present a compromise among issues at dispute. This can only work to encourage unions to extend and expand their demands. Given the not uncommon "laundry list" of demands that public-employe unions bring to the bargaining table and given the presence of binding arbitration as an impasse procedure, there is no reason to expect a teachers' union to drop any of its demands. It is more probable that a union will hold its position through arbitration, since it risks nothing by such a strategy. The union may well gain more through the arbitrator than it could possibly achieve at the bargaining table.

It is also of significant concern that the arbitrator's role is that of an *ad hoc* appointee who is not responsible for implementing the contract and therefore is not compelled to make awards that are based upon effective, efficient management of public schools.

There are many other concerns board members can and do raise regarding binding arbitration, including the lack of required standards for arbitrators or for their training; the tremendous costs in time and dollars resulting from arbitration; and the concern for compromise instead of merit.

The prospects for binding arbitration are widely touted by some as a panacea for solving labor unrest, but it appears that binding arbitration in education labor relations raises some extremely serious questions. **We can see the damage binding arbitration can do to representational government now operating in our schools. It is urgent for all concerned board members and their local communities to forewarn legislators that binding arbitration is not the answer for public schools.**

FOOTNOTES

1. Public Service Research Council, "Compulsory Binding Arbitration And Public Sector Labor Disputes," *Issue Analysis*, February 1979, p.1.
2. Berrodin, Eugene F., "What's Wrong with Compulsory Arbitration," Michigan Municipal League.
3. *Public Personnel Management*, January 1973, pp. 6-7.
4. Stern, James L., *Monthly Labor Review*, September 1974, p. 39.
5. Cole, Gordon, *AFL-CIO American Federationist*, June 1972, p. 19.

LANGUAGE OF ARBITRATION

The term **binding arbitration** is used in this article to refer to the more technically correct phrasing, **compulsory binding interest arbitration.** Other terms used in this area:

- **Arbitration:** A method of settling a labor-management dispute by having an impartial third party hold a formal hearing, take testimony, and render a decision. The decision may or may not be **binding** upon the parties. If arbitration is prescribed by law as a method of settling disputes, it is usually preceded by mediation and fact-finding. Arbitration is **compulsory** if it is legislated.
- **Interest Arbitration** is the arbitration of disputes that arise during the course of contract negotiations, when an arbitrator determines the final contents of the contract. This should not be confused with **rights arbitration** which deals with the interpretation or application of the existing contract, not the negotiation of a new one.

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NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

file HB 130

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March 20, 1986

TO: NEA-Alaska HB 130 Coordinators
Legislative Contacts
Local Presidents
NEA-Alaska Board of Directors
NEA-Alaska Staff

FROM: Chip Tassone, HB 130 Project Coordinator Chip

SUBJECT: Plans for Escalation of Activities

For those in attendance at the March 15 meeting, Thank You! It was good meeting you, and your enthusiastic participation gives great hope for success in the project.

For those unable to attend the meeting, Gayle's memo (attached) fills you in on the relevant information.

The significant repeated message from all the meeting activities and reports, is that our project is creating change, but we need to do more; we need to escalate our activities.

This packet includes five sets of "notes from ...." - - These notes resulted from a planning activity at the March 15 meeting, and can provide ideas for those locals where the planning of activities for May 3 is not yet complete.

When your plans are complete, both for May 3 and subsequent picketing or other activities, we would very much appreciate having copies of your plans sent to the Anchorage office.

The list of "on-going project activities" (also attached), was incorporated into the March 15 meeting, again with the pounding message, "we need to escalate all project activities".

To assist you in intensifying efforts and participation, we will be sending out more specific information and direction for some of the activities.

In the meantime, if you have any questions about any activities in the project, don't hesitate to call me or your Uni-Serv staff. I can be reached at the Anchorage office.

A final note: in planning any and all activities, REACH OUT! Try to involve all school employees, parents, groups and organizations in your area who are, or can be persuaded to support HB 130.

A REMINDER: "FLY-IN", April 4, 5, 6
Focus of "Fly-In" this year is HB 130

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There will be an all-night vigil at the State Capitol Saturday night with all our people and others participating....more details, later.

ESCALATE....ESCALATE....ESCALATE....ESCALATE

CT1:01/sc

file HB 130

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

MEMBER
SENATE JUDICIARY COMMITTEE

SELECT COMMITTEE ON LEGISLATIVE ETHICS

WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE

EXECUTIVE COMMITTEE
WESTERN LEGISLATIVE CONFERENCE
COUNCIL OF STATE GOVERNMENTS

ALTERNATE MEMBER
NATIONAL CONFERENCE OF STATE LEGISLATURES
STATE AND FEDERAL ASSEMBLY
COMMITTEE ON
FEDERAL TAXATION, TRADE AND ECONOMIC DEVELOPMENT

April 10, 1986

All Members of the Senate
Alaska State Legislature
Juneau, Alaska

Dear Colleagues:

Obviously this note and the attachments have been distributed by the undersigned.

Irrespective of how you may feel about HB 130, the attached copy of the Lew Williams ("Ketchikan Daily News") editorial should prove of interest.

More importantly, the second attachment, which is authentic, gives you the NEA-Alaska game plan for the remainder of the session. It's too bad that President Bennett has to receive 1,000 letters of remonstration; it's also a sort of a minor tragedy that the homes of Senator Faiks and Senator Abood are going to be picketed on May 3rd. This is no way, in my opinion, to win friends and influence people.

At least they're not going to picket my home in Ketchikan, as far as I can tell; I'm miffed about that.

Very truly yours,

Robert H. Ziegler, Sr.

Attachments

Ketchikan Daily News

Monday, April 7, 1986

Editorial

No time for HB 130

Teachers from around the state flew into Juneau for a weekend demonstration on the Capitol steps. It's part of an organized campaign by NEA-Alaska to push for passage of HB 130, which requires binding arbitration in the event of disputes between school boards and teachers.

We are going to see more demonstrations. There will be letters to the editor, information booths at malls, direct mail pushes to influence parents and use of kids in the program. We object to the use of youngsters for a strictly political action by a teachers' union. It's blatantly unethical.

This is strictly a union battle to gain an advantage in negotiations of salaries and working conditions for teachers. It's not a quality of education issue. It has nothing to do with curriculum or the welfare of students.

It's a poorly timed idea especially with the reduction in oil revenues to the state and local governments.

Under HB 130, if a school district and a group of teachers are unable to agree on a contract a mediator will be brought in and the school district will be bound by the decision of the mediator. It's not hard to see that in all situations the teachers will benefit from this. The districts will pay more, whether or not they can afford it. Control of local districts will go from the taxpayers, who elect the school boards, to the teachers. If such was not the case, we are sure that NEA-Alaska wouldn't be putting on its push for passage of HB 130.

Some states have passe[illegible] arbitration laws. Sitka School Superintendent A[illegible]ouse last week said that Michigan has such a law. He formerly worked there and said that districts lose control of employee payroll costs with binding arbitration. Losing control of any cost in Alaska in this tight money situation is unwise.

Alaska teachers should have no complaint. They make about [illegible] more per year than the average teacher pay in the U.S. [illegible] make higher average salaries than any other union group in Alaska except for maybe ferry skippers and airline pilots. And many get automatic raises each year above what they negotiate in salary increases.

State Sen. Mitch Abood, R-Anchorage, says HB 130 isn't going to move out of his committee in its current form. He is willing to compromise with the teachers. Knowing the teachers' union, they won't compromise. In fact, according to their plan of attack, they are going to especially target Abood's district with petitions and mailers.

That doesn't sound much like compromise.

Sen. Bill Ray, D-Juneau, says that the chances of HB 130 passing this year are slim to none. It's inappropriate for it to even have a slim chance. But it may have that chance if citizens aside from teacher union members don't advise their legislators accordingly.

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CT1:01/sc

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March 18, 1986

TO: Ron Binkley, Bev Gulliksen, Sandy Peotter, Larry Trani, Allen Wintersteen

FROM: Gayle Pierce, Chip Tassone

RE: Coordinator Meeting March 15th

Hello,

We missed you at the meeting but hope to catch up to you soon with these materials and by phone.

The agenda for the meeting is enclosed. As you know, Chip is assuming the role of HB 130 coordinator as I move into my new job as Uniserv Field Staff. So the morning of our meeting had three purposes - Introductions to Chip and vice versa, assessment of where we are compared to where we hoped to be last June when the project was conceived and analysis of what is happening in Juneau.

In a nutshell, our efforts are having the desired effect. Senator Abood has spent and continues to spend quite a lot of time on the Bill and it seems he sincerely wants to address the problem of finality in some way. He is hoping for a compromise position from both parties. The problem is the School Boards Association can say no forever, preserve the status quo and thereby protect the unfair advantage they currently enjoy in negotiations. It is becoming clearer to everyone that the effort to negotiate a compromise bill is a replication of the experience of Locals at the bargaining table. We've suggested Binding Arbitration as a mechanism to resolve the dispute.

It is Bob's assessment that the constituent pressure on Bennett and the other Legislators by mail and especially at constituent teleconferences has changed votes to "yes" and, most importantly, is affecting the priority status of the Bill. Our work with Senator Abood is slow, frustrating, but there are signs that it is having the desired effect.

The important message is hang in there! The Bill could sit in Committee until the last day and still go through all the necessary steps to be signed into law. Bob, Jean and Bob Cooksey are more optimistic now than ever - but we've got to keep the pressure on and be successful in our escalation plans as we move toward the end of the session.

The afternoon of our meeting focused on plans from now until when the session adjourns. Please review the list and note especially, the teleconferences, the postcards, Fly In plans, the petition drive which will take considerable organization on your part, and finally, May 3rd and informational picketing.

We spent the last 2 hours brainstorming activities for May 3rd. I'm enclosing what the groups came up with in the hope that will give you some ideas of activities that will be effective and will involve as many of the school employees and parents, and others as possible.

We handed out a blank calendar to use for planning and to underscore our eight week time frame.

Chip will be in touch with you soon. Hope this memo helps to catch you up a little.

Thank you for all you have done.

GP1:27/sc

LET'S FINISH THE JOB
LOCAL COORDINATORS MEETING

MARCH 15TH, 1986
SHERATON HOTEL, ANCHORAGE

I	INTRODUCTIONS	GAYLE
II	GET AQUAINTED EXERCISE	CHIP
III	OUR GOALS WHEN THE PROJECT BEGAN WHERE WE ARE NOW	GAYLE
IV	HB 130 - WHAT IS HAPPENING IN JUNEAU	BOB
V	COLLECTIVE POWER	CHIP
LUNCH		
VI	ONGOING ACTIVITIES/ESCALATION	CHIP/GAYLE
VII	PLANNING FOR ACTIVITY IN THE LOCAL	CHIP

PLANS FOR ACHIEVING HB 130

ON - GOING PROJECT ACTIVITIES

LEGISLATIVE/LOBBYING

Members lobbying in Juneau - Each week, covering Mondays, Fridays and Saturdays, members and coalition members are going to Juneau to lobby. **Gayle, Chip, Staff, Local Coordinators, Local Presidents**

Postcard Campaign - In conjunction with the member lobby in Juneau and with other project activities, " Let's Finish the Job" postcards will inundate Juneau. **Chip, Staff, Local Coordinators**
Note: Postcards should be distributed by people who have lobbied in Juneau, attended a teleconference, been to Fly-in and/or signed a petition. The message should be, "I've talked to ____who talked to you, (in Juneau, at the teleconference, etc.). This is what I heard. This is how I feel about it."

Teleconferences - At each constituent teleconference we have people to request action on HB 130. **Chip, Staff, Local Coordinators in all areas except Southeast. Juneau office covers Southeast conferences.**

Telephone Campaign - Directed at certain legislators as a lobby effort. **Bob Manners, Jean and Bob Cooksey, Staff, Local Coordinators**

Lobby at Home - When legislators return to their home towns, we want to meet with them, be at the same political functions, etc. **Bob Manners, Bob Cooksey, Staff**

Targeted Constituent Contact - We want to devise a plan for school employee to neighbor contact that would reach a particular constituency. **Bob Manners, Bob Cooksey, Staff, Local Coordinators**

Legislative Contact Structure - Utilize the structure as needed. **Bob Manners, Jean, Bob Cooksey**

School Board Support - When the time comes, have School Board members testify in support of the bill. **Bob Manners, Staff**

COMMUNICATIONS - EXTERNAL

Speakers Bureau - We have speakers trained to give presentations on HB 130 to PTAs and community service organizations. Members of the local bargaining committe could team up with HB130 speakers to talk about the issues of local negotiations. **Gayle, Chip, Local Coordinators**

Jean Krause on a Speaking Tour - Whenever it's appropriate to get public/media exposure or to address audiences local speakers aren't able to reach. **Local Coordinators, Trudy, Local Presidents**

Letters to the Editor - In March we want to begin an on-going campaign of Letters to the Editor advocating HB 130. **Chip, Local Coordinators**

Local Public Relations -- Margaret Ortiz, NEA/Ak Communications Coordinator prepared PR packets with ideas for Public Service Announcements, paid ads, and HB130 signs for car and home windows. **Chip, Margaret, Local Coordinators**

Brochures for a Public Audience - For distribution at Speakers Bureau presentations and any other approoriate occasions. **Gayle, Trudy, Chip**

Public Support Committee - People whose names we can use as supporters of the bill who are influential members of the public. **Chip, Staff**

COMMUNICATION - INTERNAL

HB 130 Up date - Regular Communication with Coordinators, Local Presidents, Board of Directors, PACE, Staff **Bob, Gayle, Chip, Trudy**

Ongoing Contact with Local Coordinators - Chip

NEGOTIATIONS

Big Four Bargaining - Use the fact of bargaining in Anchorage,Fairbanks, Mat-Su and Kenai to bring attention to HB130. **Chip, Chuck, Leslie, Mary Ann**

ESCALATION - ACTIVITIES AND EVENTS

Letters to Bennett - A statewide push for 1000 letters to Bennett by March 15. Model letter available. Provided to Board, PACE, Local Presidents, HB 130 coordinators, site reps and coalition members. **Gayle, Chip, Staff, Local Coordinators**

Teleconferences between locals and legislators - Anchorage, Fairbanks, Mat-Su and Kenai to hold such conferences. **Bob Manners, Bob Cooksey in Juneau, Chuck and Mary Ann (Anch. 3/11)**

Fly-In - Each participant brings 20 letters to deliver. **Chip, Staff, Coordinators, and Local Presidents**

Saturday Hearing - hooked up by teleconference to all sites with school employees at all sites. **Chip, Staff, Coordinators Local Presidents, site reps.**

Capitol Vigil Saturday night. **Jim, Leslie**

Postcard follow up - each participant responsible for 50 postcards. **Chip, Jean**

Statewide Petition - Between **April 7th** and **April 21st** the goal is to have 7000 signatures. Each person who signs is given 5 postcards for people who are **not** school employees. **Chuck, Staff, Local Coordinators, Local Presidents, Site Reps**

May 3rd - HB 130 Day -Political and Public activity in every local followed by a social function for all participants. Governor/ Mayor proclamations. **Chip, Staff, Board, Local Coordinators, Local Presidents**

Informational Picketing - May 5th - Legislature ajournment. Picket appropriate site each day. **Chip, Staff, Local Coordinators, Local Presidents**

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March 18, 1986

Notes from Fairbanks for May 3rd -

1) Rally, downtown in Centennial Park (near Old Main), and then

   March to Legislative Affairs, music, speakers, food for sale, T-shirts (sell before, wear that day).

2) Legislative teleconference that day, and/or HB 130 signs up around town on all major corners and at all malls.

MEDIA COVERAGE FOR ALL MAY 3rd ACTIVITIES

Up to May 3rd -- pickets after school each day (rush hour); designate spots.

Signature Ad - Hand out to Reps -

   1) They get all employees in building.

   2) Make effort to distribute to community for signatures.*

* Have people at Malls, Labor halls, Teamster Recreation center to gather signatures.

GP2:01/sc

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March 18, 1986

Notes from Ketchikan for May 3rd -

1) A race - run or walk,

   Wear T-shirts
   Carry signs
   Challenges between schools
   Parents join us
   Prizes
   Members of TEASE will join us

2) A rally with a band and speeches with a teleconference hookup with our legislators.

3) A boat parade (regatta) with informational signs, music and balloons.

4) A no-host party to end the day!

GP2:06/sc

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March 18, 1986

Notes from Anchorage on May 3rd-

Balloons imprinted.
Corner picketing and Malls too.
"Walk for Hope" with T-shirts on.
Picket Abood's house.
Picket Faik's house.
Knowles declaration.
Hot air balloon.
Balloons with message.
Phone with message.
Cars drive "Walk for Hope" route with signs, etc.
Evening social activity.
Rally - Park strip - include
  community leaders
  legislators who are around
  other labor ??

Possibly less public ending activity, maybe Legislative teleconference inside?

Imprint cups - refreshment stand for "Walk for Hope" - (call to see if we can do a booth).

Petitions and post cards.

Coordinate: "Walk for Hope" walkers
  car parade
  refreshment stand
  corner pickets
  evening activity

May 5-13 and April

Picket Legislative Affairs office building -
  Eagle River site?

Starting April 21 pickets at a few intersections every day during rush hour.

Use April 15 to get material by Ortiz to sites.

Using brochure.

Rent table at Great Garage Sale for passing out information.

(over)

Need for money -
    Ask in advance for donations.

Meeting of HB 130 Day Committee

    6:00 - 7:30 P.M. - HB 130 Day Planning Session

Petitions in Abood's district.

Get labels for Abood's district.

GP2:04/sc

NEA-ALASKA

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March 18, 1986

Notes from N. W. Arctic, Tok - Alaska Gateway, Nenana, and Delta for May 3rd.

HB 130 Day Activities: Specifically in Delta

I. Meet Saturday morning at the Post Office for informational picketing and asking public to write POMs.

II. Write letters to the editor from:
   Teachers
   Classified
   General public
   Labor Union members
   Emphasis on classified Right to Bargain

III. KUAC FYI - Radio Spot.

IV. Leafletting local bars.

V. Mail out to local boxholders.

VI. Put posters up in local businesses.

HB 130 Day Activities - Ideas for Rural Alaska

* informational mailings to boxholders
* informational newspaper articles
* informational radio "blurbs"
* involvement of other unionized employees
* posters around communities
* leafletting of local "hang-outs"
* social gatherings at individual sites
* mayoral proclamation of HB 130 day
* personal contact with influential and/or misinformed people
* identify community leaders and members willing to write letters
* support staff involved

GP2:02/sc

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March 18, 1986

Notes from Kenai, Mat-Su and Juneau Locals for May 3rd.

Information tables in all Malls.

Balloons - HB 130.

Party - Social Event involving community - evening.

Media coverage - Ads & Article.

Attend community events - May 3 (if any are scheduled).

Kid activity, sponsored by Local.

Sandwich boards to be worn.

Prizes as incentive.

Run/walk - 10 K. race.

Ask mayors to attend Social (Legislators & School Board).

Signature ad.

Testimony for newspaper.

Information tables: (in Malls)

1) Contact person in charge for permission.
2) Get brochures from NEA-Alaska.
3) Have petitions available for signatures.
4) Display pictures of teachers with kids.
5) Recruit members to work in each Mall - make schedule.
6) Have balloons printed & available -- HB 130.
7) Drawing for Grand Prize ($50 - $100 gift certificate)
8) Have information available about local negotiations, (if appropriate).

Evening activity;

Social at a Resort - No Host bar, snacks and Door Prize: $ ___

Invite - School Board, Mayors, Borough Assembly, City Councils and entire community.

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