

S B

16

DATE: 1/21/91

FURTHER: HESS

Date of 5-Day Notice: 1-23-92  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 1-28-92

L&C Committee considered SENATE BILL NO. 16

"An Act including public school employees in the Public Employment Relations Act as class (a)(3) employees entitled to a right to strike after advisory arbitration; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS SB 16 (L+C)  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

zero fiscal note(s) ADMIN  
SB & CS  
\_\_\_\_\_  
\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

Shirley Craft  
John M. Collins  
Kirk Halford  
J. K. ...  
[Signature]

OTHER RECOMMENDATIONS:

LEC CS FDP Same  
Φ FNs to SB & CS per (Admin)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Irue Raice - 10/23/91  
 Chair: Signature and Recommendation

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 16

Revision Date: 1/21/92 Department Affected: Education  
 Title: An Act providing advisory arbitration for school employees prior to striking. BRU: K - 12 Support  
 Component: Foundation  
 Sponsor: Duncan  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	4	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None to DOE. However, it could be considerable to districts.

ANALYSIS: (Attach a separate page if necessary.) The Department will provide technical assistance for the striking districts, contingent upon district reimbursement of travel and per diem. There will be no impact to the foundation program because funding is based on average daily membership (ADM) not the number of days in session. The impact of districts could be considerable, but undetermined, based on the length and nature of

the strike.  
 Prepared By: Mike Maher Phone: 465-2900  
 Division: Commissioner's Office Date: 1/21/92  
 Approved by Commissioner: *Karen B. Chan* for Jerry Covey  
 Agency: Education Date: 1/21/92

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO. SB 16

Revision Date: \_\_\_\_\_ Department Affected: Education

Title: Act providing advisory arbitration for school employees prior to BRU: \_\_\_\_\_

Component: \_\_\_\_\_  
Sponsor: Duncan

Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact: none

**ANALYSIS:** (Attach a separate page if necessary.) The Department will provide technical assistance for striking districts, contingent upon district reimbursement of travel and per diem. There will be no impact to the foundation program because funding is based on average daily membership (ADM) not the number of days in session. The impact to districts could be considerable, but undetermined, based on the length and nature of the strike.

Prepared By: Harry Gamble Phone: 465-2300

Division: Commissioner's Office Date: 10/31/91

Approved by Commissioner: Jerry Covey, Commissioner

Agency: Education Date: 10/31/91

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

BILL NO : SB 16

Revision Date: \_\_\_\_\_  
Title: "An Act Including public school employees in the Public Employment ... Act..."  
Sponsor: Senators Duncan, Zharoff  
Requestor: Senate Labor & Commerce

Department Affected: Labor  
BRU: Commissioner's Office  
Component: Ak Labor Relations Agency  
COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jan DeYoung, Hearing Examiner Phone: 264-2887  
Division: Ak Labor Relations Agency Date: 10/29/91

Approved by Commissioner: John Abshire Date: 10/29/91  
Agency: Department of Labor

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 16

Revision Date: \_\_\_\_\_  
 Title: Act providing advisory arbitration for school employees  
prior to striking.  
 Sponsor: Duncan  
 Requestor: \_\_\_\_\_

Department Affected: Administration  
 BRU: Labor Relations  
 Component: Labor Relations

COMPONENT SERIAL NO. 

0	0	5	8
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	12.0	0	12.0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>12.0</b>	<b>0</b>	<b>12.0</b>	<b>0</b>	<b>0</b>

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

GENERAL FUND	0	12.0	0	12.0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>12.0</b>	<b>0</b>	<b>12.0</b>	<b>0</b>	<b>0</b>

POSITIONS:

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

Estimate of current year impact: None.

ANALYSIS: (Attach a separate page if necessary.)

Assumes advisory arbitration to be conducted by paid arbitrator for two (2) State teacher bargaining units (Mt. Edgecumbe/AVTEC) at \$6,000 in fees for each hearing. Assumes issues for both groups would be largely repetitive (e.g., wages). Current contracts do not expire until June 199 (arbitration occurring in early 1993). Assumes teachers' bargaining will remain under PERA and that contracts will be of at least two years' duration. Assumes additional negotiations workload will be absorbed by current staff.

Prepared by: Bruce Cummins  
 Division: Labor Relations

Phone: 465-4404  
 Date: April 5, 1991

Approved by Commissioner: Millett Kelley  
 Agency: Administration

Date: 4/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1992 LEGISLATIVE SESSION**

**BILL NO. SB 16**

Revision Date: January 21, 1992  
 Title: Act providing advisory arbitration for school employees  
prior to striking.  
 Sponsor: Duncan  
 Requestor: Senate Labor and Commerce

Department Affected: Administration  
 BRU: Personnel/OEEO  
 Component: Labor Relations

COMPONENT SERIAL NO. 

0	0	5	8
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	6.0	6.0	6.0	6.0	6.0	6.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>

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

GENERAL FUND	6.0	6.0	6.0	6.0	6.0	6.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>	<b>6.0</b>

POSITIONS:

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

Estimate of current year impact: 6.0

ANALYSIS: (Attach a separate page if necessary.)

Assumes advisory arbitration to be conducted by paid arbitrator for two (2) State teacher bargaining units (Mt. Edgecumbe/AVTEC) at \$6,000 in fees for each hearing. Assumes issues for both groups would be largely repetitive (e.g., wages). One contract expires this fiscal year, the other expires in FY 93. Assumes teachers' bargaining will remain under PERA and that contracts will be of at least two years' duration. Assumes additional negotiations workload will be absorbed by current staff.

Prepared by: R. H. King *Richard P. King*  
 Division: Personnel/OEEO

Phone: 465-4430  
 Date: 1/21/92

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*  
 Agency: Administration

Date: 1/21/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SB 16 - Public School Employees in PERA

This legislation would permanently place all public school employees in the Public Employment Relations Act as class (a)(3) employees. This change would allow these employees to go on strike after contract negotiations have been declared at impasse and advisory arbitration has failed.

Your bill files should include:

- \*Copy of SB 16
- \*Sectional summary prepared by Legislative Counsel
- \*Fiscal notes from the Dept. of Education, the Dept. of Labor and the Dept. of Administration.
- \*Chapter 180, SLA 90 which gives public school employees the right to strike and is scheduled for sunset next year.
- \*Copies of Title 14, Education statutes, and Title 23, which contains PERA.
- \*Recent Anchorage Times article dealing with an AEA poll concerning current Anchorage School District negotiations.

ON FRIDAY 1/24

CLASSIFIED EMPLOYEES  
ASSOCIATION, CONNECTED  
TO NEA, WILL BE ON  
LINE FROM THEIR  
CONVENTION AT THE  
ANCHORAGE HILTON.

Tenny -

Hayo -

"GIVE PRR"

"KNOWLEDGE LOSS  
CONDITIONS"

NO DEFINITIONS

OPEN INTERPRETATION

WISZ mtg.

12/17/91

1) Rod - I want some info on arbitration + right to strike. 1<sup>st</sup> - we need a 2-3 page memo for LC files describing the old system previous to "right to strike".

TALK 14

Then - another that explains the process that leads to strike .... and what is laid out in statute vs. what individual districts control.

How is arbitrator chosen? What requirements exist?

2) Arbitrators have licenses? If so - how many in Alaska? Info on their work load. I'm working toward requiring Alaskans.

We need all this before session begins.

LEGISLATOR'S COPY -- If you have modifications, please contact the assigned staff immediately

**Legislative Research Agency**  
Phone: 465-3991 Fax: 463-3351

**WORK ORDER**

No. 92.090

Short Title: Teachers Right to Strike

Legislator: Senator Drue Pearce Phone: 465-4993

Requested By: Rod Mourant  Phone  Memo

Date Requested: November 13, 1991

Staff Assignment: Carol R. Vandor

Date Assigned: November 13, 1991

**QUESTIONS ASKED/INFORMATION SOUGHT:**

See attached.

*DRUE -  
I SPOKE WITH  
TIMELY BEFORE I  
DID THIS. HEL  
RESEARCH WANTS TO  
MAKE SURE YOU  
KNOW ABOUT IT.  
Rod*

PURPOSE: \_\_\_\_\_

REGARDING BILL NUMBER: \_\_\_\_\_

INFORMATION GATHERED/SOURCES CONTACTED: \_\_\_\_\_

COMPLETION DATE: January 13, 1991

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: Gordon Harrison, Director  
Legislative Research Agency

FROM: Rod Mourant, Legislative Aid  
Senate Labor & Commerce Committee

DATE: November 12, 1991

RE: Teachers' Right-to-Strike

RECEIVED  
NOV 13 1991

Legislative Research Agency

Gordon, I was talking with Nevin Menzlin(sp?) of the Republican Research Agency for the Pennsylvania legislature today on teacher right-to-strike issues. His telephone number, by the way, is 717-783-2010. He had requested information on Alaska's laws a couple of weeks ago and called back with some follow-up questions.

He mentioned that in his research on teacher strike experience that he had been using information on the experience of other states. He specifically mentioned that the State of Pennsylvania has allowed teachers to strike since 1970 and had prepared a report that detailed their collective bargaining track record and teacher salary changes. Teachers in Pennsylvania probably hold the national record for going on strike the most number of times. Likewise, the State of New York has a right-to-strike law but charges a teacher two days pay for each day that they are on strike. He has seen a report that detailed their teacher salary record as well.

These are but two states that place in the top twenty for teacher compensation. Would be please attempt to obtain or produce similar reports. Also, would you please research how the remaining eighteen states handle the compensation question for educators; i.e., strike, binding arbitration, etc.. This information would be most useful when the committee holds hearings on SB 16 this January.

Thanks for your help.

SENATE LABOR & COMMERCE COMMITTEE  
AGENDA

DATE: OCTOBER 31, 1991

TIME: 4:00 PM

LOCATION: ANCHORAGE

1. Call meeting to order
2. Note time/day/year
3. Note members present and members excused  
\*remember to note any late arriving members
4. Recognize any VIP's
5. Remind participants/witnesses to sign in  
WE ARE ON TELE CONFERENCE.
6. Announce order of bills to be heard

SB 16 - PUBLIC SCHOOL EMPLOYEES IN PERA  
AND ENTITLED TO RIGHT-TO-STRIKE

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7. Begin by announcing first bill to be heard and proceed through the agenda.
8. Announce time of Adjournment

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3857 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

January 27, 1992

**SUBJECT:** Selection of arbitrator in Amendment to SB 16 - Public school employee collective bargaining (Amendment 7-LS0133\A.3 dated 1/24/92)

**TO:** Senator Drue Pearce, Chair  
Senate Labor and Commerce Committee

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested an opinion concerning the constitutionality of the above-referenced amendment.

In my opinion, the amendment is based on supportable public purposes and probably would withstand a court challenge.

The amendment does not create a preference based on the residence of the arbitrators but rather identifies desirable experience and knowledge that an arbitrator should have. The residence of the arbitrator is not a criterion to be considered. The grounds relied on by the state supreme court in Robison v. Francis, 713 P.2d 259 (Alaska 1986), (holding that a 90 to 95 percent resident employment preference on public construction contracts was unconstitutional) and State v. Enserch Alaska Const., Inc., 787 P.2d 624 (Alaska 1989) (holding that a regional employment preference in an economically distressed zone was unconstitutional) to invalidate the employment preferences based on state or regional residence were the federal privileges and immunities clause,<sup>1/</sup> which forbids discrimination against the citizens of other states, and the state equal protection clause.<sup>2/</sup>

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<sup>1/</sup>Art. IV, sec. 2, United States Constitution provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

<sup>2/</sup>Article 1, sec. 1 of the state constitution provides, in part, that "all persons are equal and entitled to equal rights, opportunities and privileges under the law."

Senator Drue Pearce  
January 27, 1992  
Page 2

Since the amendment proposed to SB 16 does not create a preference based on the residence of the arbitrator, and, I believe, would not be considered by the court to be a subterfuge to do so without saying so, I believe it would withstand scrutiny under the federal privileges and immunities clause.

Under state equal state protection analysis, the court would consider whether the distinction created by the amendment, between arbitrators with local experience and those without local experience, was a reasonable one, supported by a valid state purpose. While, in Enserch, the right to public employment was found to be an important right, and the interest underlying the state's regulation was therefore required to be an important one in order to support the constitutionality of the measure, I believe that the state could successfully defend the amendment here. The distinction based on knowledge is directly related to ensuring that arbitrators who have an appreciation for the effect of their decisions on the people who will have to live with those decisions are selected. The court would probably consider this to be an important enough state purpose to support the distinction that the amendment makes between arbitrators.

If I may be of further assistance, please advise.

TBC:gc  
92-065.glc

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

January 21, 1992

**SUBJECT:** Amendment requiring that Advisory Arbitrators be state residents (SB 16)

**TO:** Senator Drue Pearce

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

Enclosed is the amendment you requested, requiring that, beginning on January 1, 1997, the advisory arbitrators for education employee impasse or deadlock resolution be state residents. In my opinion, the state resident requirement is vulnerable to constitutional challenge as a violation of the federal privileges and immunities clause.

In Robison v. Francis, 713 P.2d 259 (Alaska 1986), the state supreme court reviewed a state law that required that 95 percent of the work force on public construction projects in the state be state residents. The court held that this requirement violated the federal privileges and immunities clause<sup>1/</sup> because the opportunity for employment on public construction projects in Alaska was a "fundamental right" protected under the privileges and immunities clause and the state had failed to show that it had substantial justification for the discrimination against nonresidents. Under the privileges and immunities clause, a state may justify violation of a fundamental right only by showing that the nonresidents of the state are a "peculiar source of the evil" that the state is seeking to remedy and that less restrictive means to achieve that goal are not available. The court held that excluding nonresidents from public construction jobs so that more jobs are available to Alaskans was not a permissible justification for discrimination under the privileges and immunities clause. I believe that the same analysis would be followed if the enclosed amendment were enacted. Unless the state is able to establish a "substantial justification" for the discrimination

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<sup>1/</sup>Section 2, article IV of the United States Constitution. The clause provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Senator Drue Pearce

January 21, 1992

Page 2

against nonresidents and to show that employment of nonresidents as advisory arbitrators creates or exacerbates a serious state problem that cannot be remedied by means that do not violate the rights of the nonresident arbitrators, I believe that a court would hold the provisions of this amendment unconstitutional.

If I may be of further assistance, please advise.

TC:pl:gc  
92-029.plm

Enclosure

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

*Have her  
suggestion  
drafted as an  
amendment.*

**MEMORANDUM**

January 17, 1992

**SUBJECT:** Hiring preference for arbitrators (SB 16 - Including Public School Employees in PERA)

**TO:** Senator Jim Duncan

**FROM:** Teresa B. Cramer *BC*  
Legislative Counsel

You have asked whether arbitrators who conduct advisory arbitrations under the amendment to AS 23.40.200(d) in sec. 4 of SB 16 could be required to be members of the American Arbitration Association (AAA) and whether a resident preference could be imposed on the selection of the arbitrators.

Assuming that membership in the AAA is reasonable evidence of the qualifications of the arbitrator, I see no reason why the bill could not require membership in the AAA for advisory arbitrators.

In my opinion, based on the resident and regional hiring preference cases that have been decided over the past several years,<sup>1/</sup> Alaska courts would not uphold a law creating a state or regional residence preference. (If you would find a discussion of these decisions and how they apply to your question useful, please let me know.) However, I believe that the bill could require that arbitrators who have some familiarity with local conditions be given a selection preference.

Language to accomplish both of these conditions could be added to the end of the amendment AS 23.40.200(d) now in the bill and might read:

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<sup>1/</sup> See Robison v. Francis, 713 P.2d 259 (Alaska 1986), holding that a statute requiring that almost all work on public construction projects be performed by state residents violates the privileges immunities clause of the federal constitution.  
State v. Enserch, 787 P.2d 624 (Alaska 1989) holding that statute creating a hiring preference on public works projects for eligible residents of an economically distressed zone violated the equal protection clause of the state constitution.

Senator Jim Duncan  
January 17, 1992  
Page 2

The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association. In selecting the arbitrator, the parties shall give preference to arbitrators who have knowledge of the local conditions in the school district or regional educational attendance area.

(If this language were inserted in the bill, it would be set out in bold typeface and underlined.)

If I may be of further assistance, please advise.

TBC:gc  
92-033.glc

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

October 28, 1991

**SUBJECT:** Sectional summary of SB 16 (Including public school employees in the Public Employment Relations Act)

**TO:** Senator Jim Duncan

**FROM:** Teresa B. Cramer *TBC*  
Legislative Counsel

You have requested a sectional summary of SB 16 which makes permanent the temporary inclusion of public school employees in the Public Employment Relations Act (PERA) enacted last legislature. As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections 1 and 2 remove employees of the state boarding school from the education employee collective bargaining provisions in Title 14 and place them under PERA.

Sections 3 and 6 make changes to PERA to place both certificated and noncertificated employees of school districts regional educational attendance areas, and the state boarding school<sup>1/</sup>, other than school superintendents, within Class (a)(3) of PERA. Class (a)(3) employees may engage in strikes after an impasse is reached. Section 3 leaves employees of the University of Alaska within Class (a)(2) of PERA. Those employees have a limited right to strike.

Section 4 requires that, if an impasse or deadlock is reached in negotiations, public school employees and school districts must submit to advisory arbitration before the employees may engage in a strike.

Section 5 makes clear that the legislature does not need to approve the monetary terms of a collective bargaining agreement entered into by a school district.

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<sup>1/</sup>In this memo, I use the term "school district" to include municipal school districts, REAA's, and the state boarding school.

Senator Jim Duncan

October 28, 1991

Page 2

Section 6 amends the definition of "public employee" in PERA to include school district employees other than superintendents.

Section 7 amends the definition of "public employer" in PERA to include school districts. It also makes an editorial change by substituting "municipality" for "town, city, borough." Under AS 01.10.060(4), "municipality" is defined for the entire extent of Alaska Statutes as

a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

Section 8 adds a definition of "regional educational attendance area" to PERA.

Section 9 makes clear that this change in the law does not terminate or modify a collective bargaining unit determination, recognition of a collective bargaining representative, or a collective bargaining agreement if it was in effect on the effective date of this Act.

Section 10 repeals the provisions for educational employee collective bargaining that are found in Title 14.

Section 11 precludes municipalities and REAA's from opting out of PERA.

Section 12 is an immediate effective date provision.

If I may be of further assistance, please advise.

TBC:gc  
91-385.glc

Post-It™ brand fax transmittal memo 7671 # of pages 2

To <i>Senator Pearce</i>	From <i>Senator Duncan</i>
Co. <i>Rod Alvarado</i>	Co. <i>Dale</i>
Dept. <i>L &amp; C Committee</i>	Phone # <i>465-4766</i>
Fax # <i>561-4194</i>	Fax # <i>465-4948</i>



# Alaska State Legislature

COMMITTEES:  
VICE CHAIR -  
FINANCE  
VICE CHAIR -

SENATOR JIM DUNCAN

RECEIVED  
AUG - 6 1991

P. O. Box V JUNEAU, ALASKA 9  
(907) 465-4766

12/19/91

Will BE RELEASED

LEGISLATIVE AUDIT

July 28, 1991

1/16/92 DHR

WELKER

Representative Ron Larson, Chairman  
Legislative Budget and Audit Committee  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative Larson:

I would like to have a performance audit performed on the effect of Senate Bill 15, Chapter 180 SLA 1990. This new law placed public school employees in Title 23 the Public Employment Relations Act as class (a)(3) employees entitled to a right to strike.

I am interested in the impact this new law has had on school districts and the union when comparing this last year with a year when a similar amount of funding was available during negotiations.

Some of the factors that should be part of a review are:  
length of time involved in negotiations,  
cost of any attorney or legal services attributable to negotiations,  
cost to school district attributable to a negotiator,  
a comparison of the settlement process between Titles 14 and 23,  
the amount to Labor Relations Agency involvement,  
the number of Unfair Labor Practice filings, and  
interviews with both labor and management to determine the general attitude toward each other during the negotiations period.

Please let me know if I may provide you with any additional information.

Sincerely,

Jim Duncan  
Senator

Post-It™ brand fax transmittal memo 7671		# of pages 1	
To	Merle Ineson	From	SEN. DUNCAN
Co.	Leg Audit	Co.	Dale
Dept.	3830	Phone	465-4766
Fax	2347	Fax	465-4748

STRIKE POLICY

Permitted

Alaska	Montana
Hawaii	Oregon
Illinois	Pennsylvania
Minnesota	Wisconsin

Prohibited

California	Massachusetts*	Rhode Island
Connecticut	Michigan	South Dakota*
Delaware*	Nebraska*	Tennessee*
Florida*	Nevada*	Washington
Indiana*	New Hampshire	
Iowa*	New York*	
Kansas	New Jersey	
Maine	North Dakota*	
Maryland*	Ohio	
	Oklahoma*	

No Specific Provision

Alabama  
Idaho  
North Carolina  
Vermont

\* Denotes states that have penalty provisions.

## IMPASSE PROCEDURE

Mediation is utilized in 20 states and factfinding in 27 states.  
Interest arbitration is utilized as follows.

### Mediation

Alaska	New Jersey
Connecticut	New York
Hawaii	Ohio
Illinois	Oregon
Iowa	Pennsylvania
Indiana	Rhode Island
Maine	Wisconsin
Massachusetts	
Minnesota	
Montana	
Nebraska	
Nevada	
New Hampshire	

### Conventional

Hawaii	Montana	New York
Connecticut	Nebraska	Ohio
Illinois	Nevada	Oregon
Indiana	New Hampshire	Pennsylvania
Iowa	New Jersey	
Maine		
Massachusetts		

## BARGAINING RIGHTS

### 34 States Have Collective Negotiation

Alaska	Maine	North Dakota
California	Maryland	Ohio
Connecticut	Massachusetts	Oklahoma
Delaware	Michigan	Oregon
Florida	Minnesota	Pennsylvania
Hawaii	Montana	Rhode Island
Idaho	Nebraska	South Dakota
Illinois	Nevada	Tennessee
Indiana	New Hampshire	Texas
Iowa	New Jersey	Vermont
Kansas	New York	Washington
		Wisconsin

### States Have No Bargaining Statute

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

While there is no bargaining statute, many school districts in these states do bargain.

### 1 State has a Meet and Confer Statute

Nebraska

### Bargaining is Prohibited in 1 State

North Carolina

SB 16 - Public School Employees in PERA

Your file should include:

SB 16

Sectional by Legislative Counsel

Fiscal Notes : Education

Administration

Chptr 180 SLA 90 - Current sunset right-to-strike

Title 14 - Education statutes

Title 23 - PERA

Anchorage Times Teacher Poll article

Legal opinion Cramer 1/21/92 - Arbitrator Residency

Anchorage Times Editorial

State by state salary & bargaining comparison packet

Summary of Title 14 procedures

Wisconsin Law Review "Collective Bargaining in Public Schools"

AAESP Position paper

AASA Position paper

New York Teacher Collective Bargaining statutes

Telegram from Ft Yukon

Leg Audit: Impact of PERA on Local Schools

NEA Chart: PERA Salary changes

## TEACHERS' SALARIES

Here, in rank order by salary, are the average 1990-91 salaries of teachers in the top 20 states, the year-to-year percent change, and the national average.

Rank	State	Average Salary	Percent Change
1	Alaska	\$43,406	0.7
2	Connecticut	43,398	6.5
3	New York	42,080	8.1
4	District of Columbia	43,398	2.5
5	California	39,118	3.5
6	New Jersey	38,411	7.7
7	Maryland	38,312	4.7
8	Rhode Island	38,220	6.0
9	Michigan	37,800	3.7
10	Massachusetts	36,090	4.0
11	Pennsylvania	36,057	8.2
12	Nevada	35,269	5.3
13	Delaware	35,246	5.6
14	Illinois	34,642	5.6
15	Hawaii	33,548	4.0
16	Minnesota	33,128	2.9
17	Wisconsin	33,077	3.6
18	Washington	32,975	8.0
19	Indiana	32,931	5.9
20	Virginia	32,692	5.6
U.S. Average		\$32,880	5.0

Source: American Federation of Teachers

## TEACHERS' SALARIES

Here, in rank order by year-to-year percent change in salary, are the average 1990-91 salaries of teachers in the top 20 states and the national average.

Rank	State	Average Salary	Percent Change
1	Washington	\$32,975	8.3
2	Pennsylvania	36,057	8.2
3	New York	42,080	8.1
4	New Jersey	38,411	7.7
5	Connecticut	43,398	6.5
6	New Jersey	38,411	7.7
7	Indiana	32,931	5.9
8	Delaware	35,246	5.6
8	Illinois	34,642	5.6
8	Virginia	32,692	5.6
11	Nevada	35,269	5.3
12	Maryland	38,312	4.7
13	Hawaii	33,548	4.0
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19	District of Columbia	43,398	2.5
20	Alaska	43,406	0.7
U.S. Average		\$32,880	5.0

Source: American Federation of Teachers

## Vacancies

Senator Steve Symms (R-ID) has announced that he will not seek reelection to a third term in 1993. The 53-year-old Symms expressed an interest in beginning a new career. A staunch conservative, he said that he would work to hold his seat for the Republicans by staving off an expected challenge from Representative Richard Stallings (D-ID).

In other news, Attorney General Dick Thornburgh has resigned his cabinet post to run for the Senate seat left vacant by the untimely death of Senator John Heinz (R-PA) in a plane crash last April. An election for the seat will be held on November 5 and Thornburgh's opponent will be Senator Harris Wofford (D-PA) who was appointed by Pennsylvania Governor Robert Casey (D) to fill Heinz's seat.

It is rumored that White House Chief of Staff John Sununu is urging President Bush to replace Thornburgh with Missouri Governor John Ashcroft (R). However, the President is not expected to offer up a candidate before his return to the White House on September 3.

## **State Collective Bargaining Statutes**

While the Indiana Legislature has failed during its last two sessions to extend collective bargaining privileges to state and local employees, four states have revised their bargaining statutes since Critique published its first survey of such laws in January 1990. In Alaska, legislators gave educators the right to strike, while North Carolina lawmakers added teachers to the group of state government employees with a union dues check off provision.

Nevada, which permits only local government employees to bargain collectively, revised its law to impose mandatory arbitration in the event of a negotiation impasse. A similar situation occurred in North Dakota where a law was enacted giving state teachers binding arbitration. However, that law may not take effect until the conclusion of a public referendum on the matter next year.

The table on pages 4 and 5 provides an updated, state-by-state survey of public sector bargaining or meet and confer statutes, what they permit and the types of employees that are covered by those laws. (Footnotes pertaining to the table appear on page 6.)

The first state to enact collective bargaining legislation was Wisconsin in 1959. As of August 1991, 38 states allowed exclusive representation for some categories of public employees.

Today only six states -- Arizona, Colorado, Mississippi, New Mexico, Virginia and West Virginia are completely free of such laws. Six others -- Alabama, Arkansas, Louisiana, North Carolina, South Carolina and Utah -- have laws solely providing for some form of limited dues check off.

## STATE PUBLIC SECTOR BARGAINING STATUTES

STATE	STATUTE APPLICABILITY	LOCAL OPTION	ADMINISTRATIVE AGENCY	BARGAINING FORM			UNION SECURITY					IMPASSE PROCEDURES			STRIKES			
				Meet and Confer	Collective Negotiation	SUPERVISOR BARGAINING	Exclusive Representation	Dues Check Off	Maintenance of Membership	Agency Shop	Union Shop	Mediation	Fact Finding	Arbitration		Prohibited	Permitted	Penalties
														Voluntary	Mandatory			
Alabama	se							X										
Alaska 1	pe	X <sup>b</sup>	X		X	X	X	X		X	X	X		X	X		X	
Alaska 2	t				X	X	X					X					X	
Arizona	ns																	
Arkansas	sg							X										
California 1	sg		X	X		X	X	X	X	X		X						
California 2	sg <sup>1</sup>			X													X	
California 3	ue		X	X			X	X	X			X	X				X	
California 4	lge			X		X	X	X		X		X					X	
California 5	se, ce				X		X	X	X	X		X	X				X	
Colorado	ns																	
Connecticut 1	sg		X		X	X	X	X		X		X	X	X		X		
Connecticut 2	t		X		X	X	X	X		X		X	X		X		X	
Connecticut 3	me		X		X	X	X	X				X	X		X		X	
Delaware 1	pe	X <sup>b</sup>	X		X	X	X	X				X		X <sup>e</sup>		X		X
Delaware 2	t		X		X		X	X				X	X		X		X	
Florida	pe		X		X		X	X				X	X				X	X
Georgia 1	sg															X		X
Georgia 2	ff	X		X		X	X					X				X		X
Hawaii	pe		X		X	X	X	X		X		X	X	X	X <sup>1</sup>		X	
Idaho 1	ff		X		X		X					X	X			X <sup>b</sup>		
Idaho 2	t		X		X		X					X	X					
Illinois 1	pe, ff		X		X		X	X		X		X	X		X <sup>1</sup>		X <sup>b</sup>	
Illinois 2	se		X		X		X	X		X		X	X	X				
Indiana	t		X		X		X	X				X	X	X		X		X
Iowa	pe		X		X		X	X				X	X	X		X		X
Kansas 1	pe	X <sup>c</sup>	X	X			X					X	X			X		
Kansas 2	t		X		X	X	X	X				X	X			X		
Kentucky 1	ff	X	X		X	X	X	X		X		X	X			X		
Kentucky 2	p				X	X										X		
Louisiana	pe							X										
Maine 1	sg		X		X	X	X					X	X	X <sup>h</sup>		X		
Maine 2	me, se		X		X	X	X					X	X	X <sup>h</sup>		X		
Maine 3	ue		X		X	X	X	X		X	X	X	X	X <sup>h</sup>		X		
Maryland 1	t		X		X	X	X	X				X	X			X		X
Maryland 2	se				X	X	X	X				X	X			X		X
Massachusetts	pe		X		X		X	X		X		X	X		X	X		X
Michigan	pe		X		X		X	X		X		X	X		X <sup>1</sup>	X		X
Minnesota	pe		X		X	X	X	X		X		X		X	X <sup>a</sup>	X <sup>1</sup>	X <sup>1</sup>	X
Mississippi	ns																	
Missouri	pe but t & p		X	X			X	X								X		X
Montana 1	pe		X		X		X	X		X		X	X	X	X <sup>1</sup>		X <sup>m</sup>	
Montana 2	n		X		X		X										X	
Nebraska 1	pe, t		X		X	X	X	X				X	X	X <sup>n</sup>		X		X
Nebraska 2	t	X		X			X					X	X	X <sup>n</sup>				

STATE	STATUTE APPLICABILITY	LOCAL OPTION	ADMINISTRATIVE AGENCY	BARGAINING FORM			UNION SECURITY					IMPASSE PROCEDURES				STRIKES		
				Meet and Confer	Collective Negotiation	SUPERVISOR BARGAINING	Exclusive Representation	Dues Check Off	Maintenance of Membership	Agency Shop	Union Shop	Mediation	Fact Finding	Arbitration		Prohibited	Permitted <sup>a</sup>	Penalties
														Voluntary	Mandatory			
Nevada	lge		X		X	X	X	X				X	X		X	X		X
New Hampshire	pe		X		X	X	X					X	X	X <sup>c</sup>		X		
New Jersey	pe		X		X	X	X	X		X		X	X	X	X <sup>i</sup>	X		
New Mexico	ns																	
New York	pe		X		X	X	X	X		X <sup>o</sup>		X	X	X	X <sup>i</sup>	X		X
North Carolina	sge, t							X										
North Dakota	t		X		X	X	X	X				X	X			X		X
Ohio	pe		X		X	X	X	X		X		X	X	X <sup>p</sup>		X <sup>o</sup>		
Oklahoma 1	p, ff		X	X	X	X	X				X	X	X		X		X	
Oklahoma 2	se				X	X	X	X				X			X		X	
Oregon	pe		X		X		X	X		X		X	X	X	X <sup>i</sup>	X <sup>o</sup>	X <sup>o</sup>	
Pennsylvania 1	p, ff		X		X	X	X					X	X	X		X		
Pennsylvania 2	pe		X		X	X	X	X	X	X <sup>c</sup>		X	X	X	X <sup>p</sup>	X <sup>o</sup>	X <sup>o</sup>	
Rhode Island 1	sge		X		X	X	X	X		X		X		X	X	X		
Rhode Island 2	me		X		X		X					X		X <sup>n</sup>		X		
Rhode Island 3	ff		X		X	X	X								X	X		
Rhode Island 4	p		X		X	X	X								X	X		
Rhode Island 5	t		X		X		X	X		X		X			X	X		
South Carolina	sge							X										
South Dakota	pe		X		X		X	X				X				X		X
Tennessee	t				X		X	X				X	X			X		X
Texas	p, ff	X			X	X	X	X				X		X		X		X
Utah	pe							X										
Vermont 1	sge		X		X	X	X					X	X			X		
Vermont 2	me		X		X		X	X		X		X	X	X			X	
Vermont 3	t				X	X	X					X	X					
Virginia	ns																	
Washington 1	lge		X		X	X	X	X		X	X	X	X <sup>i</sup>		X <sup>i</sup>	X		X
Washington 2	t		X		X	X	X	X		X		X	X			X		
Washington 3	ue		X		X		X	X			X					X		
Washington 4	ce		X	X		X	X					X	X					
West Virginia	ns																	
Wisconsin 1	sge		X		X	X	X	X	X		X	X				X		X
Wisconsin 2	lge		X		X		X	X		X		X		X		X <sup>s</sup>	X <sup>s</sup>	
Wyoming	ff				X		X							X				X

Statute Applicability Code

- pe: all public employees
- sge: state government employees
- lge: local government employees
- me: municipal employees
- se: all school employees
- t: teachers
- ue: university employees
- ce: community college employees
- ff: fire fighters
- p: police
- n: nurses
- ns: no statute

## FOOTNOTES

- a. In the ten states where strikes are permitted, they are on a limited basis with employees judged essential to the public well-being generally prohibited from striking.
- b. Local jurisdictions may opt not to be covered by the statute.
- c. Only applies to state and public education employees.
- d. Mandatory for state government and others, optional for cities and counties employing less than 100 full time workers.
- e. Salary questions may not be arbitrated.
- f. Arbitration is only mandatory for fire fighters.
- g. Strikes prohibited during term of contract.
- h. Arbitration over wages and benefits is purely advisory.
- i. Arbitration is mandatory for police and fire fighters.
- j. Arbitration only applies to police, fire and medical workers.
- k. Arbitration is mandatory for essential workers, voluntary for nonessential personnel.
- l. Essential employees are prohibited from striking, others, including teachers, may opt to strike or submit to arbitration.
- m. Fire fighters are prohibited from striking.
- n. Arbitration is permitted for employees covered by the teacher statute.
- o. Strikes by police, firemen, prison and hospital guards, banned.
- p. Mandatory arbitration for workers who cannot strike.
- q. Court employees, prison and hospital guards may not strike.
- r. Applicable to uniformed employees.
- s. Strikes by police and fire fighters is prohibited, others may strike if permitted by prior, mutual agreement or both sides refuse to submit to final offer arbitration.
- t. Noncivil service employees.

## Publications of Interest

Government Union Review, Volume 12, Number 3, Summer 1991 - Public Service Research Foundation, 1761 Business Center Drive, Suite 230, Reston, VA 22090: Yearly subscription \$10, Single copy \$2.50.

From the Editor's Note: "A debate is raging in the U.S. Congress, and many state legislatures, over bills that would prohibit the hiring of permanent striker replacement workers. The U.S. House of Representatives has already passed such a measure, H.R. 5, while its Senate companion bill, S. 55, had 30 cosponsors as of August 1991, short of the number needed to override a promised presidential veto.

"The purpose of this legislation is to overturn two U.S. Supreme Court decisions and give labor unions the upper hand in any disputes with management that result in strikes. For that reason, the AFL-CIO has placed passage of S. 55/H.R. 5 on the top of its priorities list for the 102nd Congress.

"In On Strikers and Their Replacements, Dr. Charles Baird examines the nature of this new legislation in light of the Court's rulings

Table 1

## Teacher Collective Bargaining Laws and Strike Provisions

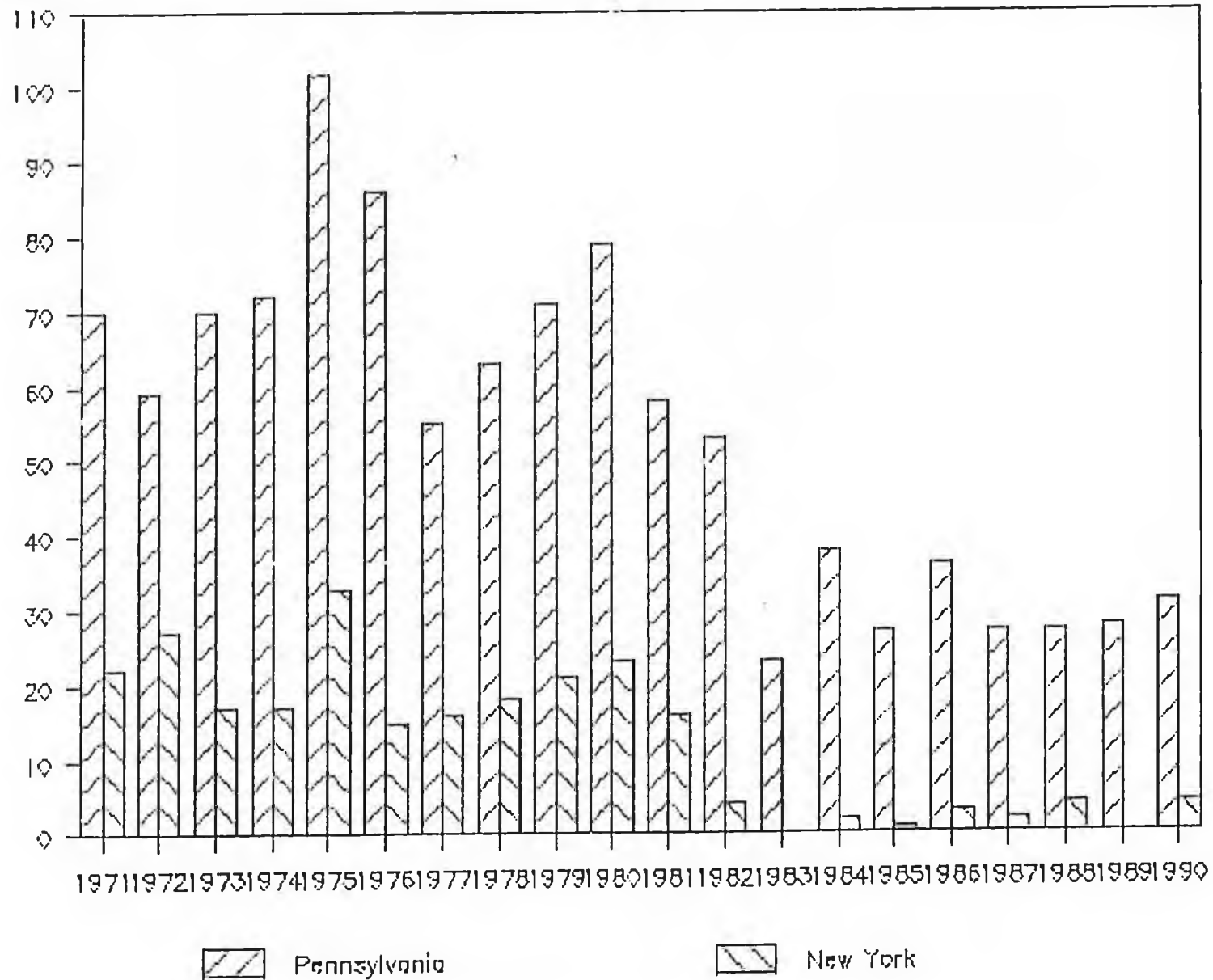
	Law First Enacted	Statutory Basis					Strikes				
		Public Em- ployee Law	Special For Teachers	Contract Enforc- able	Exclusive Repre- sentation Possible	Agency Fee Allowed	Allowed		Prohibited		
							Legal	No Law	Sanctions Are:		
								Absort	Modest	Severe	
ALASKA	1970	▲	▲			▲		▲			
CALIFORNIA	1975	▲	▲			▲		▲			
CONNECTICUT	1958	▲	▲			▲			▲		
DELAWARE	1969	▲	▲							▲	
FLORIDA	1974	▲								▲	
HAWAII	1970	▲				▲					
ILLINOIS	1983	▲	▲			▲					
IOWA	1974	▲								▲	
KANSAS	1970	▲	▲					▲			
MAINE	1968	▲							▲		
MASSACHUSETTS	1973	▲				▲				▲	
MICHIGAN	1947	▲				▲		▲			
MINNESOTA		▲				▲				▲	
MISSOURI	1967	▲						▲			
MONTANA	1973	▲				▲					
NEBRASKA	1967	▲	▲							▲	
NEVADA	1969	▲								▲	
NEW HAMPSHIRE	1975	▲							▲		
NEW JERSEY	1968	▲						▲			
NEW YORK	1967	▲				▲			▲		
OHIO	1984	▲				▲				▲	
OREGON	1963	▲				▲					
PENNSYLVANIA	1978	▲				▲					
RHODE ISLAND	1966	▲	▲			▲		▲			
SOUTH DAKOTA	1969	▲								▲	
VERMONT	1969	▲	▲					▲			
WASHINGTON	1975	▲	▲					▲			
WISCONSIN	1959	▲							▲		
IDAHO	1971		▲			▲		▲			
INDIANA	1973		▲						▲		
MARYLAND	1969		▲							▲	
NORTH DAKOTA	1969		▲			▲			▲		
OKLAHOMA	1983		▲						▲		
TENNESSEE	1978		▲			▲				▲	
NEW MEXICO				▲				▲			
ALABAMA					▲			▲			
ARIZONA								▲			
ARKANSAS								▲			
COLORADO				▲				▲			
GEORGIA					▲			▲			
KENTUCKY								▲			
LOUISIANA				▲				▲			
MISSISSIPPI								▲			
NORTH CAROLINA								▲			
SOUTH CAROLINA					▲			▲			
TEXAS					▲					▲	
UTAH					▲			▲			
VIRGINIA								▲			
WEST VIRGINIA								▲			
WYOMING								▲			

Source: Bureau of National Affairs Reference File, AFT Research Department and Partridge (1988).

Public Sector Work Stoppages

	Pennsylvania			Total	New York
	Teacher	Support Staff	Local Gov't		Total
1971	65	1	4	70	22
1972	40	9	10	59	27
1973	27	18	25	70	17
1974	36	25	11	72	17
1975	61	20	21	102	33
1976	46	16	24	86	15
1977	28	7	20	55	16
1978	23	16	24	63	18
1979	33	15	23	71	21
1980	37	15	27	79	23
1981	26	10	22	58	16
1982	40	4	9	53	4
1983	13	6	4	23	0
1984	21	9	8	38	2
1985	15	5	7	27	1
1986	24	4	8	36	3
1987	16	7	4	27	2
1988	22	1	4	27	4
1989	21	3	4	28	0
1990	19	7	5	31	4

## Comparative Work Stoppages



The arbitrator selected to conduct the advisory arbitration must be a member of either the American Arbitration Association or the Federal Mediation and Conciliation Council. In selecting the arbitrator, the parties should request from the American Arbitration Association or the Federal Mediation and Conciliation Council a list of arbitrators who have knowledge of local conditions in the state boarding school, school district, or regional education attendance area and recent local experience. A list containing at least five such nominees shall be considered complete by the parties for the purpose of striking names and selecting the arbitrator.

SRT 1/24

*No*  
AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: SB 16

Page 3, line 31, after "":

Insert "The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association. In selecting the arbitrator, the parties shall give preference to arbitrators who have knowledge of the local conditions in the state boarding school, school district, or regional educational attendance area."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: SB 16

Page 3, after line 31:

Insert a new bill section to read:

"\* Sec. 5. AS 23.40.200(d) is repealed and reenacted to read:

(d) The class in (a)(3) of this section includes all other public employees who are not included in the classes in (a)(1) or (a)(2) of this section. Employees in this class may engage in a strike if a majority of the employees in a collective bargaining unit vote by secret ballot to do so. However, if an impasse or deadlock is reached in collective bargaining negotiations between a municipal school district, a regional educational attendance area, or the state boarding school and its employees, the parties shall submit to advisory arbitration before the employees may engage in a strike. An arbitrator selected for advisory arbitration must be a resident of the state."

Re-number the following bill sections accordingly.

Page 4, after line 28:

Insert a new bill section to read:

"\* Sec. 13. Section 5 of this Act takes effect January 1, 1997."

Re-number the remaining bill section accordingly.

Page 4, line 29:

Delete "This"

Insert "Except as provided in sec. 13 of this Act, this"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: SB 16

Page 3, line 31, after ".":

Insert "The arbitrator selected to conduct the advisory arbitration must be a member of the American Arbitration Association or the Federal Mediation and Conciliation <sup>Service</sup> Council. In selecting the arbitrator, the parties shall request a list of arbitrators who have knowledge of and recent experience in the local conditions in the school district, regional educational attendance area, or state boarding school. A list containing at least five nominees who meet the qualifications of this subsection is a complete list for the purpose of striking names and selecting the arbitrator."

Panel of Labor Arbitrators

NEIL BLACKMAN - AMAT  
204

## POSITION PAPER: DEPARTMENT OF EDUCATION

**Bill No:** Senate Bill 16

**Date:** October 31, 1991

**Title:** "An Act including public school employees in the Public Employment Relations Act as Class (a) (3) employees entitled to a right to strike after advisory arbitration; and providing for an effective date."

**Contact:** Harry Gamble  
465-2821

Under the provisions of Senate Bill 16, the Public Employment Relations Act would continue to govern labor relations for certificated and non-certificated school employees in Alaska, as it has for the past two years.

These employees were placed under PERA by a previous Legislature. The original act included a two-year "sunset" limitation that takes effect in 1992.

The original act began as a binding arbitration bill that would allow a third party to decide terms and conditions of employment for school districts and their employees. The right-to-strike element was added by lawmakers as a compromise. It removed school district employees from the school labor laws of Title 14 and placed them under the PERA, Title 23.

However, the "opt out" provision of Title 23, which applies to municipalities, was deleted from the final version of this bill. The "opt out" clause would have allowed districts to develop their own bargaining system (as some municipalities have done) or revert back to Title 14 school labor laws.

Under Senate Bill 16, the coverage of public school employers and employees under PERA would continue after 1992, and the Alaska Labor Relations Agency would continue to serve as their labor relations agency. The "opt out" clause in PERA, which applies to municipalities, would continue to be denied to school districts.

This bill would not expand the responsibilities of the Department of Education. It would have no fiscal impact as described in the attached fiscal note.

The Department opposes SB16 as not being in the best interest of Alaska education for the following reasons:

- Teacher strikes are not good for students.
- School boards have lost their authority to negotiate evenly with unions under Title 23.
- Teachers had achieved and maintained the highest average teacher salaries in the nation under Title 14. *and excellent benefit packages*
- It is bad policy to tamper with a system (Title 14) that was working well.

APPROVED:

\_\_\_\_\_  
Jerry Covey, Commissioner  
Department of Education

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 29, 1991

The Honorable Walter J. Hickel  
Governor  
State of Alaska  
P.O. Box A  
Juneau, Alaska 99811

Re: CSSB 219 am (miscellaneous changes to workers' compensation laws impacting employers and excluding some employer-sponsored recreational activities from coverage)

Dear Governor Hickel:

This Department has reviewed CSSB 219 am which makes a number of changes in the present workers' compensation law. Some changes are technical, such as a clarification of the definition of medical stability and are not anticipated to result in significant increased costs to the State or other employers. The substantive changes to the workers' compensation law are the subject of this commentary. Those changes include: (1) a requirement that employers pay for a claimant's personal health insurance for a period up to 18 months following termination of employer contributions to group health insurance; (2) a requirement that if controversion of benefits or appeal delays development of a reemployment plan, the controverting or appealing employer shall pay 60 % of the claimants' spendable weekly wages (generally take home pay) during the period of controversion or appeal regardless of the outcome of the controversion or appeal; (3) a requirement

WALTER J. HICKEL, GOVERNOR

REPLY TO: NEW ANCHORAGE  
PHONE (907) 269-5100

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 278-3897

KEY BANK BUILDING  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 468-1317

P.O. BOX K — STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 485-3600  
FAX: (907) 483-5295

that an employer give the claimant a round-trip airline ticket if a deposition is scheduled out of state, regardless of whether the claimant prevails; (4) a provision that the Workers' Compensation Division refer "apparently frivolous or unfair" controversions to the Insurance Division for unfair claims practice proceedings without providing an opportunity for prior explanation or hearing; (5) a provision denying employers access to an employee's prior workers' compensation injury medical files until an employee is injured and gives his employer a release; (6) a provision excluding employer-sponsored recreational activities at non-remote sites not owned or leased by the employer from coverage; (7) a provision requiring payment of compensation by negotiable instrument cashable within three days of issuance (certified check); (8) a provision that insurers are not liable, in the absence of reckless or intentional misconduct, for civil damages as a result of acts or omissions in work place safety inspections or safety advisory services; and, (9) extension of coverage to volunteer emergency medical technicians at State expense.

The State of Alaska is self-insured for workers' compensation coverage. The experience of the differing departments and the estimation of risk associated with departmental activity is used to arrive at an assessment against each department's operating budget which funds the State's projected workers' compensation liability for each fiscal year's injuries. Workers' compensation coverage, through insurance or self-insurance, is mandatory. The compensation benefits paid to State workers are

based on taxable salary plus employer contributions to retirement and SBS annuities. In the case of State employees, this amounts to something over 80% of take home pay as a temporary total compensation benefit. Workers' compensation represents a significant drain on State resources, totalling \$1,969,570.37 reserved and paid out on losses incurred only to date in this fiscal year. A better perspective is gained by looking at the workers' compensation injuries incurred in FY 1989-90: of \$2,923,138.67 reserved for injuries incurred, more than \$2,096,798.41 has been paid to date. This review focuses on the impact of CSSB 219 am on State workers' compensation costs. That same impact will be translated to employers throughout the State of Alaska.

1. Health Insurance Continuation. At the present time, a State employee who claims an injury or illness is work-related may use accrued sick or annual leave to "make-up" the small difference between salary and workers' compensation and continue in active employment status until his leave is exhausted. So long as the employee is in active status, the State continues to make contributions for group health insurance on the employee's behalf. Section 4 of CSSB 219 am would require the State to continue paying monthly an amount up to the amount of its monthly health insurance contribution (\$385.00) for a period up to 18 months from the date the State terminated its direct health insurance contributions (i.e. the first month the employee exhausted sick and annual leave). It is not required that the employee actually be totally

disabled during that period; an employee who is receiving permanent partial disability benefits and is able to return to work may still receive health benefit continuation. The Workers' Compensation Ad Hoc Committee, a group comprised of labor and management, testified that this provision would result in at least a 1-1/2% increase in compensation costs. For small or seasonal employers (there is no minimum employer size) this health insurance continuation may represent a more significant cost in the event of a work-related injury which, as it is not defined as compensation, may be contested as a non-covered expense by workers' compensation insurers.

This provision represents a humane effort to mitigate the effects of work-related injury or illness on a worker and his dependents. However, the provision creates a division between employees who are disabled by personal injury or illness and those disabled by work-related injury or illness. To that extent the provision represents an additional incentive to claim a questionable injury or illness is work-related. It has been suggested that if this bill becomes law it may be worthwhile to give consideration to determining whether State employees on workers' compensation may be prevented from drawing on their leave banks in order to retain some financial incentive to return to work. However, initial review suggests that this course of action may not be possible under current collective bargaining agreements and personnel rules.

2. Controversion Penalty. AS 23.30.041 requires the employer to pay for a reemployment (vocational rehabilitation) evaluation for any claimant who requests one within 90 days of injury. The evaluation is performed by a private vocational rehabilitation counselor. The evaluator's report is the primary basis of the Administrator's decision whether the claimant is able to return to suitable gainful employment or whether he will need reemployment services (e.g., retraining) to return to work. If the Administrator decides a plan is needed, the evaluator devises a plan which may be approved by the Administrator. The Administrator is an employee of the Alaska Workers' Compensation Board. The Administrator's decision may be appealed to the Board. Until now, the Administrator has found a claimant whose claim has not been determined compensable (because the employer controverts the claim or the Board has not decided the claim or decides against the claimant) is not eligible for an evaluation.

Section 2 of CSSB 219 am requires an employer to make payments equal to 60% of the claimant's spendable weekly wages if the employer's controversion or appeal delays evaluation, development, or commencement of a reemployment plan. Since any controversion of work-relatedness delays evaluation, the employer must pay a "penalty" for controverting whether the claimed injury occurred in the course of employment. Moreover, Section 2 prohibits set off of the 60% payments against compensation if the Board determines the claim is compensable. If the Board determines

the claim is not compensable, the employer has no mechanism for recouping the 60% payments made to the claimant.

The right to exercise a controversion is important because it is the employer's opportunity to make the claimant prove his claim. Until recently, an employer could pay compensation without admitting the claim was valid, and, after gathering evidence against the claim, controvert the claim and present the case to the Board. Since the Supreme Court's decision in Wien Air Alaska v. Kramer, \_\_\_ P.2d \_\_\_, Slip Op. 3673 (Alaska March 15, 1991), the mechanism of voluntary pay is not as attractive, because the Court stated that payment of compensation raises a presumption that the disability continues to be work-related. An initial controversion of work-relatedness is the only means of requiring the employee to produce evidence that his claim is work-related.

Section 2 also penalizes the decision to appeal by requiring the employer to pay 60% of the spendable weekly wage during the pendency of the appeal or temporary total disability compensation (80 % of spendable wages) if the claimant is not medically stable. The payments cannot be off-set against permanent partial disability compensation. Again, if the question is ultimately decided in the employer's favor, the employer has no means of recouping his payments. The claimant with a questionable claim has nothing to lose by bringing his claim, since he can at least collect 60% of his spendable wages in the absence of any decision in his favor.

The workers' compensation laws already provide penalties for frivolous, unfair, or untimely controversions. The controversion designed to delay a plan is obviously unfair and may result in penalties of 25% of compensation owed. In addition, an employer must request a stay on appeal to avoid payment of compensation pending appeal; these stays are routinely denied.

3. Airline Ticket. AS 23.30.145 and related regulations now permit the recovery of costs, including travel to depositions, to the prevailing claimant. Section 6 of CSSB 219 am requires an employer scheduling deposition of an out of state medical witness to provide a claimant a round trip airline ticket to the site of the deposition, regardless of whether the claimant prevails. If the claimant loses, no provision is made for the employer to recover the cost of the ticket. In addition, in the event of a telephonic deposition, the employer's attorney may not leave Alaska; nonetheless, as this section is worded the employer would be required to give the claimant a ticket to the deposition site (which is the location of the deponent). The effect is to discourage, or financially encumber, the taking of out-of-state examiner's depositions. While it is the State's practice to use in-state medical providers when possible, the lack of available experts or, in the case of Southeast Alaska, the lower expense of travel to Seattle, compels the use of outside examiners in some cases. The same is true of other employers.

The first part of this section simply restates what is already provided by AS 23.30.095 and regulation; an employer must

already pay round-trip airfare and travel expenses for an employee traveling to an out of state examination, as well as attendant travel expenses when required by a physician. As a rule, airfare and lodging costs are advanced by the State in such circumstances.

4. Division Referral of Unfair Controversions. The present law requires the Workers' Compensation Board to refer controversions it finds frivolous or unfair to the Division of Insurance for possible unfair claims practices proceedings. This means that the employer or its insurer must be provided an opportunity to respond to the charge that a particular controversion is frivolous or unfair and the Board must make some sort of decision based on findings of fact and conclusions of law. In order to do so, the Board must hold a hearing.

Section 9 of CSSB 219 am deletes the opportunity for hearing and explanation by requiring referral by the Workers' Compensation Division staff (who do not have the authority to hold hearings) of "apparently frivolous or unfair" controversions. In short, there need be no finding that in fact the controversion is unfair or frivolous -- it need only appear to be so. As a result, the responsibility for hearing and deciding if a controversion is frivolous or unfair is shifted to the Division of Insurance.

Some questions have been raised that this constitutes an unconstitutional deprivation of property (license as an adjustor or insurer) without due process. However, the Division of Insurance must provide hearings; the difficulty lies in the imprimatur given by the Division's referral of "apparently

frivolous or unfair" controversions and the lack of expertise in this area in the Division of Insurance.

5. Confidentiality of Medical Records. Until the current administration, workers' compensation records were considered in the nature of litigation records, open to public inspection. Because an employee who claims compensation from the employer (not the government) places his medical condition in controversy, it was felt that the employee waived his privacy interests in his records, just as he would in a personal injury lawsuit. Workers' compensation proceedings are in fact a substitute for lawsuits against the employer (in some states they are still filed as lawsuits before a court); therefore the medical records were exempted from evidentiary claims of privilege, except when a protective order was granted. In my own recollection as a former Board hearing officer, such protective orders have been granted by the Board when sensitive, unrelated information was contained in medical records.

The present administration has taken the position that the medical records are equivalent to government-produced medical records (as those produced at API or Public Health) and are therefore confidential except to the parties directly involved in a proceeding. As a result, an employer could not obtain access to medical records of an employee's prior workers' compensation injuries. Section 7 attempts to strike a middle ground between these positions. The employer is given access to the employee's

records of prior injuries, but only after an injury occurs and after the employee signs a medical information release.

There is, however, no incentive for the employee to consent to a medical release. The employee is not sanctioned for failure to give a medical release; nothing in the statute penalizes the employee for refusing to give a release. This means that the employee may continue in his proceeding and, in fact, most likely will continue while the employer remains blind. There is no advantage to the employee to release the information.

The other problem is that, in order to document a prior injury for Second Injury Fund purposes, (the Second Injury Fund reimburses employers who hire or retain previously injured employees, provided they possess written records of the prior injury and disability before the second disabling injury), the employer must have access to medical reports before an injury occurs.

Ultimately, this section presents a policy question: should workers' compensation be regarded as something of a quasi-governmental entitlement program, merely funded by employers, wherein the claimants have certain privacy rights? or should it be regarded as a claim against the employer conducted in a neutral quasi-judicial forum in which the claimant asserts his rights against the employer and the employer defends himself against the employee's claims? The argument is made that the prospect of publicizing medical conditions is a deterrent to workers filing claims; how that argument is viewed depends on the whether workers'

compensation is seen as a non-adversarial entitlement program or a substitute for litigation which is nonetheless adversarial in nature. As this is a policy judgment, no opinion is expressed regarding this section.

6. Recreational Activities at Non-remote Sites. (Softball bill). In LeSuer-Johnson v. Rollins, Burdick, Hunter, 808 P.2d 266 (Alaska 1991) the Alaska Supreme Court ruled that an employee playing on her employer-sponsored softball team was covered by workers' compensation while she played. The court found that the employer's payment of league fees to secure a field and referee and purchase of jerseys, equipment, and encouragement to play constituted sufficient employer-provided facilities and employer sanction of the activity to extend coverage. Section 13 of CSSB 219 am attempts to reverse the Supreme Court's ruling by exempting from coverage employer sponsored recreational activities at non-remote sites not owned or leased by the employer. If participation was required as a term of employment, the activity would be included in coverage. This is an attractive means of reversing what is almost universally regarded as a poor decision; however, it presents a problem by creating a new category of employment sites: non-remote sites. Non-remote is not defined; since the drafters chose not to use "not a remote site" it may be argued that something other than all sites except remote sites was intended. Non-remote may be considered as relative to the employment site. Thus, employer sponsored activities at sites which, while not really remote, are yet not "non-remote" may be covered. The

obvious example is an employer-sponsored fishing charter. While the State does not generally directly sponsor employee recreational activities, the State as part of other programs (e.g., Natural Resources) sponsors recreational activities. It is an unsettled question whether State sponsored activities in which State employees participate would be included within "employer-sponsored" activities.

For employers and recreational groups generally, the difficulties presented by LeSuer-Johnson could be gotten around by using sponsor pools to fund leagues instead of direct funding of employee teams, not paying for employees' jerseys, etc. And, LeSuer-Johnson contains no suggestion that non-employee players become employees of the sponsor during the activity. The fears of the recreational community may be overstated.

7. Three Days for Cash. Section 10 of CSSB 219 am adds to AS 23.30.155 which sets out the method and times for paying compensation. The addition requires that compensation be paid in the form of a negotiable instrument which may be cashed within three days of issuance. Frankly, for the State this is impossible. Workers' compensation for State workers is paid from Barrow to Hoonah. The State maintains a zero balance account with Key Bank for payment of workers' compensation benefits. Checks drawn on Key Bank within the State of Alaska may not always be cashed within three days, because a branch of that bank may not be present in the town or village to which the check is delivered. The only method of complying with this statute is to purchase certified checks, or

in some villages, postal money orders, which represents a significant cost to the State, not only in the cost of the instrument but in the adjustor time needed to deal with this additional requirement. The inclusion in the statutory section relating to penalties must be presumed to create an inference that payment not reducible to cash in three days is late payment subject to the 25% penalty for late payment.

It should be sufficient to address the problem of out of state insurers using Seattle or Hartford banks to require that checks for payment of compensation to Alaska residents to be drawn on Alaskan bank accounts.

8. Civil Liability for Workplace Safety Inspections.

Section 11 of CSSB 21.9 am addresses the issue of civil liability for workplace safety inspections by insurers or adjustors created by the Supreme Court in Van Biene v. ERA Helicopters, Inc., 779 P.2d 315 (Alaska 1989). This statute properly belongs in Title 9, which contains the various limitations on civil liability for negligence. The specter of liability for acts and omissions in performing such inspections was an object of concern with the insurance industry. How much actual liability exists for workplace safety inspections is a matter of opinion and speculation. The State is self-insured; workplace safety inspections by State agencies or State work places would not be affected by this amendment. The alternative is to cease insurer or adjustor provided workplace safety services until the liability question is fully addressed.

9. Volunteer Emergency Medical Technicians as State Employees. Section 12 and Section 16 together create state liability for compensation paid to volunteer Emergency Medical Technicians who are injured in the course and scope of employment. However, because the section uses the phrase "within the course and within the scope of providing services as a volunteer [EMT]" instead of "arising out of and in the course of providing services" it uses a different, and arguably narrower, test for work-relationship than all other employees covered by the Alaska workers' compensation act. In view of the small number of EMT's covered by this section, a zero fiscal note was attached by the Department of Administration.

This review does not address questions of general legality which may be raised in regard to Section 10, (paragraph 7 above), as violative of Alaska and interstate banking laws. No serious constitutional issues are raised.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

CEC:KSK:mc

# American Arbitration Association

Puget Sound Plaza  
1325 4th Avenue, Suite 1414  
Seattle, WA 98101-2511

Telephone: (206) 622-6435 • Fax: (206) 343-5679



Neal Blacker  
*Northwest Regional  
President*

Patrick Mead  
*Assistant Regional Manager*

October 17, 1991

Re: 75 L390 0197 91

State of Alaska

Date Filed: October 11, 1991  
Grievance: Preparation for contract negotiations

Bruce Cummings  
Director  
State of Alaska  
Department of Administration  
Division of Labor Relations  
PO Box 110220  
Juneau, AK 99811-0220  
ph: 907 465 4404

REGISTRATION

OCT 1991

RECORDS

Dear Mr. Cummings:

Enclosed please find a list of all American Arbitration Association Labor Arbitrators who are residents of the State of Alaska. Attached to the list of names please find a brief biographical summary of each arbitrator's qualifications.

The administrative fee for this service is \$125.00. You will receive an invoice for that amount from our New York office.

We understand that no further services are requested from the Association at this time. Accordingly, we have closed this file. We look forward to serving you in the future.

Sincerely,

Donna Miller  
Case Administrator

dm  
Enclosures

ARBITRATION • MEDIATION • FACT-FINDING • PUBLICATION • RESEARCH • TRAINING

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Headquarters: 140 West 51st Street, New York, NY 10020-1273

AMERICAN ARBITRATION ASSOCIATION ARBITRATORS  
WHO ARE RESIDENTS OF ALASKA

J.R. "Randy" Carr  
Charles Richard Decker  
Leonard F. Doherty  
William M. Erwin, Esq.  
Dennis Geary  
Vern E. Hauck  
Robert W. Landau, Esq.  
Clark R. Milne  
Raymond A. Nesbett, Esq.  
David M. Roderick, Esq.  
Jerry Thorn

RECEIVED

JUL 1931

U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C.

AMERICAN ARBITRATION ASSOCIATION

NAME: CARR, J.R. "Randy" Anchorage, Alaska

OCCUPATION: State Administrator, Alaska

QUALIFICATIONS: Neutral experience as former member of Department of Labor Relations Agency with "mini-NLRB" jurisdiction over political subdivisions of Alaska, chairing hearings to decide unit clarification, unit determination/certification and unfair labor practice charges. Includes arbitration, mediation and conciliation in the public sector, construction and service industries, wholesale and retail industries, miscellaneous.

Management experience as former Director of Labor Relations, Department of Administration, State of Alaska, negotiating and administrating 11 major contracts with 9 unions statewide.

Labor experience as former negotiator for Alaska Public Employee's Association, participating in full contract negotiations for 8000 employees statewide. Adjunct professor, Chapman College. Guest lecturer, Alaska Pacific University, University of Alaska Juneau and Anchorage.

FORMERLY: (Neutral) Chief, Wage and Hour Administration, Labor Standards and Safety Division, Alaska Department of Labor, 1983-86; 1987-88; (Management) Director, Division of Labor Relations, Department of Administration, State of Alaska, 1986; (Labor) Negotiator, Alaska Public Employees Association, 1981; Officer, United States Army, 1972-75.

EDUCATION: Eastern Washington State College - BA 1972  
Pacific Lutheran University - M.A. (Human Relations) 1975  
National Judicial College, University of Nevada - Certificate in Administrative Law/Fair Hearings 1984

PER DIEM CHARGES: \$550.00  
Cancellation Fee: per diem within one week of hearing.

AMERICAN ARBITRATION ASSOCIATION

NAME: DECKER, Charles Richard Anchorage, Alaska

OCCUPATION: Arbitrator - Mediator

QUALIFICATIONS: Served in binding arbitration for labor contracts in both the private and public sectors. Familiar with medical service delivery and food service operation. Consulted for labor and management in organizational problems in Alaska.  
Contract Arbitrator: City of Anchorage & Firefighters; Alaska Associated Industries & Pilots (Teamsters); Brinkerhoff Drilling Company & Roughnecks and Drillers; Matanuska Electric & IBEW; Sheffield Hotel & Hotel and Restaurant Employees; Municipality of Anchorage & Police Department.

FORMERLY: Administrative Dean, Alaska Methodist University, 1977-79;  
Professor of Labor Relations, Golden Gate University;  
Professor of Business Management, University of Alaska;  
Personnel Director, City of Anchorage, Alaska, 1970-72;  
Director of Personnel, Budget & Research, City of Boulder, Colorado, 1964-70.

EDUCATION: University of California - BA Management 1949  
University of Colorado - MPA 1970  
Golden Gate University - PhD Public Management 1978

PER DIEM CHARGES: \$450.00 in Anchorage  
\$450.00 for award writing and research  
Expenses: outside Anchorage billed at cost

AMERICAN ARBITRATION ASSOCIATION

NAME: DOHERTY, Leonard F. Anchorage, Alaska

OCCUPATION: Educator - Arbitrator

QUALIFICATIONS: Associate Instructor in Labor Relations and Economics, Graduate School, LaVerne University, Chapman College (Elmendorf AFB, Anchorage), and Adjunct Instructor of Labor Relations, Alaska Pacific University since 1980. Chairman of Labor Board for Municipality of Anchorage. Extensive experience in contract negotiation and arbitration in public and private sector.  
Permanent Arbitrator: Anchorage School District & Anchorage Education Association.

FORMERLY: Director of Labor Relations, Municipality of Anchorage, 1976-80; Labor Relations Sector Coordinator, Alyeska Pipeline Co., 1976; Director of Labor Relations, ITT Arctic Services, 1975-76; Director, Labor Relations & Personnel Staff Services, Office Product Manufacturing, Sales and Service Division, Sperry Rand (PA), 1970-75; Employee Relations Manager, Smith-Corona-Marchant (NYC), 1962-70.

EDUCATION: New York University - BA 1958  
Fairleigh Dickinson University - MBA 1971

PER DIEM CHARGES: \$300.00 (Grievance; Mediation/Factfinding; Interest/Expedited)  
Cancellation Fee: per diem plus expenses within three business days.  
Travel Time: when hearing and travel on same day, no travel time charged. When travel not on same day as hearing, travel time is same as per diem charge.

AMERICAN ARBITRATION ASSOCIATION

NAME: ERWIN, William M., Esq. Anchorage, Alaska

OCCUPATION: Attorney

QUALIFICATIONS: Has represented 50% management and 50% unions. Has served as arbitrator. Contract Arbitrator, Anchorage Natural Gas and Plumber's Local, International Brotherhood of Electrical Workers, Chugach Electric Association, City of Anchorage, Anchorage Police Department, Municipal Light and Power, Bendix Corporation, Teamsters Local 959, Homer Electric Association, United Brotherhood of Carpenters. Experience as an advocate and arbitrator in ERISA law, pension and employee benefit plans.

EDUCATION: University of Colorado - BA 1955  
University of Washington - LLB 1965

PER DIEM CHARGES: \$800.00

AMERICAN ARBITRATION ASSOCIATION

NAME: GEARY, Dennis Anchorage, Alaska

OCCUPATION: Arbitrator - Mediator - Hearing Officer

QUALIFICATIONS: Chief of Wage & Hour Administration, State of Alaska since 1990. Experienced in both grievance and interest arbitrations as arbitrator, mediator and hearing officer. Issues: discharge, discipline, wages, hours, overtime, job classifications, assignment of work, seniority, layoff, work conditions, reassignments, promotions, leave, dues, hiring, pension & benefits, management rights and arbitrability. Public and private sector experience included construction, mining, oil, transportation, education, postal, food service, automotive and communication.

FORMERLY: Regional Supervising Investigator, Alaska Department of Labor, 1978-90; Grievance Committee Chairman, Alaska Public Employees Association, 1984-86; Advocate and Hearing Officer, U.S. Army, 1973-75.

EDUCATION: University of Nevada-Reno - BA 1972

PER DIEM CHARGES: \$400.00

AMERICAN ARBITRATION ASSOCIATION

NAME: HAUCK, Vern E. Anchorage, Alaska

OCCUPATION: Educator - Arbitrator

QUALIFICATIONS: Professor, School of Business, University of Alaska since 1983. Teaches graduate courses in labor law, collective bargaining and arbitration. Has served as arbitrator in both public and private sector. Also has trained labor and management representatives in grievance handling and collective bargaining. Member, National Academy of Arbitrators. Author of articles on epilepsy and employment and the economics of discrimination.  
Issues: transfer, demotion, discharge, resignation, incompetence, arbitrability, scheduling, management rights and working conditions.  
Permanent Arbitrator: State of Alaska & APEA; Municipality of Anchorage & AMEA; FAA & Air Traffic Controllers; Alascom & Teamsters, Local 959.

FORMERLY: Associate Professor, School of Business, Duquense University, 1980-83; Associate Professor, School of Business & Public Administration, University of Alaska, 1975-80; Research Assistant, Industrial Relations, University of Iowa, 1971-74; Industrial Relations Assistant, Northwestern Glass Co., 1967-71.

EDUCATION: Washington University - BSA Personnel 1967  
Iowa University - Ph.D. Industrial Relations 1974

PER DIEM CHARGES: \$450.00

AMERICAN ARBITRATION ASSOCIATION

NAME: LANDAU, Robert W., Esq. Anchorage, Alaska

OCCUPATION: Attorney - Arbitrator - Mediator

QUALIFICATIONS: Sole practitioner since 1988. Practice is limited to administrative hearing officer work for various state and local agencies. Considerable experience as state mediator and hearing officer in public sector labor disputes.  
Issues: contract interpretation/application, discharge, discipline, discrimination, job class rates, management rights, overtime, wages, mandatory/discretionary subjects of bargaining, unilateral implementation of contract changes, public sector interest mediation, safety and health primarily in fire education, sanitation, public works, all types of public employees. Fluent in Spanish.

FORMERLY: Deputy Commissioner of Labor, Alaska Department of Labor, 1983-87; Assistant Attorney General, Alaska Department of Law, 1980-83; Attorney, Law Offices of Thomas R. Tatka, 1979-80; Law Clerk, Superior Court Judge Seaborn Buckalew, 1978-79.

EDUCATION: Amherst College - BA 1974  
University of Virginia Law School - JD 1978

PER DIEM CHARGES: \$600.00

AMERICAN ARBITRATION ASSOCIATION

NAME: MILNE, Clark R. Fairbanks, Alaska

OCCUPATION: Engineering Manager - Arbitrator

QUALIFICATIONS: Director of Maintenance & Operations for the Northern District, Alaska Department of Transportation & Public Facilities.  
Issues: arbitrability, contract interpretation/application, discharge, discipline, discrimination, jurisdictional disputes, management rights, overtime, scheduling of work, seniority/ability, wages.  
Industries: construction, federal sector, manufacturing, mining, petroleum, rubber, service industries, stone/quarry, transportation, public works.  
As trained industrial engineer, conducted time and motion studies in manufacturing and construction. Industries: rubber/tire valve press and assembly, die casting stations, screw machine and milling machine work studies.

FORMERLY: Operations Manager, Arctic Slope Consulting Group, 1988-91; Chief Civil Engineer, Fairbanks North Star Borough, 1985-88; Construction Manager, Jordan Construction (Fairbanks), 1984-85; Superintendent Project Engineer, Kiewit Construction (Fairbanks), 1981-84; Superintendent Project Engineer, Peter Kiewit Sons' Company (Anchorage), 1977-80; Industrial Engineer, Eaton Corporation (Ohio), 1973-75.

EDUCATION: Cornell University - BSIE 1973  
University of Alaska - MSCE 1977  
University of Alaska - MS Engrg. Mgmt. 1977

PER DIEM CHARGES: \$400.00  
Cancellation Fee: 1/2 per diem if notice is received less than 48 hours before scheduled date and time.

AMERICAN ARBITRATION ASSOCIATION

NAME: NESBETT, Raymond A., Esq. Anchorage, Alaska

OCCUPATION: Attorney - Arbitrator

QUALIFICATIONS: General practice of law and arbitration, served as arbitrator in hotel, restaurant, trucking, catering, education, telephone, oilfield supply and services as well as state employment areas.

FORMERLY: Associated with Burr, Boney & Pease, 1965-69.

EDUCATION: University of Alaska - BA 1961  
Cornell Law School - LLB 1964

PER DIEM: \$800.00  
Per diem for eight (8) hours of hearing. Less than eight (8) hours at hourly rate of \$125/hour.

AMERICAN ARBITRATION ASSOCIATION

NAME: RODERICK, David M., Esq. Anchorage, Alaska

OCCUPATION: Attorney at Law

QUALIFICATIONS: Arbitrating since 1948, except while employed with Federal Government. Has arbitrated disputes ranging from contract interpretations (hours and working conditions) to wage disputes based on economic data both in the State of Washington and the State of Alaska prior to 1977. Arbitrated under labor contract between Pacific Maritime Association & International Longshoremen and Warehousemen's Union; 1948-58, Washington State Legislator; 1948-1952, Trustee & Business Agent for Office Employees International Union AFL 1948-49. Presently (1985) again a private Attorney and arbitrator.

FORMERLY: Chief Counsel, Alaska Railroad, 1977-85; Private Practice of law 1973-77; General Counsel, Alaska State Housing Authority, Alaska Housing Finance Corporation, 1971-73; Private Practice of Law, Seattle, Washington, 1960-70; Rod & Coney, 1956-60; Weyer, Roderick, Schroeter & Sterne, 1949-56.

EDUCATION: University of Washington - BA 1947  
University of Washington - JD 1954

PER DIEM CHARGES: \$450.00  
½ cancellation fee if less than three (3) days notice.

AMERICAN ARBITRATION ASSOCIATION

NAME: THORN, Jerry Anchorage, Alaska

OCCUPATION: Arbitrator - consultant

QUALIFICATIONS: Arbitrator in public and private sectors.  
Issues: absenteeism, arbitrability, classification, compensation, contract interpretation, discharge, discipline, dishonesty, drug and alcohol testing, insubordination, job performance, job posting, layoff, leave, management rights, past practice, pension, probation, recall, seniority, sexual harassment, transfer, mediation of bargaining, impasse, fact finding. Also Taft-Hartley trustee deadlock and plan participant appeal.  
Industries: bar and restaurant, dairy, hotel, fishing, printing, railroad and retail, as well as administrative government, fire, police, school district, state troopers, and utilities.  
Adjunct lecturer on graduate and undergraduate labor-management relations course, University of Alaska. Member and chairman, Anchorage Municipal Employee Relations Board. Consultant on industrial relations, Carrs Quality Centers since 1981.

FORMERLY: Director of Personnel & Labor Relations, Carrs Quality Centers, 1967-79; Union Representative RCIA, 1956-66.

EDUCATION: Willamette University - BA 1950

PER DIEM CHARGES: \$480.00  
Cancellation Fee: \$400.00 if less than 72 hours notice (three days excluding Saturday and Sunday).



SETTING THE FOCUS ON LEARNING FOR LIFE



EXECUTIVE BOARD  
1991/92

**PRESIDENT**  
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Kavenwood Elementary School  
9500 Wren Lane  
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464-7351

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Glacier Valley Elementary School  
10014 Crazy Horse Dr.  
Juneau, AK 99801  
749-0873

**VICE PRESIDENT**  
**LEWIS McLIN**  
Paul Santa Elementary School  
1340 Ear Rd.  
Homer, AK 99603  
235-4161

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Chena Elementary School  
P.O. Box 1250  
Fairbanks, AK 99707  
356-7721

**TREASURER**  
**TONY HARDUAR**  
Abrax Loop Elementary School  
6427 Lake Olin Parkway  
Anchorage, AK 99507  
549-6471

**STATE REPRESENTATIVE**  
**LINDA CONNELLY**  
Chena Valley Elementary School  
1750 Patterson Rd.  
Anchorage, AK 99504  
337-9502

**REGION-AT-LARGE**  
**MARY KATE MAYER**  
Pioneer Peak Elementary School  
HCOI Box 6493  
Palmer, AK 99645  
745-0157

**REGION-AT-LARGE**  
**FRITH BUFFMIRE**  
Paul, C. Elementary School  
P.O. Box 71250  
Fairbanks, AK 99707-1250  
479-4214

**REGION-AT-LARGE**  
**MARK MASSION**  
Oskosh City Schools  
P.O. Box 299  
Oskosh, AK 99741  
546-1205

**EXECUTIVE DIRECTOR**  
**ORIG DANIFIS**  
426 Rogers Road  
Seward, AK 99611  
1-800-478-3636

## AAESP EXECUTIVE BOARD MEETING JANUARY 18, 1992

### Position Statement

#### SB 16, "Employees right to strike"

The Alaska Association of Elementary School Principals supports the idea of finality in the bargaining process and recommend that the sunset clause on the current law authorizing strikes be extended for one year. During that time period, a task force appointed by the legislature should be formed to examine alternatives to the question of finality in the bargaining process and bring recommendations back to the legislature for their consideration and action.

# ASSOCIATION OF ALASKA SCHOOL BOARDS

316 West 11th Street, Juneau, Alaska 99801-1510 • Tel. (907) 586-1083 • Fax (907) 586-2995

Rod  
Copy  
Committee

*Serving Alaskan Education*



November 5, 1991

## OFFICERS

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Gene Redden  
Fairbanks

### PRESIDENT-ELECT

Percy Frisby  
Hydaburg

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Jean P. Ichanan  
Anchorage

### SECRETARY/TREASURER

Carole Huntington  
Galena

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### ANNETTE ISLANDS

Paul Brendible

### IDITAROD

Arno'd Hamilton

### KETCHIKAN

Pamela Hjorteset

### KLAWOCK

Jeff Nickerson

### MATANUSKA-SUSITNA

Diana Herschbach

### NENANA

Terrie Irwin

### NORTH SLOPE

Roy Nageak

### SITKA

Sandi Hicks

### YUKON-KOYUKUK

Luke Titus

### YUPIIT

Michael Williams

### EX-OFFICIO DIRECTOR

Dick Anderson  
Delta-Greely

## EXECUTIVE

### DIRECTOR

Carl F.N. Rose

The Honorable Drue Pearce, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
PO Box V  
Juneau, Alaska 99801

Dear Senator Pearce:

I appreciate the position of the proponents of SB 16, "An act including public school employees in the Public Employment Relations act." However, I believe that a "level playing field" was not afforded to those members of the public who may have offered an opposing point of view at the October 31st Labor & Commerce Committee hearing on SB 16.

In light of this unfortunate circumstance, I want to thank you and the members of the committee for your patience in allowing me to vent my frustration and offer AASB's present position on SB 16. As I mentioned during the hearing, AASB's Annual Conference will be held during the 9th-12th of November at which time its voting delegates will establish a formal position on SB 16.

As school boards around the state attempt to frame the issue of labor relations and the right to strike, they are continually drawn back to the cost of providing a quality public education experience for young Alaskans. From a school board's perspective, inflation and the increasing fixed costs of educating our youth, and the reality of inadequate state funding present a very dim financial picture.

Consider further the inability of school boards to address cost containment in a significant way due to legislative mandates that apply to personnel, benefits, leaves, lay off, etc. They really have little latitude in what they can do. Those limitations coupled with the ability of employee groups to leverage demands by the threat of a political and economic weapon - the unlimited right to strike - put school boards in a tough spot. Our children will be the losers.

Sincerely,

Carl F.N. Rose,  
Executive Director

ASSOCIATION OF ALASKA SCHOOL BOARDS

316 W. 11th St. • Juneau, Alaska 99801-1510 • (907) 586-1083

MEMORANDUM

To: Rod Mourant, Office of Sen. Drue Pearce

From: Carl Rose, Executive Director

Date: January 21, 1992

Re: SB 16 Testimony

Rod, these are the school board members who wish to testify on SB 16. Some of them may not have access to an LIO (Akiak, Galena). Can you set them up with a bridge?

Gene Redden, Fairbanks School District

Carole Huntington, Galena School District — 656-1312

Carol Stolpe, Anchorage School District

Pam Hjorteset (or alternate), Ketchikan School District

Fred Shields, Haines School District

Ed Tollman, Copper River School District (Glennallen)

Edith Vorderstrasse, North Slope School District (Barrow)

Reggie Joule (or alternate), Northwest Arctic School District (Kotzebue)

Tom Wood, Petersburg School District

Bill Messmer, Wrangell School District

Mike Williams (or alternate), Yupiit School District (Akiak) — 765-7426

<sup>1200</sup>  
~~DANN~~ FANOTTER — LOWRA KOSK.

800  
478-8353



**ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS**

326 Fourth Street • Suite 408 • Juneau, Alaska 99801-1101 • (907) 586-9702 • FAX (907) 586-5879

LEADERSHIP  
FOR LEARNING

November 6, 1991

Senator Drue Pearce, Chairperson  
Labor and Commerce Committee  
3111 C Street, Suite 535  
Anchorage, AK 99503

Dear Senator Pearce:

It has been brought to our attention that SB 16, the bill to remove the sunset clause from SB 16 was heard before your committee, Thursday, October 13, 1991, and that audio conference testimony was available only to a few select organizations.

Further, it was told to me that the executive director of NEA made the statement, since the Alaska Association of School Administrators and the Association of Alaska School Boards were not present, they must be supporting the legislation, this is far from the truth!

Senator Pearce, as you well know, this issue has been debated intensely for several years. We do have a position on SB 16 and will be providing testimony when we are apprised of the opportunity through the hearing process.

If, we believe, that the public process is to work, then we must be informed and be given the opportunity to debate the issue on the same level as the other interested organizations.

I respectfully request we be placed on your notification list for all future hearings regarding SB 16 and that a transcript of this past hearing be sent to our office.

Senator Drue Pearce

Page 2

For your information, I am enclosing a resolution passed during the October meeting of the Alaska Association of School Administrators regarding this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "S T McPhetres".

Stephen T. McPhetres  
Executive Director

Enclosure



## ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

326 Fourth Street • Suite 408 • Juneau, Alaska 99801-1101 • (907) 586-9702 • FAX (907) 586-5879

LEADERSHIP  
FOR LEARNING

### 6-92A LABOR RELATIONS

WHEREAS; the 1990 Legislature placed public school employees under the Public Employees Relations Act and granted them the right to strike under Senate Bill 15; and

WHEREAS; collective bargaining and employee relations have not been enhanced by this statutory change; and

WHEREAS; strikes and threats of strikes by public school employees are detrimental to the education of Alaska's young people; and

WHEREAS; this legislation has a two-year sunset provision;

NOW THEREFORE BE IT RESOLVED; that the Alaska Association of School Administrators actively supports the sunset of the Senate Bill 15 legislation.

10/91



# ALASKA ASSOCIATION OF SCHOOL ADMINISTRATORS

326 Fourth Street • Suite 408 • Juneau, Alaska 99801 • (907) 586-9702

LEADERSHIP  
FOR LEARNING

## Position Statement

### SB 16 School Employees Right to Strike

The Alaska Association of School Administrators passed a resolution at their October conference in opposition to the removal of the sunset clause.

#### Rationale:

We believe that a strike will have a devastating effect on the education of the children in the community which the strike occurs.

We believe that in the age of state and national education reform movements where site based management, shared decision making, strategic planning and collaborative negotiations are becoming the norm and not the exception, the resolution of conflict is becoming more and more possible without the threat of strike.

We further believe that collective bargaining and employee relations have not been enhanced by this statutory change.

We believe that a strike is not in the best interest of children and education, therefore it should not be a part of the negotiations process.

# ASSOCIATION OF ALASKA SCHOOL BOARDS

316 West 11th Street, Juneau, Alaska 99801-1510 • Tel. (907) 586-1083 • Fax (907) 586-2995

*Serving Alaskan Education*

*Rod  
Copy  
Committee*



## OFFICERS

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Fairbanks

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Diana Herschbach

**NENANA**  
Terrie Irwin

**NORTH SLOPE**  
Roy Nageak

**SITKA**  
Sandi Hicks

**YUKON-KOYUKUK**  
Luke Titus

**YUPIIT**  
Michael Williams

**EX-OFFICIO DIRECTOR**  
Dick Anderson  
Delta Greely

**EXECUTIVE  
DIRECTOR**  
Carl F.N. Rose

November 5, 1991

The Honorable Drue Pearce, Chair  
Senate Labor and Commerce Committee  
Alaska State Legislature  
PO Box V  
Juneau, Alaska 99801

Dear Senator Pearce:

I appreciate the position of the proponents of SB 16, "An act including public school employees in the Public Employment Relations act." However, I believe that a "level playing field" was not afforded to those members of the public who may have offered an opposing point of view at the October 31st Labor & Commerce Committee hearing on SB 16.

In light of this unfortunate circumstance, I want to thank you and the members of the committee for your patience in allowing me to vent my frustration and offer AASB's present position on SB 16. As I mentioned during the hearing, AASB's Annual Conference will be held during the 9th-12th of November at which time its voting delegates will establish a formal position on SB 16.

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Consider further the inability of school boards to address cost containment in a significant way due to legislative mandates that apply to personnel, benefits, leaves, lay off, etc. They really have little latitude in what they can do. Those limitations coupled with the ability of employee groups to leverage demands by the threat of a political and economic weapon - the unlimited right to strike - put school boards in a tough spot. Our children will be the losers.

Sincerely,

Carl F.N. Rose,  
Executive Director

00221  
00221 REND NV 01-21 1223P PST RYNG

SEND VIA TELECOPIES

DATE \_\_\_\_\_  
TIME \_\_\_\_\_ OFF. H. \_\_\_\_\_

FAX 907-463-3650 AGENT  
JUNEAU AK



1-0039489021 01/21/92  
ICS IPMBNGZ CSP  
9076622515 FOM TDBN FT YUKON AK 50 01-21 0300P EST  
PMS REPRESENTATIVE DRUE PEARCE  
JUNEAU AK 99901

THE YUKON FLATS SCHOOL DISTRICT BOARD OF EDUCATION FAVORS THE SUNSET  
OF SB15 OPPOSES SB16 SPECIFIC EXPERIENCES WITH THE LABOR RELATIONS  
BOARD AND UNFAIR LABOR PRACTICE PROCESS UNDER SB15 DURING THE LAST  
YEAR ARE POOR AT BEST. PLEASE CONSIDER OUR EXPERIENCE AND SUPPORT OUR  
POSITION ON THIS MATTER.

THANK YOU.

DOUGLAS WALKER, SUPERINTENDENT OF SCHOOLS  
PO BOX 359  
FT YUKON AK 99740

1522 EST  
>(EX/>109).

**WESTERN  
UNION | TELEGRAM®**

JAN 13 1992



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

## Don Oberg, President

Claudia Douglas  
Vice President  
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Fairbanks, AK 99707

Judy Salo  
NEA Director

4710 Kenaltze Court  
Kenai, AK 99611

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Region I Director

P.O. Box 5876  
Ketchikan, AK 99901

Deedie Sorensen  
Region I Director

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Juneau, AK 99801

Mary Bohanan  
Region II Director

P.O. Box 1164  
Delta Junction, AK 99737

Trena Richardson  
Region III Director

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Olaf Allison  
Region IV Director

Box 44  
Kiana, AK 99749

Kathy Gross  
Region IV Director

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Bethel, AK 99559

Susan Annis  
Region V Director

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Fairbanks, AK 99701

Carole Evans  
Region V Director

2118 Cushman Street  
Fairbanks, AK 99701

Gayle Harbo  
Region V Director

Box 80522  
College, AK 99708

Loretta B. Christie  
Region VI Director

2220 Yorkshire Lane  
Anchorage, AK 99504

Richard Kronberg  
Region VI Director

3511 Chinitak Bay Dr  
Anchorage, AK 99515

Pam McCarl  
Region VI Director

2116 Sorbus Way  
Anchorage, AK 99508

Kathi McCord  
Region VI Director

1601 Hidden Lane  
Anchorage, AK 99501

John Cyr  
Region VII Director

P.O. Box 878063  
Wasilla, AK 99687

Sandy Pevan  
Region VII Director

Box 871256  
Wasilla, AK 99687

Dorothy Wells  
Region R Director

2529 Northern Road  
North Pole, AK 99705

## ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
FAX: (907) 274-0551

## JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302  
JUNEAU, ALASKA 99801  
(907) 586-3090  
FAX: (907) 586-2744

## FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

January 10, 1992

**Sen. Drue Pearce**  
**Alaska State Legislature**  
**P.O. Box V**  
**Juneau, AK 99811**

Dear Druc:

NEA-Alaska is looking forward to working closely with you during the upcoming session on the many important educational issues facing the Alaska State Legislature.

As President of NEA-Alaska I am pleased to introduce you to Vernon Marshall who has recently joined NEA-Alaska as our executive director and director of government relations.

As a former classroom teacher, Arkansas Education Association Staff Member, and Congressional Aide to Congressman Ray Thornton of Arkansas, Vernon has significant experience in public school funding and educational policy at the local, state, and national government levels. We anticipate that Vernon will be a valuable resource to you on policies effecting our Alaskan public school students and public school employees.

Vernon plans to have a personal meeting with you in the very near future to discuss mutual interests and concerns.

NEA-Alaska is confident you will find Vernon to be an open, thoughtful, and positive advocate for quality schools in Alaska. We look forward to continued productive communications with you, your staff, and the other members of the Alaska State Legislature.

Sincerely,

*Don Oberg*  
Don Oberg

cc: Board/Staff

*I need to see asap  
re: right to strike  
2/15  
4/8/92*

LE04/Vernintr/dl



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Pod. file

NOV 6 1991

**ANCHORAGE REGIONAL OFFICE:**

1411 W. 33RD AVENUE  
ANCHORAGE, ALASKA 99503  
(907) 274-0536  
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**JUNEAU OFFICE**

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**FAIRBANKS REGIONAL OFFICE**

2118 CUSHMAN STREET  
FAIRBANKS, ALASKA 99701  
(907) 456-4435  
FAX: (907) 456-2159

November 4, 1991

Sen. Druc Pearce, Chair  
Senate Labor & Committee  
3111 C Street #525  
Anchorage, AK 99503

Dear Druc:

On behalf of NEA-Alaska I want to thank you for your cooperation <sup>is</sup> scheduling the recent Labor & Commerce hearing on SB 16. As you know, this particular issue is one of the highest priorities of NEA-Alaska and public school employees throughout the state.

We are especially appreciative of your support for this issue and your willingness to have the Labor and Commerce Committee act on it early in the upcoming session.

I know that some of our testimony may have duplicated earlier testimony but I am sure that this emphasizes the importance of this issue.

Thanks for your help, Druc. I appreciate it.

Sincerely,

Bob Manners  
Executive Director

cc: Don Oberg, President  
NEA-Alaska  
Belinda Daniels, President  
Anchorage Education Association

LE04/Sb16/dl



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

## ANCHORAGE REGIONAL OFFICE

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ANCHORAGE, ALASKA 99503  
(907) 274-0536  
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(907) 456-4435  
FAX: (907) 456-2159

January 22, 1992

## TEACHER COLLECTIVE BARGAINING IN ALASKA UNDER PERA 1991-92

<u>Bargaining Unit</u>	<u>Status</u>	<u>Percent Change in Base Salary Over 1990-91</u>
Adak	S	3.0
Alaska Gateway	B	
Aleutian East	TA	0.0
Aleutian Region	?	
Anchorage	A	
Annette	S	3.0
Bering Strait	M	
Bristol Bay	S	1.3
Centralized Correspondence	S	6.7
Chatham	S	2.0
Chugach	S	6.0
Copper River	S	-1.0
Cordova	S	2.0
Craig	S	2.0
Delta/Greely	M	
Dillingham	S	4.0
Fairbanks	S	3.5
Galena	?	
Haines	S	-5.0
Hoonah	S	4.5
Hydaburg	S	-5.5
Iditarod	S	2.0
Juneau	S	2.0
Kake	S	5.0
Kashunamiut	?	
Kenai	S	7.7
Ketchikan	TA	2.0
Klawock	S	2.0
Kodiak	A	
Kuspuk	?	
Lake and Peninsula	S	1.6
Lower Kuskokwim	S	2.0
Lower Yukon	S	2.0
Matanuska-Susitna	S	5.8
Mount Edgecumbe	S	5.0
Nenana	S	2.5

Nome	S	3.5
North Slope	S	5.1
Northwest Arctic	S	-4.5
Pelican	S	3.0
Petersburg	S	5.0
Pribilofs	S	0.0
Railbelt	S	0.0
St.Mary's	S	0.0
Sitka	S	1.5
Skagway	B	
Southeast Island	S	2.5
Southwest Region	S	2.7
Tanana	S	0.0
Unalaska	S	3.1
Valdez	S	2.0
Wrangell	S	2.5
Yakutat	S	3.0
Yukon Flats	A	
Yukon-Koyukuk	S	2.0
Yupitit	?	
AVERAGE:		2.2

Source: NEA-Alaska Research

P	Preparing	0
B	Bargaining	2
M	Mediation	2
A	Arbitration	3
SK	Strike	0
PA	Post-Arbitration	0
TA	Tentative Agreement	2
S	Settled	42
?	Status Unknown	5

IM02/Bargatus/dl

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: All Senators

FROM: Drue Pearce

A handwritten signature in cursive script that reads "Drue Pearce".

DATE: February 3, 1992

RE: SB 16 Education Employee Collective Bargaining

This correspondence arrived after SB 16 moved from the Labor & Commerce Committee. Dr. Laursen was unable to testify during the teleconferenced hearings on the legislation. For this reason I am calling his correspondence to your attention.

He teaches  
funday at  
4<sup>00</sup> pm??

Rod/Buey -  
plz call him  
to placate.

Say we'll put his  
letter in ~~file~~ packets.

Then - copy  
for all desks  
funday - w/e  
note that he  
did not get to  
testify so we're  
sharing.



# West Valley High School

3800 Geist Road • Fairbanks, Alaska 99701 • (907) 479-4221

1 1992

January 28, 1992

Senator Drue Pearce  
Chairman  
Labor and Commerce Committee  
Seventeenth Alaska State Legislature  
Capitol, Room 113  
Juneau, AK 99801-1182

Dear Senator Pearce:

On Friday, 24 January, there was to have been a Legislative Teleconference in Fairbanks at the Denali Bank Building concerning Senate Bill 16, Education Employee Collective Bargaining. I learned of it Thursday evening, prepared a written statement to be shared and met at the prescribed time only to learn that the teleconference had been cancelled. I was upset. When I learned there would be other opportunities to be heard, I was forgiving. Then, I learned that they would take place during times I would have to be in my classroom teaching. In fact, planned or unplanned, your lack of concern for those of us in the trenches who want to contribute, are now excluded from the teleconference process. I'm furious!

So now I find I must once again sit down and articulate my concerns via letter.

I speak in strong opposition to SB-16. "Teachers" should not be provided the right to strike, as the real loser, once again, will be our students. If passed, SB-16 would only provide that "right" to governing bodies, teachers' associations and unions. Many teachers, who may be "represented" by unions only because of closed shop or agency fee agreements negotiated by a few, but who may vehemently oppose such action or direction, will not be heard. No one-person, one-vote applies to these autocratically operated group actions.

If the right to strike is issued, then strike exercises would decidedly not represent my point of view. Yet, if "the" governing group supposedly representing a collective viewpoint voted to exercise strike rights and, in concert with those actions, my school district administration opts to close my school with the intent to make up lost days later into the summer, then I would be barred from performing my contracted teaching duties. I would also be required to appear for make up days imposed on us to fulfill what would be tantamount to an altered contractual obligation to the Fairbanks North Star Borough School District. I simply find the possibility repugnant.

Above actions would impose undue hardships on students, their parents and teachers who are earnestly involved in working toward academic advancement at colleges and universities around the country, UAF not withstanding. Through intensive planning

and exerted effort, I also plan the conduct of an active summer research program involving other professionals from Europe and the contiguous states for which I receive funding from the federal government to perform "contracted" investigations, which can only be performed during our short northern interior summer months.

To have such things happen would be most unfortunate, certainly for our students and their parents. I must also say that if school district administrators choose not to close our schools in light of a strike, I would be the first to cross picket lines to meet my accepted contractual obligations, dedication to students and my teaching duties at West Valley High for which I am amply paid! Let us not make another serious mistake of providing still yet one more costly vehicle for encouraging the persistence of teacher/teaching mediocrity during this time when a changing climate for educational redirection is so very badly needed in our public schools.

Sincerely,



Gary A. Laurusen, Ph.D.  
Presidential Awardce for Excellence  
in Science Teaching  
West Valley High School  
3800 Geist Rd.  
Fairbanks, AK 99709

cc: Honorable Virginia Collins, Vice Chairwoman, Labor and Commerce Committee  
Honorable Shirley Craft, Labor and Commerce Committee  
Honorable Rick Halford, Labor and Commerce Committee  
Honorable Jay Kerttula, Labor and Commerce Committee  
Honorable Steve Frank  
Honorable Tom Moyer  
Honorable Nilo Koponen  
Andy Warwick, Pres. School Board  
Sue Wilkin

TELECOPY COVER SHEET  
Fairbanks Legislative Information Office

JAN 24 1992

Office - (907) 452-4448

Fax - (907) 458-3348

TO: John Loo FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM: Flt Lt PHONE: \_\_\_\_\_

INSTRUCTIONS: Please distribute to Senate L&C  
Crute. Writer testimony for tele on 1-27-92  
@ 4:00 p.m. Sen Pease

RECEIVED: Date \_\_\_\_\_ Time \_\_\_\_\_

SENT: Date 1/24/92 Time \_\_\_\_\_

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 3 (Not counting cover sheet)

SENT BY: Fran

Copy testimony  
only into  
Committee files.



**LEGISLATIVE AFFAIRS AGENCY**

**DIVISION OF PUBLIC SERVICES**

DATE: 1/27/92

Please accept the enclosed original(s) of written testimony for the Senate L+C teleconference hearing that was scheduled on 1-27-92.

A copy of this testimony was transmitted to your committee via fax on 1-24-92.

Thank you,

\_\_\_\_\_

JAN 24 10 23 AM '84 FAIRBANKS

Denali Bank Bldg. 3:30-6:00

Senata Bill 16

Gary A. Laursen  
4850 Villanova  
Fairbanks, AK 99710

I speak in strong opposition to **SB16** - Teachers should not be given the right to strike: In fact, if passed, SB16 would not give individual teachers the right to strike. It would give the governing body; i.e., teachers association and unions that right. Many teachers who may be represented by unions via closed shop or agency fee resolutions, but who vehemently oppose such action, may not be heard through a one-person one-vote voice. If the right to strike is issued, then striking exercises would decidedly not represent my point of view. Yet, if the governing body supposedly representing my discerning voice voted successfully to strike and the administration of my school district opted to close school, with the intent of making up lost days at a later time then I would, in fact, not have the right to continue teaching and would have to appear later into the summer to fulfill my contractual obligation to the School district.

This would impose undue hardship on me in the conduct of my summer research program for which I receive money from the federal government to perform contracted investigations that can only be performed during our short northern summer months.

Parenthetically, should the school district administration not take such action as to close schools in the event of a strike, then I would be the first to cross picket lines to perform teaching duties for which I am amply paid. Let us not make the mistake of providing still yet another vehicle for mediocrity to persist during this time when in fact a climate for positive educational changes is so badly needed in our public schools.

TELECOPY COVER SHEET  
Fairbanks Legislative Information Office

JAN 24 1992

Office - (907) 452-4448

Fax - (907) 458-3348

TO: Jim L. O'D FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM: Jul L.M PHONE: \_\_\_\_\_

INSTRUCTIONS: Please distribute to Senate L&C  
Cont. Written testimony for tele on 1-27-92  
@ 4:00 p.m. Sent Peace

RECEIVED: Date \_\_\_\_\_ Time \_\_\_\_\_

SENT: Date 1/24/92 Time \_\_\_\_\_

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 3 (Not counting cover sheet)

SENT BY: Jul

Copy test mony  
only into  
Committee files.



**STATE OF ALASKA**

**LEGISLATIVE AFFAIRS AGENCY**

**DIVISION OF PUBLIC SERVICES**

DATE: 1/27/92

Please accept the enclosed original(s) of written testimony for the Senate R+C teleconference hearing that was scheduled on 1-27-92.

A copy of this testimony was transmitted to your committee via fax on 1-24-92.

Thank you,

FEL LIO

**Denali Bank Bldg. 3:30-6:00**

**Senate Bill 16**

**Gary A. Laursen  
4850 Villanova  
Fairbanks, AK 99710**

I speak in strong opposition to **SB16** - Teachers should not be given the right to strike: In fact, if passed, SB16 would not give individual teachers the right to strike. It would give the governing body; i.e., teachers association and unions that right. Many teachers who may be represented by unions via closed shop or agency fee resolutions, but who vehemently oppose such action, may not be heard through a one-person one-vote voice. If the right to strike is issued, then striking exercises would decidedly not represent my point of view. Yet, if the governing body supposedly representing my discerning voice voted successfully to strike and the administration of my school district opted to close school, with the intent of making up lost days at a later time then I would, in fact, not have the right to continue teaching and would have to appear later into the summer to fulfill my contractual obligation to the School district.

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# Alaska State Legislature

Please enter into the record my testimony to the

Senate Labor & Commerce  
~~Senate Labor~~

committee name

committee on

SB 16 Right To Strike

bill/subject

dated 1/27/92

*See attached page.*

*Original submission was  
Monday (1/27) at 4:30 pm*

Signed:

Testifier

*Jonathan Lung*

Representing (Optional)

2325 - 30<sup>th</sup> Ave. Fairbanks, AK 99701

Address

907 - 452 - 5538


Phone No.

27 Jan 92

Dear Legislators

I would like to speak to SB16 and HB 68. The right to strike is not needed to provide an equitable negotiating atmosphere in our district. Fairbanks teachers are the highest paid in the country with one of the best benefit packages going. This was all accomplished without the right to strike clause. I believe this demonstrates that all parties can negotiate in good faith past and future. Any strike would prove very disruptive to the education of our Fairbanks children - a disruption which can not be justified or condoned. Teachers as professional public servants, have a higher responsibility to our children - the right to strike is not warranted. These bills represent a cure for a non-existent problem, please remove the right to strike from future negotiations.

Sincerely,

  
Jonathan Ewig



# Alaska State Legislature

JAN 29 1992

Please enter into the record my testimony to the Senate Labor & Commerce Committee  
 committee name  
SB 16  
 committee on "Right to Strike", dated 1-24-92  
 bill/subject

Please see <sup>2</sup> pages attached.

Signed: Ruth E. Craig  
 Testifier

Representing (Optional)  
2325 - 30th Avenue, Fairbanks, Ak. 99701  
 Address  
(907) 452-5538  
 Phone No.

Dear Public Servants in the Legislature,

A collective bargaining process is highly important and my husband's grandfather was instrumental in the formation of unions in Michigan during a time period when there were "company mining towns". He served extensively in the legislature in Lansing.

The school board (management) certainly needs to consider all groups when making decisions. Unions are one way of insuring that special needs are considered through negotiations that might otherwise be overlooked, such as benefits or working conditions and, in some cases, increases in salary.

I arrived in Fairbanks in 1972 to teach junior and senior high mathematics. After a year I got married and continued to teach. I was appointed Mathematics Department Head at a junior high. I was active in the National Education Association (NEA) during the time I taught and also served on the Faculty Senate of a junior-senior high school. After eight years I retired to become a mother and then served in the PTA as treasurer where our children attended school.

Over the years the NEA leadership consistently placed salary increases and benefits at the top of their negotiating list when bargaining here with the North Star Borough school board. As a result my starting salary was \$10,700 twenty years ago and the starting salary at present is \$30,700. Benefits when I started teaching were full payment of all medical and dental bills without my having to pay into the system. Benefits today are still excellent. I know of no other workers with benefits nearly comparable to these. The administrators, secretaries, and custodians have been able to receive good benefits and increases in salary regularly with the efforts of the NEA leaders creating the pressure enabling these other groups to model the persuasion techniques used with the school board. School principals earn a wage of \$75,000 not counting their benefits! The university intellectuals and other school districts in the state have been able to "piggy back" off of the wage increases here in order to get their own wages raised. For example, if the superintendent in Fairbanks gets a raise of \$10,000 then "the superintendent in Anchorage ought to get a raise of at least that much" or vice versa. A family could live on the fringe benefits alone of our superintendent up here (\$35,000). (The superintendent's wage is \$110,000 and that is far beyond public servant status.)

Because of the process of bargaining we have prospered in this field (education) to the point of losing track of our obligation as public servants. Along with the privilege of being able to collectively bargain is the responsibility we have to the community through the school board and to the students to do the job that we are paid to do. We are not deprived and do not have the ethical or moral right to intimidate a community with threats of strikes, or to bankrupt it by striking, because we want more money or more "freebies". Our "boss" should still have the final decision since they pay us. I would venture to guess that most workers in most work fields want more money but it is not necessarily fiscally sound to

give it out just because we want it. It takes self-control and practice to accomplish our goals with the amount of money we have been allocated to work with in each case. I oppose HB 68 and SB 16 because striking would be like holding my breath until I turn blue to get my way. It would give a message that I have no desire to ignore my natural inclination not to set limits on myself, that I refuse to use self control and responsible fiscal planning but I want more money instead--I am entitled to all of the money that I ask for at any time that I ask. This does not help my responsibility to encourage my own fiscal growth. It does not address my responsibility to get along and compromise with others or my responsibility to straighten up and give more of my talent and not demand to be able to "rip-off" the taxpaying public and the students. Disrupting the educational process is not what the taxpaying community pays special interest groups such as NEA, ESSA or administrators' unions to do.

At present 70% of the money budgeted for the school district goes to teacher/administrator wages and an additional 16% goes to fringe benefits. I doubt that the taxpaying public would sympathize with unions that want to strike when they already use up 86% of the school district budget!! What about the children???

People in the education profession definitely have difficulty at this time seeing themselves as deserving any less than what a lawyer or a doctor earns because we are "professionals and educated". Because of our affluence we expect to travel out of state at least twice each year, own two or three cars and have a mansion-like home. Many of us are insulted when a demeaning term such as "public servant" is applied to us in our occupation. Whether we like it or not and whether we are affluent or not, we ARE public servants and should respond to the community as such instead of trying to bankrupt it and the state by strikes.

When money is excessively available we tend to expect more and be corrupted by the easy availability of it. If the unions strike it will be over money and a compulsion to acquire more power.

HB 68 and SB 16 will be a disservice to the voting public including far more than fifty teachers up here who have expressed opposition to it and who continue to remind me (and others) to help oppose it. Rank and file teachers do not have an interest in striking but feel the pressure to comply with the militant and intimidating leadership. The idea of "strike" is coming from the top down without consideration of the rank and file teacher opposition to it. (It will be natural for the union leadership to deny the above facts....)

Throw away this selfish bill so that we can get back on track educating the children instead of trying to manipulate the community at the expense of the children for reasons having nothing to do with our responsibility. For the sake of our state and our future attitudes, we need to be willing to work with the taxpaying public and families instead of alienating them through strikes.

Respectfully,

Ruth E. Ewig

Ruth E. Ewig 1/23/92

2325-30th Avenue, Fairbanks, Alaska 99701

©FNSB-School Board



JAN 27 1992

SB16 file

# Alaska State Legislature

Please enter into the record my testimony to the Senate Labor Commerce  
 committee name  
 committee on SB16, dated 1-22-92  
 bill/subject

I am writing in support of SB 16.  
 After being involved with teacher school board negotiations, I found a definite need for finality in the process. I would much prefer binding arbitration but if this is not going to be available, I feel PERA SB 16 protects my right to bargain.

Signed: Jane Chatter  
 Testifier  
myself  
 Representing (Optional)  
Box 3806 Kodiak  
 Address  
486-5301  
 Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate Labor & Commerce  
committee name

committee on SB 16, dated 1/22/92  
bill/subject

Support SB 16, needed to maintain a  
form of finality conducted under the  
state labor relations agency. ~~Under~~ Title 14  
As provided some of this. To understand  
the ineffectiveness of ~~that~~ Title 14, consider  
the number of unilateral impositions of  
contracts prior to PERA.

Signed: Tom Sawyer  
Testifier

KTBEA  
Representing (Optional)

Box 405  
Address

Kodiak  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate Labor + Commerce  
 committee name  
 committee on SB 16, dated 1/22/97  
 bill/subject

I support binding arbitration and  
 feel that if this is not going to happen  
 then I would like to support passage  
 of SB 16,

Signed: Nancy K. Holyday  
 Testifier Kodiak Bureau Educ. Assoc.  
 Representing (Optional) self & ~~other members of the~~  
 Address SR 3265 Bay View Dr Kodiak AK  
99615  
 Phone No. 907 486 6852



# Alaska State Legislature

Please enter into the record my testimony to the Senate  
Labor & Commerce  
committee name

committee on SB16, dated 1/22/92  
bill/subject

Provision for finality is necessary  
in any negotiations process. Binding  
Arbitration might be ~~more~~ a better  
option, however, without that SB16  
is very important and should  
continue teachers under P.E.R.A.

Signed: Frank Parker  
Testifier

Representing (Optional)  
Box 2533, Kodiak, Ak.  
Address

486-4479  
Phone No.



TELECOPY COVER SHEET  
Kodiak Legislative Information Office

Office - (907) 486-8116

Fax - (907) 486-5264

TO: Juneau LIO

ATTN: \_\_\_\_\_ FAX: 465-2864 PHONE: \_\_\_\_\_

FROM: Kodiak LIO PHONE: \_\_\_\_\_

INSTRUCTIONS: Written testimony to be delivered  
to Labor & Commerce Committee  
Sen Peace

SENT: Date 1-28 Time 10

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 1 (NOT counting cover sheet)

TRANSMITTED BY: Tina



# Alaska State Legislature

Please enter into the record my testimony to the labor and Commerce  
 committee name  
 committee on Senate Bill No. 16, dated 1-27-92  
 bill/subject

I would like to express my support for Senate Bill 16. I have taught in Alaska since 1970 and I know from experience that something is needed to ensure that negotiations come to a fair and speedy conclusion. No teacher can be completely effective in the classroom when negotiations drag on and on. Without binding arbitration we need this bill.

Signed: Isiah Babbitt  
 Testifier

Representing (Optional)  
1816 Simeonoff St. Kodiak AK 99615  
 Address  
907-486-4246  
 Phone No.



Alaska State Legislature  
**LEGISLATIVE RESEARCH AGENCY**

P.O. Box Y, Juneau, Alaska 99811-3100  
907-465-3991 Fax 907-463-3351

TO: Rod M.

DATE:

FROM: Carol V.

1-9-92

This info came from  
Nevin Mindlin  
Pennsylvania House of Reps

Please let me know where we stand.  
Thanks.



Alaska State Legislature  
LEGISLATIVE RESEARCH AGENCY

P.O. Box Y, Juneau, Alaska 99811-3100  
907-465-3991 Fax 907-463-3351

TO:

Rod

DATE:

1-9-92

FROM:

Carol

This is personal info I put together in 1986. The Note: section discusses strikes and should be useful. (Eleven out of the top 20 states).

EDUCATION NEGOTIATION/MEDIATION - TITLE 14  
(PRIOR TO RIGHT TO STRIKE)

ALASKA

Authority: Alaska Statutes, Section 14.20.550 to 14.20.610.

Exclusions: Superintendent of Schools.

Administrative Agency: Local School Boards.

Unit Determination: No Specific Provision.

Criteria for Unit Determination: All K-12 certificated personnel; principals and assistant principals may negotiate independently if they so choose.

Recognition: Exclusive, voluntary or by election.

Bargaining Rights: Duty to Bargain.

Scope of Bargaining: Matters pertaining to employment and fulfillment of professional duties.

Employer Rights: School board retains the right to make final decision on policy.

Employee Rights: No Specific Provision.

Grievance Procedure: Grievance procedure mandatory culminating in final and binding arbitration.

Union Security: No Specific Provision.

Unfair Labor Practices: No Specific Provision.

Impasse Procedure: Mediation - Parties may select a mediator or parties may petition EMCS to provide a mediator; each party shall select a team of persons to present evidence and position to the mediator; terms agreed to shall be reduced to writing and made public. Arbitration - If no settlement at mediation, governor may appoint an arbitrator who upon reviewing the issues will make advisory recommendation.

Strike Policy: No Specific Provision.

Note: Negotiations may be held in executive session by mutual agreement; final agreement must be made public; contract duration may not exceed three years.

Case Law

Teacher strikes are illegal. Anchorage Educ. Ass'n v. Anchorage School District, 114 LRRM 3377 [1982].

## CONNECTICUT

There are three public employee bargaining statutes in the State of Connecticut. The laws cover state employees, municipal employees, and teachers. The statutes for state and municipal workers provide for bargaining over wages, hours, and other employment conditions, excluding merit systems. Teachers may bargain over salaries and other conditions of employment. All three statutes prohibit strikes.

### TEACHERS

Authority: Connecticut General Statutes, Title 10, Section 10-153a et seq (1958) as last amended effective July 1, 1984.

Exclusions: Superintendent and assistant superintendent; employer's negotiators; personnel or budget employees; temporary substitutes; non-certified employees.

Administrative Agency: For representation and impasses - State Board of Education (SBE). For prohibited practices - State Board of Labor Relations (SBLR).

Unit Determination: Statute, two units established - administrators, teachers.

Recognition: Exclusive; voluntary requires showing of interest from majority in unit; election requires 20 percent to petition.

Bargaining Rights: Duty to Bargain.

Scope of Bargaining: Salaries and other conditions of employment.

Employee Rights: To form, join or assist unions; refrain from doing so; present grievances.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate union; discriminate on account of testimony; refusal to bargain in good faith; refusal to participate in mediation or arbitration in good faith.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees or employer's representative; discriminate on account of testimony; refusal to bargain in good faith; refusal to participate in mediation or arbitration in good faith; solicit or advocate support of students.

Union Security: Agency Shop Permitted.

## CONNECTICUT (cont.)

Impasse Procedure: Mediation - Either party may request mediation from the Commissioner of the State Board of Education; if no agreement 110 days prior to budget submission and mediation has not been initiated, Commissioner will initiate mediation; cost shared equally by the parties. Arbitration - If mediation fails by fourth day or 85 days prior to budget submission date, Commissioner will initiate arbitration; parties may mutually agree to a single arbitrator, otherwise tripartite panel; final offer on issue by issue basis; award due within 20 days; costs shared equally by the parties.

Criteria for Arbitration Award: Negotiation prior to arbitration; public interest; ability to pay; interests and welfare of the employees; existing conditions of employment of employees and those of similar groups; prevailing salaries, benefits, and other working conditions in state labor market.

Strike Policy: Prohibited; may be enjoined by courts.

Note: In Connecticut, two factors account for the relatively high percentage of bargaining situations ending in arbitration; (1) a town government can challenge a voluntary settlement but not an arbitration award. So many times, although the two parties agree without the assistance of a mediator or an arbitrator, they go to arbitration to protect their agreement, and (2) the arbitrator cannot mediate, so more awards are written even though by the time the parties submit the last best offer they are virtually in agreement and the award in fact reflects a voluntary settlement.

Between 1980 and 1986, approximately 517 contracts were bargained. Approximately 141 (27%) contracts were settled at the table; approximately 200 (39%) contracts were settled in mediation; and approximately 176 (34%) contracts were settled in arbitration.

There were 53 teacher strikes in Connecticut prior to the enactment of arbitration legislation in 1979. Since the implementation of arbitration legislation there have been no strikes.

### Case Law

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

## DELAWARE

There are three public employee bargaining laws in the State of Delaware. One statute covers state and county employees together with employees of local governments that elect coverage. The other two statutes cover teachers and transit workers.

### TEACHERS

Authority: Delaware Code Title 14, Chapter 40, Section 4001 et seq (1969) at last amended July 7, 1982, effective 60 days thereafter.

Exclusions: Administrators.

Administrative Agency: Public Employment Relations Board (PERB).

Unit Determination: PERB.

Criteria for Unit Determination: Similarity of duties, skills, and working conditions; history and extent of organization; recommendations of party involved; overfragmentation; other factors PERB deems appropriate.

Recognition: Exclusive; by election.

Bargaining Rights: Duty to Bargain.

Scope of Bargaining: Wages, salaries, hours, grievance procedures, and working conditions.

Grievance Procedure: Required.

Employee Rights: Organize, form, join, or assist employee organization; negotiate collectively or grieve through representatives of own choosing; other concerted activities; be represented without discrimination.

Employer Rights: Matters of inherent policy, including functions and programs, standards of service, budget, technology, organizational structure, curriculum, discipline, and selection and direction of personnel.

Union Security: Dues deduction mandatory.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate union; encourage or discourage union membership; discriminate on account of testimony; refusal to bargain in good faith; refusal to comply with statute; refusal to reduce agreement to writing and to sign it; refusal to disclose public records.

DELAWARE (cont.)

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees; refusal to bargain in good faith; refusal to comply with statute; refusal to reduce agreement to writing and to sign it; soliciting employees during work hours; hindering or preventing pursuit of work; solicit or advocate support of students on school property.

Impasse Procedure: Mediation - Voluntary or PERB appoints mediator at request of either party; costs paid by PERB. Factfinding - Parties may jointly or individually petition PERB to initiate factfinding or mediator may recommend factfinding. If PERB initiates factfinding, party may mutually select factfinder or PERB appoints one from list of five if parties do not designate factfinder from list; recommendations due 30 days after hearings end but not later than 45 days from day of appointment. PERB may publicize recommendations if dispute continues; costs shared equally by the parties.

Criteria for Factfinding Report: Interests and welfare of public; comparison of wages and benefits of employees involved with those of other employees performing similar work and with other public and private employees generally in same and comparable communities; overall compensation; increases in wages in private sector of the state; stipulations of the parties; lawful authority of employer; ability to pay; other factors normally considered.

Strike Policy: Prohibited.

Note: Contract duration must be for minimum of two years; hearings conducted by factfinders shall be open to the public.

Delaware's law was amended following a major teacher strike in 1978. There have not been any strikes since. In fact even up to 1978, strikes were a rarity. The original bill contained a provision for arbitration; it was amended out. The Delaware State Education Association would like to see the law amended to provide for both the right to strike and binding arbitration.

Delaware has 19 public school districts and approximately six to seven are in negotiations each year. Only one contract dispute has involved mediation and that dispute was resolved prior to the mediators' report being issued.

Delaware's last amendment has only been in effect for three school years and during this time, teacher salaries have improved substantially due to the availability of funds. This, more than anything else, has resulted in relative ease in negotiations. The Delaware School Board Association does expect that areas of the law will come into dispute in the future.

## HAWAII

There is one public employee bargaining statute covering all employees in the State of Hawaii. The statute provides for bargaining on wages, hours, contributions to the Hawaii public employees' health fund, and other terms and conditions of employment. The law also calls for final offer arbitration of fire fighters' disputes and grants a limited right to strike provided certain conditions are met.

### PUBLIC EMPLOYEES

Authority: Hawaii Revised Statutes, Chapter 89, Section 89-1 et seq (1970).

Exclusions: Elected or appointed officials; members of boards or commissions; employer's representatives who are top-level managerial and administrative personnel; confidential employees; part-time and temporary employees; employees in the Governor's office, Lt. Governor's office, and mayor's office; household employees in the Governor's residence; legislative employees; legislative branch employees of the city and county of Honolulu and counties of Hawaii, Maui, and Kauai, except for clerk's office employees; inmates, patients, wards, or students of a state institution; student help; National Guard.

Administrative Agency: Hawaii Labor Relations Board (HLRB).

Unit Determination: The following consolidated statewide units are designated by statute; non-supervisory blue-collar employees; supervisory blue-collar employees; non-supervisory white-collar employees; supervisory white-collar employees; teachers; educational officers; University of Hawaii and community college faculty; non-faculty personnel of the University of Hawaii and community colleges; registered nurses; non-professional and scientific employees. The last five groups may vote to be included in the general white or blue-collar units. Supervisors may vote to be included in non-supervisory units.

Recognition: Exclusive; by election.

Bargaining Rights: Duty to Bargain.

Scope of Bargaining: Wages, hours, amounts of contributions by the state and counties to the Hawaii public employees' health fund, and other terms and conditions of employment; excluded are classifications and reclassifications, benefits of, but no contributions to, the Hawaii public employees' health fund, retirement, salary ranges and number of incremental and longevity steps, matters inconsistent with merit principles and equal pay for equal work, principle, or managerial discipline and control; consultation on all other matters affecting employee relations.

HAWAII (cont.)

Grievance Procedure: Arbitration permitted; absent such procedure, disputes may be submitted to HLRB for final decision.

Employee Rights: To organize, form, join, or assist unions; engage in lawful concerted activity; refrain from doing so; present grievances.

Employer Rights: Direct employees; determine qualifications and standards of work; hire, promote, transfer, assign, and retain employees; discipline employees for proper cause; relieve employees because of lack of work or other legitimate reason; maintain efficiency of operations; determine methods, means, and personnel to implement operations; take actions as might be necessary to carry out mission of agency in cases of emergency.

Union Security: Dues deduction and agency shop mandatory; employees whose religious beliefs prohibit payment of dues may pay an equivalent amount to a non-religious, non-union charity chosen by the employee from list designated in contract or to any fund chosen by employee if contract does not designate fund; procedure for rebate on demand of any employee for pro rata share of expenditures for activities of political or ideological nature unrelated to terms of employment.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain in good faith; refusal to participate in impasse procedures in good faith; refusal to comply with statute; violation of contract terms.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees; refusal to bargain in good faith; refusal to participate in impasse procedures in good faith; refusal to comply with statute; violation of contract terms.

Impasse Procedure: Parties may establish their own procedure with arbitration as the final step; absent such procedure, parties may request assistance or HLRB may initiate. Mediation - Mediator(s) appointed by HLRB within three days after date of impasse; costs paid by HLRB. Factfinding - Excluding fire fighters; HLRB appoints panel of not more than three members 15 days after date of impasse; report issued within ten days; made public within five days if not referred to arbitration; costs paid by HLRB. Arbitration - Voluntary, excluding fire fighters; procedure begins 30 days after date of impasse; tripartite panel; award due within 20 days; costs of arbitration hearing and neutral arbitrator shared equally by the parties. If parties do not submit to arbitration, employer will submit recommendations on all cost items together with those of factfinding board to appropriate legislative bodies. Union may submit recommendations.

## HAWAII (cont.)

Strike Policy: Prohibited unless impasse procedures have been complied with, impasse is not submitted to arbitration, 60 days have elapsed since factfinding report, ten day notice of intent to strike is given, employees are part of the bargaining unit, and employees have been designated by HLRB as being non-essential; HLRB may set requirements to avoid or remove danger to public health or safety; strikes in violation of these procedures may be enjoined; prohibited on issue of contributions to public employees' health fund.

Note: Since the inception of collective bargaining in 1970, Hawaii has had only one significant teacher's strike and it did not result in an alteration to the law.

The voluntary arbitration procedure has been used only once for teachers and that was in the very early stages of collective bargaining. From the Hawaii State Department of Education's point of view the results obtained were highly inappropriate and even to this day still come back to haunt them. Since that time the Department has not used the voluntary arbitration procedure and does not plan to do so in the future.

In October, 1985, the Department of Education submitted a report to the State Office of Collective Bargaining which proposed a number of changes to the law (copy following). The Department believes that management would be in a better position if these recommended changes could be made.

### Case Law

The HLRB can only declare on impasse after it has determined that the party declaring an impasse has bargained in good faith. Board of Educ. v. Hawaii PERB, 88 LRRM 2543 [1974].

Cost items subject to appropriation. O.A.G., #72-10, 4/4/72.

## INDIANA

The one public employee bargaining statute in the State of Indiana covers teachers. The law provides for teachers to bargain over pay, hours, and wage-related fringes, allows discussion on other employment matters, and prohibits strikes.

### TEACHERS

Authority: Indiana Code Title 20, Article 7.5, Section 20-7.5-1-1 et seq (1973) as last amended May 1, 1978.

Exclusions: Supervisors, confidential, and part-time employees; employees performing security work; non-certified employees.

Administrative Agency: Educational Employment Relations Board (EERB).

Unit Determination: EERB in cases of dispute.

Criteria for Unit Determination: Efficient administration of school operations; community of interest; avoidance of over fragmentation; recommendations of the parties.

Recognition: Exclusive; by voluntary designation requires showing of interest from majority in unit; by election requires majority of employees in unit.

Bargaining Rights: Duty to bargain.

Scope of Bargaining: Salaries, wages, hours, and salary and wage related fringe benefits. Duty to discuss curriculum development and revision; textbook selection; teaching methods; selection, assignment, or promotion of personnel; student discipline, expulsion, or supervision of students; pupil-teacher ratio; class size; budget appropriations.

Grievance Procedure: Arbitration permitted.

Employee Rights: To form, join, or assist unions; participate in bargaining; engage in other activities; present grievances.

Employer Rights: Direct work; establish policy; hire, promote, demote, transfer, assign or retain employees; suspend or discharge employees; maintain efficiency of school operations; relieve employees because of lack of work; take actions necessary to carry out mission.

Union Security: Dues deduction mandatory.

INDIANA (cont.)

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain or discuss; failure or refusal to comply with statute.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees or employer's representative; cause or attempt to cause employer to commit unfair labor practice; refusal to bargain; failure or refusal to comply with statute.

Impasse Procedure: Mediation - Either party may request EERB to appoint mediator or EERB shall appoint mediator if no agreement 75 days prior to budget submission date; costs paid by EERB. Factfinding - Either party may request factfinding after five days of mediation or EERB shall appoint a factfinder if no agreement 45 days prior to budget submission date; report issued, made public within ten days. EERB may bypass mediation; factfinder may mediate; costs paid by EERB. Arbitration - Voluntary; arbitrator appointed by EERB; costs shared equally by the parties.

Criteria for Factfinding Report: Past agreements; comparison with public and private sector employees doing comparable work, giving consideration to factors peculiar to schools; public interest; financial impact.

Strike Policy: Prohibited; union loses dues deduction for one year; employees may not be paid for strike days.

Note: Teachers are the only public employees who have the right to bargain. The law has remained unchanged since its enactment 13 years ago.

There are 304 bargaining units in the state which includes some area vocational schools and special education cooperatives. The law does not differentiate between the various types of bargaining units. Approximately two-thirds of all contracts are open each year. This means that Indiana bargains about 175-200 contracts per year. On the average, there will be seven to eight contracts that are not settled for the entire year.

Most of the teachers in Indiana's 285 school corporations have opted to form bargaining units. Only a few do not have written agreements. An additional few have written contracts that were developed in a meet and confer environment. The great majority (80-85% of the state's public school teachers belong to the local and state affiliates of the NEA or AFL) bargain formally.

There have been 28 strikes in the last 13 years. There have been five strikes in one year on three different occasions; there were no strikes in three of the years. The longest strike has been 20 school days and a recent one lasted but 45 minutes. Strikes have occurred in the largest school systems as well as in some very small ones.

INDIANA (cont.)

It will vary from year to year, but most of the contracts are settled without the involvement of a third party. In negotiating the 1985-86 contracts, there was mediation in approximately one-third of the state's bargaining units. The use of factfinding is diminishing; last year there were 28 hearings and only four written reports.

If changes were to be made, the Indiana School Boards Association would advocate: (1) stronger penalties for the violator of the no strike clause; (2) giving boards the rights to issue contracts at the beginning of the school year based upon their last offer. The Association believes that the requirement to discuss is unique but has tremendous potential to establish a productive relationship between employees and boards.

The Indiana Education Association feels that the one thing that Indiana's law needs more than anything else is an amendment to legalize strikes. They believe that employees need greater control over the final product.

## MICHIGAN

The comprehensive public employee bargaining statute in the State of Michigan covers all public employees except, as dictated by the state constitution, those in the state classified service. In addition, separate statutes provide for arbitration for municipal police and firemen and for state police troopers and sergeants.

### PUBLIC EMPLOYEES IN GENERAL

Authority: Michigan Compiled Laws Annotated, Section 423.210 et seq (1947) as last amended effective October 8, 1978.

Exclusions: Employees in the state classified civil service.

Administrative Agency: Michigan Employment Relations Commission (MERC).

Unit Determination: MERC.

Criteria for Unit Determination: History of bargaining; avoid over fragmentation; one person units permitted provided union represents other employees in similar craft or occupation.

Bargaining Rights: Duty to bargain.

Scope of Bargaining: Wages, hours, and other terms and conditions of employment.

Employee Rights: To organize, form, join, or assist unions; engage in lawful concerted activities; present grievances; bargain collectively.

Grievance Procedure: Grievance procedure culminating in binding arbitration is negotiable.

Union Security: Union shop permitted.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain.

Unfair Labor Practices by Union: Restrain or coerce employees or employer's representative; cause or attempt to cause employer to commit a ULP; a refusal to bargain.

Impasse Procedure: Mediation - Either party may request a MERC appointed mediator 30 days prior to expiration of an agreement. Factfinding - Either party may request or MERC may initiate factfinding; tripartite panel or single neutral; hearing within 20 days, report within ten days from close of hearing.

MICHIGAN (cont.)

Strike Policy: Prohibited.

Note: Michigan is a highly unionized state and as such Michigan teachers have, since 1965, pursued collective bargaining in a vigorous fashion. Although strikes are technically illegal under the Public Employment Relations Act, strikes by teachers have occurred ever since the right to bargain was enacted. In the past ten years, Michigan has experienced as few as six and as many as 70 strikes in one year. The Michigan Education Association (MEA) believes it would be fair to say that collective bargaining for public school employees in Michigan has been interpreted in this state as very closely akin to private sector bargaining in that the Public Employment Relations Act, in many ways, resembles the National Labor Relations Act. Michigan has had strikes every year since the Act, no teacher has been dismissed for striking since 1974.

Mediation is utilized from a low of ten percent of the contract negotiations to a high of between 40 and 50 percent in a given year. The cost of mediation is borne by the state.

Factfinding was utilized a great deal more the first ten years of the bargaining statute than today. Last year, for example, the Association participated in fewer than ten factfindings statewide. This occurred in an atmosphere where they bargained well over 200 contracts. Like mediation, factfinding where enacted under the statute, is paid for by the State of Michigan.

In terms of the number of contracts settled per year by the Michigan Education Association, the numbers vary greatly from year to year. In that they represent over 800 bargaining units, when they combine their teacher units and education support personnel units, they often will bargain as many as 350 contracts in a twelve-month period. As noted, the majority of these are settled by the parties at the bargaining table without the influence of a third party.

In all, MEA believes that their collective bargaining statute has served the interests of employers, employees and the public well. In fact, they believe it would serve, in most instances, as a model for school employees. This is not to say that problems do not exist. MEA has long believed that public employees should have the right to strike if bargaining reaches impasse. MEA believes this is particularly important in that the statute does not provide for interest arbitration or a binding factfinding ruling. On the plus side, however, the statute and various interpretations by the Commission have established broad subjects of bargaining that require the parties to deal substantive employment issues at the bargaining table. MEA believes this expansive view of collective bargaining rights and obligations is a vital key to the success of the Public Employment Relations Act.

MICHIGAN (cont.)

Occasionally, a school district and a local will bilaterally agree to arbitrate; it has happened five or six times in twenty years in Michigan. However, it is not encouraged by the Michigan Association of School Boards (MASB). The MASB experience with police and fire arbitration is that arbitration stifles true collective bargaining. In the long run, arbitration awards are more costly to the public employer than negotiated agreements. MASB is on record as preferring the legal right to strike over arbitration.

After twenty years of public sector collective bargaining in Michigan, the public has accepted the adversarial process. MASB feels that one area of the law that leads to considerable confusion is that while it is illegal to strike in Michigan, the courts have effectively removed any penalties the employer could impose on striking locals except that of discharging the offending employee.

Because each striking teacher is entitled to an individual hearing, the cost of discharging a striking faculty can run as high as \$20,000 per teacher if the employer wins, so therefore, school districts are motivated to ignore the illegality of the strike and continue to work to get an agreement without taking the costly action of firing faculty.

MASB tends to think that even with the average of 25 teacher strikes per year, the status quo is preferable over fine tuning the law to eliminate strikes primarily for two reasons: (1) much more is involved than fine tuning a law to guarantee teacher satisfaction, high morale, and a good education for the children, and (2) allowing an outside arbitrator to establish wages is contrary to MASB's strong belief in local control of their school districts.

## MINNESOTA

There is one comprehensive public employee bargaining law in the State of Minnesota. The statute covers state employees, including employees of the University of Minnesota, state and junior colleges, and school districts, but excluding employees of charitable hospitals. The law allows non-essential employees to strike after certain conditions are met. However, unions that engage in illegal strikes lose representation status and are ineligible for certification and deduction of dues for two years.

### ALL PUBLIC EMPLOYEES

Authority: Minnesota Statutes Annotated, Chapter 179A, Section 179A.01 et seq.

Exclusions: Elected officials, election officers; National Guard; emergency, part-time, temporary, or seasonal employees; employees of charitable hospitals; students; confidential employees of the state and University of Minnesota.

Administrative Agencies: Bureau of Mediation Services (BMS); Appeals, Minnesota Public Employment Relations Board (MPERB).

Unit Determination: BMS; may be appealed to MPERB.

Criteria for Unit Determination: Essential and other than essential employees may not be in same unit; all employees under same appointing authority in one unit except when factors require otherwise, such as: employees' classification, compensation, profession, or craft; relevant administrative supervisory levels of authority; geographical location; history and extent of organization; wishes of the parties. State and University of Minnesota units are established by statute. Supervisory employees, confidential employees, school principals, and assistant principals may form own organizations.

Recognition: Exclusive; by election or by verified majority on joint petition.

Bargaining Rights: Duty to bargain; meet and confer with professional employees on policy.

Scope of Bargaining: Grievance procedure, hours, fringe benefits, and terms and conditions of employment; excluding retirement contributions or benefits, employer's personnel policies, educational policies of school district.

Grievance Procedure: Arbitration .

MINNESOTA (cont.)

Employee Rights: To form or join unions; refrain from doing so; present grievances; designate exclusive representative by secret ballot.

Employer Rights: Policy, budget, technology, organizational structure, and selection of personnel; direction and number of personnel.

Union Security: Dues deduction; agency shop permitted; fair share fee limited to no more than 85 percent of dues.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain in good faith; blacklist; refusal to comply with grievance procedure; violate rules and regulations of BMS; refusal to comply with arbitration award; violate or refuse to comply with orders of director of BMS or MPERB; refusal to provide budget information to union.

Unfair Labor Practices by Union: Restrain or coerce employees or employer's representative; refusal to bargain in good faith; violate rules and regulations of BMS; refusal to comply with arbitration award; call a jurisdictional strike; damage property or endanger safety of persons while on strike; force or require employer to assign work to certain employees in a particular union; cause or attempt to cause employer to pay for services not performed; engage in unlawful strike; picketing that has unlawful purpose; picketing that unreasonable interferes with access to employer's facilities; seize, occupy, or destroy employer's property; violate or refuse to comply with orders of director of BMS or MPERB; restrain or coerce any person.

Impasse Procedure: Mediation - Either party may petition BMS for mediation or director of BMS may initiate. Arbitration - Mandatory for essential employees in the event the parties are determined to be at impasse by the director of BMS; tripartite panel unless parties agree to single arbitrator; for principals and assistant principals, panel selects final offer on each impasse item; for others, if parties agree, panel selects final offer on each impasse item or final offer of one party by package; award issued within ten days of conclusion of hearing; costs shared equally by the parties.

Criteria for Arbitration Award: Statutory rights of employer to efficiently manage operations.

Strike Policy: Prohibited for confidential, essential, and managerial employees; non-essential employees may strike provided contract has expired, mandatory mediation period has been completed, or, if there is no agreement, impasse has occurred; teachers generally may strike if contract has expired or if there is no contract and impasse has occurred,

MINNESOTA (cont.)

mediation period has been completed, neither party requests interest arbitration or arbitration has been rejected, employer refuses to comply with arbitration award; unions that violate strike ban lose representative status and are ineligible for certification and dues deduction for two years.

Note: All negotiations, mediation sessions, and hearings between employer and union shall be in public except as provided by director of PMS. Contract duration may not exceed three years except for duration of teachers' contracts, which may not exceed two years. Teacher contracts shall not contain wage reopeners or any other provision for renegotiation of compensation.

Between 1971 and 1981 the following statistics were fairly constant. Approximately 435 K-12 units bargained biennially. Approximately 100 (23%) settled voluntarily; approximately 300 (69%) settled in mediation; and approximately 35 (8%) settled in arbitration.

Between 1973 and 1981 there were 14 teacher strikes. In 1981-1982 there were 35 strikes and in 1983-1984 there were eight strikes. The high incidence of strikes in 1981-1982 may be attributed to the fact that teachers were using the amended right to strike clause experimentally. It is doubtful that such incidence will occur again because it proved ineffective.

Bargaining units in Minnesota do not particularly care for arbitration. It's an open process; employees and employers agree on the kind they want before beginning, i.e., conventional, item by item, final offer, etc. Up to the past couple of years, the awards have been slightly lower than average. The past three awards have been outstanding in favor of teachers. On average, however, arbitration has been just OK. All in all, the Minnesota Education Association (MEA) prefers the right to strike to arbitration and, of course, negotiated settlements to either.

A change to PELRA is being considered by the MEA; teachers have the option of choosing binding arbitration if the contract negotiations goes into the second year of bargaining without agreement in sight. There is strong sentiment from both sides that maybe, just maybe, binding arbitration is not a bad thing if employees have gone a year or two without a contract.

The current law is effective and accepted by the bargaining units. The MEA feels that compared with many other states, the Minnesota PELRA is a good law. It has had generous support from both parties. The MEA believes that arbitration will be the law for the foreseeable future because it is seen by many as preferable to the right to strike.

MINNESOTA (cont.)

Case Law

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

Because terms and conditions of employment and inherent management policy may overlap, a public employer may voluntarily negotiate over these matters. AFSCME Council 96 v. St. Louis County, 106 LRRM 2635 [1980].

Though a transfer is a managerial decision and not bargainable, whether or not the transfer conforms to negotiated transfer criteria is a proper subject of arbitration. Minneapolis Teachers Federation v. School District, 96 LRRM 2706 [1977].

## NEVADA

The single public employee bargaining statute in the State of Nevada covers local government employees, including teachers and nurses. The statute carries strong penalties for strikes. Union may be fined \$50,000 per day; union leaders, \$1,000 per day, or they may be imprisoned. Employers may dismiss, suspend, or demote striking employees, cancel a collective bargaining agreement, or withhold wages for the period of a strike.

### TEACHERS

Authority: Nevada Revised Statutes, Section 288.010 et seq (1969).

Exclusions: Confidential employees.

Administrative Agency: Local Government Employee-Management Relations Board (EMRB).

Unit Determination: Local government employer; EMRB in cases of dispute.

Criteria for Unit Determination: Community of interest; department heads, administrative employees, and supervisors shall not be in same unit as employees they supervise, may form own unit; police officers may only join unions composed of law enforcement personnel. Principals, assistant principals, or other school administrators below rank of superintendent, associate superintendent, or assistant superintendent shall not be members of same unit with teachers, unless school district employs fewer than five principals, but may join others of same rank in separate unit.

Recognition: Exclusive; by voluntary designation or by election.

Bargaining Rights: Duty to Bargain.

Scope of Bargaining: Salary, wage rates, or other forms of direct monetary compensation; sick leave, vacation leave, holidays, and other paid or nonpaid leaves of absence; insurance benefits; total hours of work required of an employee on each work day or work week; total number of days of work required in a work year; discharge and disciplinary procedures; recognition clause; method used to classify employees in the bargaining unit; deduction of dues for the recognized union; protection of employees in the bargaining unit from discrimination because of participation in recognized unions; no strike provisions; grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements; general saving clauses; duration of collective bargaining agreement; safety; teacher preparation time; procedures for reduction in workforce; any provision negotiated and in effect as of 5/15/75.

Employee Rights: To join or refrain from joining any union; present grievance.

NEVADA (cont.)

Employer Rights: Manage operation in most efficient manner consistent with public interest; take necessary actions in cases of emergency; hire, direct, assign, or transfer an employee, but excluding right to assign or transfer as a form of discipline; layoff of any employee because of lack of work or funds, subject to established procedures; determine appropriate staffing levels and work performance standards except for safety consideration; determine content or work day, including, without limit, workload factors, except for safety consideration; determine quality and quantity of services to be offered to public; determine means and methods of offering services; safety of the public.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain in good faith, including impasse procedure; discriminate on account of race, color, religion, sex, age, physical or visual handicap, national origin, political or personal reasons or affiliations; failure to provide information requested by union concerning matters to be negotiated.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees; refusal to bargain in good faith, including impasse procedure; discriminate on account of race, color, religion, sex, age, physical or visual handicap, national origin, political or personal reasons or affiliations; failure to provide information requested by employer concerning matters to be negotiated.

Impasse Procedure: As first step in negotiations, parties shall discuss procedures to be followed in case of impasse. Mediation - Either party may request mediator after July 1; before July 1, dispute may be submitted to mediator if both parties agree; labor commissioner submits list of mediators if parties cannot agree; mediator tries to help settle disputes by July 10; if dispute goes to factfinding, mediator must report to commissioner by July 15 on efforts to settle dispute; costs shared equally by the parties. Factfinding - If agreement is not reached in mediation by August 1 or if the unit has fewer than 30 employees, either party may request factfinding up to September 20; single factfinder; mediator may also be factfinder; if parties cannot agree on factfinding, either may request seven name list from AAA of FMCS; FMCS used if parties cannot agree on service to use; nonbinding report due within 30 days after end of hearing; costs shared equally by the parties. Binding Factfinding - Parties may agree in advance to be bound by any or all parts of factfinding report; if they do not agree, either party may request three member panel to determine if any or all of factfinder's recommendations are binding; panel makes determination based on public interest, fiscal effect, and public safety.

Criteria for Binding Factfinding Award: Ability to pay must be established first, then normal standards used in interest disputes are applied.

NEVADA (cont.)

Strike Policy: Prohibited; strikes may be enjoined; union may be fined \$50,000 per day, its leaders may be fined \$1,000 per day or jailed; employer may dismiss, suspend, or demote strikers, cancel collective bargaining agreement, or withhold wages for period of strike.

Note: An employee-management advisory committee has been created consisting of three designees of unions and three designees of local government employers. Duties include; interviewing applicants and submitting an agreed upon list of applicants to governor for positions on EMRB; advising EMRB; filing a report with legislature regarding procedures in statute and recommending desirable legislation.

The monetary provisions of most of Nevada's 17 school districts are negotiated annually. Occasionally a two year agreement is reached; however, that is not the norm. As of August 27, 1986, there is only one district which may arbitrate for the 1986-1987 contract year. Two other districts have not settled; it is expected that they will settle without outside assistance.

Last best offer is not mandated for schools, thus arbitration, when utilized, is conventional. Most local governments in Nevada are not enthusiastic about their experiences with arbitrators' decision. They feel the list of arbitrators available tends generally to be labor oriented and, since the persons available are almost without exception non-Nevadans, their decisions are all the more suspect. There is a general feeling that arbitrators' decisions erode the management and decision making duties of elected local officials.

Nevada law prohibits strikes of public employees. There have not been any strikes since the law was enacted. Generally, the Nevada State School Boards Association (NSSBA) feels that most educators agree that strikes would be disruptive to the education process, thus arbitration may be the better alternative. Many local government officials, including educators, have expressed to legislative committees that perhaps a right to strike provision might have a beneficial effect on the process because a strike would bring home to the public the true impacts of public employee collective bargaining.

The NSSBA feels that the provisions dealing with the list of items identifying the scope of mandatory bargaining is one of the critical areas for consideration. There has not been a legislative session when bills have not been considered to add to or to delete from the list. Some of the items, for example "safety of the employee", are subject to interpretation and cause undue problems in negotiating sessions. Collective bargaining laws are now accepted but not with a great degree of enthusiasm. The bargaining process results in many confrontations, posturing on both sides and time commitments which might be more well spent elsewhere. Without a decent alternative available both sides must continue to negotiate these conflicts. The process is effective, but is not without problems.

NEVADA (cont.)

The Nevada Education Association (NEA) believes that automatic binding arbitration is preferable to the right to strike for several reasons; first, because services continue to be rendered, and second, because 20 percent of the employees reside in smaller counties, a strike may be ineffective. The employee, no matter where he/she resides, has the same rights. A strike in a county of 10,000 people will not have the same impact as a strike in a county with 100,000 people.

Generally, the NEA believes that arbitrators' awards have been fair. Forty-two contracts have been negotiated in the past three years. Only two contracts have been resolved through arbitration. In each case the NEA's position was compromised.

NEA's position on interest arbitration is that last best offer is preferable to conventional. It forces the negotiating parties to get together and work out their differences. Arbitrators do not particularly care for last best offer and often end up playing mediator. One side always loses in last best offer, so generally, contracts can be settled before impasse is reached.

## NEW JERSEY

One employee bargaining statute in the State of New Jersey extends collective bargaining rights to public as well as private employees. The law permits bargaining over grievance procedures and terms and conditions of employment but excludes standards of employee performance. A separate law provides for arbitration of contract disputes for police and fire fighters.

### PUBLIC, PRIVATE EMPLOYEES

Authority: New Jersey Statutes Annotated, Title 34, Section 34:13A-1 et seq (1968) as last amended July 30, 1982.

Exclusions: Elected officials; members of boards and commissions, managerial executives; confidential employees.

Administrative Agency: Public Employment Relations Commission (PERC).

Unit Determination: PERC in cases of dispute.

Criteria for Unit Determination: Community of interest; professionals cannot be in a unit of non-professionals except by election; appropriate unit of employees; separate supervisory units.

Recognition: Exclusive; by voluntary designation or by election.

Bargaining Rights: Duty to bargain.

Scope of Bargaining: Grievances; disciplinary disputes, and terms and conditions of employment.

Grievance Procedure: Mandatory in all agreements; arbitration permitted.

Union Security: Dues deduction mandatory; agency shop permitted; fair share fee limited to no more than 85 percent of dues; must provide for a procedure for rebate upon demand of any employee of pro rata share for activities or causes only incidentally related to terms and conditions of employment.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain or to process grievances in good faith; refusal to reduce agreement to writing and to sign it; violate PERC rules and regulations.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees or employer's representatives; refusal to bargain in good faith; refusal to reduce agreement to writing and to sign it; violate PERC rules and regulations; discriminate on account of union membership or testimony.

NEW JERSEY (cont.)

Impasse Procedure: Mediation - Request of either party; costs borne by PERC. Factfinding - PERC may initiate or recommend; single neutral or tripartite panel; costs borne by parties except for police and fire fighters which are borne by PERC. Arbitration - Voluntary interest ARBITRATION upon mutual consent.

Strike Policy: No Specific Provision; strikes by police and fire fighters prohibited.

Note: Between 1975 and 1978, the New Jersey Public Employment Relations Commission (PERC), in numerous decisions, interpreted the Employee-Employer Relations Act to find that school boards and teacher unions could negotiate over permissive subjects, i.e., matters that were not terms and conditions of employment, and were not precluded from negotiations by statute.

The vast majority of districts (97%) have multi-year bargaining contracts which means that every school district does not negotiate every year. On an average, approximately half (45-50%) of New Jersey's school districts negotiate new agreements in any given year.

A little over half of the school districts settle their negotiations without reaching impasse (54% for the 1985-1986 school year). Thirty-six percent of the school districts settled their contracts during mediation; ten percent reported that they utilized both mediation and factfinding before reaching settlement.

Compulsory interest arbitration does not exist for school district negotiations impasses. While school boards and unions may mutually agree to submit their impasse dispute to an interest arbitrator, it very rarely occurs.

There were 64 teacher strikes in New Jersey between 1979 and 1986 which resulted in an average loss of 4.8 school days per strike.

Case Law

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

## PENNSYLVANIA

There are three public employee bargaining laws in the State of Pennsylvania. One statute covers state, county, and municipal employees in general and grants the right to strike after mediation and factfinding. Police and fire fighters are covered by a second statute that provides for compulsory arbitration of bargaining disputes. A third statute covers municipal employees.

### PUBLIC EMPLOYEES IN GENERAL

Authority: Act 195, Section 101 et seq (1970).

Exclusions: Police and fire fighters; elected or appointed officials; managerial or confidential employees; clergy or employees of church offices.

Administrative Agency: Pennsylvania Labor Relations Board (PLRB).  
Pennsylvania Bureau of Mediation (PBM).

Unit Determination: PLRB.

Criteria for Unit Determination: Community of interest; avoidance of over fragmentation; majority of professionals must vote for inclusion in non-professional units; prison and mental hospital guards, court employees, and security guards must form their own units; security guards may not affiliate with unions representing other job classifications; statewide units for statewide bargaining; supervisors must form own units.

Recognition: Exclusive; by voluntary designation or by election.

Bargaining Rights: Duty to bargain; meet and discuss for supervisors.

Scope of Bargaining: Wages, hours, and other terms and conditions of employment; meet and discuss on the impact of decisions made on issues within management rights.

Grievance Procedure: Arbitration required.

Employer Rights: Functions and programs of employer; standards of service; budget; technology; direct personnel and organizational structure; hire or discharge employees for just cause.

Employee Rights: To organize, form, join, or assist unions; engage in lawful concerted activities; refrain from doing so; present grievances.

Union Security: Maintenance of membership permitted.

PENNSYLVANIA (cont.)

Unfair Labor Practices by Employer: Interfere with, restrain or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain in good faith, including grievance processing; refusal to reduce agreement to writing and to sign it; violate PLRB rules and regulations regarding conduct of representation elections; refusal to implement arbitration award; refusal to meet and discuss.

Unfair Labor Practices by Union: Restrain or coerce employees or employer's representative; refusal to bargain in good faith; violate PLRB rules and regulations regarding conduct of representation elections; refusal to reduce agreement to writing and to sign it; strike or boycott for jurisdictional reasons; secondary boycott; refusal to implement arbitration award; refusal to meet and discuss.

Impasse Procedure: Mediation - If no agreement is reached within 21 days of negotiations or 150 prior to budget submission date, PBM must be called in; if no agreement after 20 days or 130 days prior to budget submission date, PBM notifies PLRB. Factfinding - PLRB may name a single or tripartite panel; report due within 40 days of PBM notice to PLRB; state pays one half the cost, parties each pay one fourth. Arbitration - Voluntary; tripartite panel; PLRB pays for neutral, parties pay for their own representative.

Strike Policy: May strike after mediation and factfinding; employer may seek injunction where there is a clear and present danger to public health, safety, and welfare; employee may not be paid for period of strike; court may punish violation of injunction with fines and imprisonment; employees other than those on strike who refuse to cross picket lines are deemed to be engaged in prohibited strike; ULP is not a defense to an illegal strike.

Note: The Pennsylvania State Education Association (PSEA) records an average of from 225 to 230 locals which bargain each year. Of these, the vast majority are settled either during the mediation process or subsequent to factfinding.

PSEA, and most public employee bargaining agents, feel that Act 195 is, has been, and will continue to be effective. The evidence of such acceptance can be seen in the fact that the law has withstood several attempts at modification ranging from amendment to time limits through abolition.

Generally, PSEA feels that the Act works well and needs little or no improvement. The areas that work exceptionally well are mediation and strike. The areas that work less exceptionally well are factfinding and voluntary binding arbitration. There are those organizations and individuals which feel the Act would be improved by providing for mandatory binding arbitration. PSEA has no official position espousing amending the Act to include binding arbitration. However, PSEA's position on the topic is that if the legislature amends the Act to impose harsher penalties upon bargaining agents for utilizing strikes, then the Act should be amended to provide for binding arbitration.

PENNSYLVANIA (Cont.)

The Pennsylvania School Boards Association (PSBA) feels the area that has caused the greatest amount of controversy has been the conflict between the collective bargaining law and existing school law. Pennsylvania has led the nation in strikes, both in number and in length, and this is partly the result of the conflict mentioned. Teachers in Pennsylvania can strike for 35-45 days and not lose any money because of a school code law that requires the scheduling of 180 student days. This is one example of some of the troubling problems experienced through Pennsylvania collective bargaining.

## WISCONSIN

There are three public employee bargaining laws in the State of Wisconsin. One statute covers state employees, while the second law extends bargaining rights to municipal employees, including teachers. A third statute provides for arbitration of disputes concerning policemen and fire fighters.

### TEACHERS

Authority: Wisconsin Statutes Annotated, Chapter 111, Section 111.70 et seq (1959) as last amended effective 1986.

Exclusions: Independent contractors; supervisors; confidential, managerial, or executive employees.

Administrative Agency: Wisconsin Employment Relations Commission (WERC).

Unit Determination: WERC.

Criteria for Unit Determination: Avoid fragmentation; separate units for professionals and non-professionals unless majority of professional employees vote for inclusion in non-professional unit; separate units from craft and non-craft employees unless majority of craft employees vote for inclusion; desires of employees.

Recognition: Exclusive; by election.

Bargaining Rights: Duty to bargain.

Scope of Bargaining: Wages, hours, and conditions of employment.

Grievance Procedure: Arbitration permitted.

Employee Rights: To organize, form, join, or assist unions; bargain; engage in lawful concerted activities; present grievances; refrain from doing so.

Union Security: Dues deduction mandatory; agency shop permitted; rescinded if less than majority of unit supports continuation in an election or if union refuses membership on basis of race, color, creed, or sex.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; refusal to bargain; violate any collective bargaining agreement; deduct dues without authorization; discriminate on basis of membership in a union.

WISCONSIN (cont.)

Unfair Labor Practices by Union: Coerce or intimidate employees; coerce, intimidate, or induce employer to commit an unfair labor practice; refusal to bargain; violate any collective bargaining agreement; coerce or intimidate an independent contractor, supervisor, confidential, managerial, or executive employee to join union.

Impasse Procedure: Mediation - WERC or designee. Factfinding. Voluntary Impasse Resolution - Permissive subject of bargaining; may provide for strike by municipal employees; may provide for binding interest arbitration; Arbitration - Available upon reaching deadlock and if mediation and voluntary impasse resolution procedure, if any, have been exhausted; at request of either party or jointly; final offer; costs shared equally by parties.

Criteria for Arbitration Award: Lawful authority of the employer; stipulations, if any, of the parties; interest and welfare of the public; ability of employer to meet costs of award; comparison of wages, hours and conditions of employment of other private/public employees in comparable communities; cost of living; changes in circumstances during pendency of proceeding; other factors usually considered in wage and benefit determinations.

Strike Policy: Limited right to strike. Strike may be enjoined.

Note: Presentation of initial proposals along with supporting rationale shall be open to public; contract duration may not exceed three years.

Wisconsin was the first state to permit municipal employees (elementary and secondary public school teachers included under this definition) to organize and negotiate collectively under the Municipal Employment Relations Act (Wisconsin Statutes Section 111.70 to 111.77). Under the original provisions of the act, strikes were prohibited and bargaining impasses were resolved through mediation and non-binding factfinding by a neutral third party.

Chapter 178, Laws of 1977, established a new method of resolving bargaining impasses for most municipal employees. Under this act, the neutral third party was granted authority to resolve the bargaining impasse through binding arbitration if voluntary methods of settlement proved ineffective.

The 1985 Wisconsin Legislature enacted 1985 Wisconsin Act 318 which revised the dispute settlement procedures in collective bargaining units of local government employees by separating the binding and non-binding impasse resolution procedures under the law. It repealed the arbitrator's statutory duty to mediate disputes before proceeding to final and binding arbitration. This act also eliminates the sunset expiration date of July 1, 1991.

## WISCONSIN (cont.)

Wisconsin Act 318 was the final product of the efforts of the Legislative Council's Special Committee on the Municipal Collective Bargaining Law, which had been appointed by the Legislative Council on May 4, 1984, to study the municipal employment mediation-arbitration law and to determine its effect on collective bargaining and local government employment. During the time period that this committee met, the staff prepared numerous background memoranda and reports. Following is a list of these reports. They may be obtained by contacting directly the address shown on the publication listing.

Legislation to grant University of Wisconsin System faculty and academic staff authorization to bargain collectively was considered in the current legislative session. 1985 Assembly Bill 229, which had been passed by both houses of the Legislature in slightly different forms, failed final passage because the Assembly did not consider a Senate amendment during the last hours of the final floor period. If Assembly Bill 229 had been enacted, more than 7,330 employees would have been able to form unions and bargain collectively with the Department of Employment Relations on wages, benefits and conditions of employment.

The law in its current format was adopted following a very long and bitter teachers strike. Strikes by municipal employees prior to 1978 were quite prevalent in all the different sectors, but the teachers strike in Hortonville was the catalyst for bringing municipal employees under the collective bargaining statute.

The following statistics apply to all municipal employees in Wisconsin from 1978 through 1983. The total number of contracts negotiated was 5,520. 2,983 (54%) were settled voluntarily prior to impasse; 2,113 (39%) were settled after impasse and before arbitration; and 424 (7%) were settled in arbitration.

Between 1971 and 1977 there were 90 teacher strikes in the state of Wisconsin. There have been no strikes since the implementation of arbitration in 1978. There are 432 school districts that bargain annually or biennially; the majority are bargained biennially.

From the standpoint of the Wisconsin Education Association the law has been very successful in providing labor peace. The absence of strikes has definitely been a benefit in helping to improve labor/management relationships within the public sector. There are some who would like to go back to the strike as the final alternative to bargaining. The State Legislature has reaffirmed the statute with only one dissenting vote in each chamber which clearly shows a preference to sound public policy that is fair to all.

## DISTRICT OF COLUMBIA

There is one public employee bargaining statute in the District of Columbia. Covering all employees of the city government, the law includes provisions for bargaining over compensation and terms and conditions of employment.

### PUBLIC EMPLOYEES

Authority: District of Columbia Code Annotated, Title 1, Chapter 6, Section 1-601.1 to 1-637.2.

Exclusions: Chief judges, associate judges, and nonjudicial personnel of the Superior Court and Court of Appeals; supervisors, management officials, or employees whose participation in a union would result in conflict of interest.

Administrative Agency: Public Employee Relations Board (PERB).  
Office of Employee Appeals (OEA).

Unit Determination: PERB.

Criteria for Unit Determination: Community of interest; promotion of effective labor relations; efficiency of agency operations; skills, working conditions, common supervision, physical location, organizational structure, distinctiveness of functions performed, and existence of integrated work process; extent of organization; supervisors must be in separate units except with respect to fire fighters; no unit shall include confidential employees, employees engaged in personnel work other than in a clerical capacity, employees engaged in administering statute, and employees of the city council; professionals must vote for inclusion in nonprofessional unit; two or more units for which union holds exclusive recognition within agency may be consolidated into one larger unit.

Recognition: Exclusive; by voluntary designation or by election.

Bargaining Rights: Duty to bargain.

Scope of Bargaining: Compensation, union security, and terms and conditions of employment. Compensation includes salary, wages, health benefits, within-grade increases, overtime, education pay, shift differentials, premium pay, hours, and other compensation matters.

Grievance Procedure: Arbitration permitted.

Employee Rights: To organize, join, or assist unions; bargain collectively; refrain from doing so; present grievances.

DISTRICT OF COLUMBIA (Cont.)

Employer Rights: Direct employees; hire, promote, transfer, assign, and retain employees; suspend, demote, discharge, or take other disciplinary action against employees for just cause; relieve employees from duties because of lack of work; maintain efficiency; determine mission of agency, budget, number of employees; types and grades of positions of employees assigned to organization unit; determine technology of work and internal security practices; take whatever actions may be necessary to carry out mission in emergencies.

Union Security: Dues deduction mandatory; agency shop permitted.

Unfair Labor Practices by Employer: Interfere with, restrain, or coerce employees; dominate unions; discriminate on account of union membership or testimony; refusal to bargain in good faith.

Unfair Labor Practices by Union: Interfere with, restrain, or coerce employees; cause or attempt to cause management to coerce employees; refusal to bargain in good faith; participate in a strike or work stoppage; recognition strikes or secondary boycott.

Impasse Procedure (Compensation): Mediation - Any party may request and PERB may impose anytime if at impasse, after 180 days of bargaining, or 90 days before expiration of contract. Costs borne by moving party or shared by mutual request. Factfinding - Permitted by statute; costs borne by moving party or shared by mutual request. Arbitration - Any party may request after 30 days or less of mediation; final offer by package; award due within 20 days; costs shared equally by the parties.

Impasse Procedure (Terms and Conditions): May be invoked by either party or on application of PERB; PERB may impose procedures of its choice.

Criteria for Procedure: Existing laws, rules, and regulations; ability of city to comply with award; public safety, health and welfare; need to maintain fair, reasonable, and consistent personnel policies.

Strike Policy: Prohibited; union may be decertified.

Note: Impasse resolution machinery includes, but is not limited to (1) mediation, (2) factfinding, (3) advisory arbitration, (4) request for injunction, (5) binding arbitration, (6) final best offer binding arbitration, and (7) final best offer binding arbitration item by item on noncompensation matters. Bargaining sessions shall not be open to the public; factfinding proceedings shall be open to the public; no compensation agreement can be negotiated for fewer than three years.

The District of Columbia Board of Education, in the absence of prohibiting legislation, elected to recognize unions (and in this case it was the teachers' union) for purposes of collective bargaining as early as 1967.

## DISTRICT OF COLUMBIA (Cont.)

Before the passage of the Comprehensive Merit Personnel Act (CMPA), the District of Columbia Board of Education (DCBE) experienced at least four teacher work stoppages. Since the passage of the CMPA, there have been no strikes. The CMPA provides for final and binding arbitration by a Board of Arbitration. A reasonable assumption, therefore, could be that final and binding arbitration by an impartial board of arbitrators is a deterrent to strike action and is regarded by the unions as a viable alternative to strike action. However, the school administration, while it recognizes the benefits of third party proceedings in the resolution of protracted interest arbitration, rejects the idea of relinquishing its policy making authority to an outside party.

To date, DCBE has been subject to one issue arbitration award - in compensation negotiations with the union representing their principals and supervisors - and this was in the Board's favor.

The DCBE did not support final and binding arbitration when the bill was being drafted and would like to see the law amended accordingly. They believe that policy making should be reserved to the employer or agency even if it means that they would have to deal with the threat of illegal strikes.

By law the DCBE is required to negotiate three year compensation agreements. The District of Columbia has three contracts covering educational employees: 12 month teachers; 9 month teachers; and 12 month school officers. Negotiations with these units vary. For example, negotiations with the teachers' union concluded five months after the expiration of the then current agreement, while negotiations with the officers' union are the subject of judicial proceeding. The most recent agreement with the teachers was negotiated, although six earlier negotiations resulted in a fair sprinkling of both negotiated and mediated settlements as well as factfinding recommendations. In the case of school officers, they did go to final and binding arbitration, and the award, favorable to the Board of Education, is being challenged in court by the school officers' union.

The DCBE has found that the collective bargaining law has facilitated the process by providing a structural framework which stipulates time lines for completing the various stages of the negotiation procedure. They have found that the mandated Personnel Salary and Benefits Committee has not been effective because of the lack of resources to collect compensation data in effect at the onset of negotiations. They have found that the CMPA provisions requiring separate impasse procedures for compensation and noncompensation items have been most cumbersome and, as a result, are in the process of recommending one impasse procedure for all unresolved items.

DISTRICT OF COLUMBIA (Cont.)

The District of Columbia Office of Labor Relations and Collective Bargaining is proposing to amend the provisions of the District of Columbia Merit Personnel Act to prohibit managers (i.e., authority to hire, transfer, suspend, promote, discharge, etc.) from the right to organize for collective bargaining purposes. They DCBE supports this proposed amendment unqualifiedly as it is contrary to the public interest to have principals in an educational setting functioning in an adversarial role. The DCBE does not support the concept of final and binding arbitration in interest arbitration. At the most, they would recommend advisory arbitration.

JAN 14 1992

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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### MEMORANDUM

TO: Members of the Legislature

FROM: Randy S. Welker *Randy*  
Legislative Auditor

DATE: January 10, 1992

RE: Release of Audits

In accordance with AS 24.20.311, the following audit reports were approved for release by the Legislative Budget and Audit Committee to the Legislature and the public on December 2, 1991.

- 10/44* Impact of the Public Employment Relations Act on Local School Districts, November 8, 1991. *Pool* *get 2* *copy for* *each LAC* *member*
- Department of Commerce and Economic Development, Department of Public Safety, Big Game Commercial Services Board, Consistency of Disciplinary Penalties, October 1, 1991.
- Department of Revenue, Permanent Fund Dividend Division, Relocation of the Dividend Review Unit, November 21, 1991.

Enclosed for your convenience is a short digest covering the audits listed. Should you desire copies of the completed reports, they are available through our office (465-3830).

Enclosures

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box W  
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November 21, 1991

SUMMARY OF: A Report on the Impact of the Public Employment Relations Act on Local School Districts, November 8, 1991.

### PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, we conducted a review of the effects of Senate Bill 15, Chapter 180, SLA 1990 on the State's local school districts. This legislation made public school employees subject to the provisions of the Public Employment Relations Act (PERA), AS 23.40, Article 2. Public school employees were classified as (a)(3) workers. Under PERA, class (a)(3) employees are given the legal right to strike; whereas, previously when public school employees were covered by Title 14, the Alaska Supreme Court determined that they had no legal right to strike.

### REPORT CONCLUSIONS

Our review evaluated the impact of PERA on a variety of aspects of labor relations between public school employees and the State's 54 school districts. Our report conclusions are based on the information that was gathered through interviews with education organization groups, school district administrators, and members of local unions representing both certificated and noncertificated staff. We also relied on the results of a questionnaire we mailed to 51 school districts. We had a response from 38 or 75% of districts polled.

In summary, we conclude the following:

1. The length of time involved in negotiations has generally remained unchanged.
2. Legal service costs at the district level generally have not been affected.
3. Use of professional negotiators has remained about the same.

4. The major difference involving PERA are the issues being negotiated. With the passage of PERA, there is a lot of uncertainty on the part of both administrators and unions about what can be negotiated in collective bargaining.

The National Education Association of Alaska (NEA-Ak) say that they have no plan to push for reconsideration of the issues dealt with by the courts under Title 14. However, individual local unions told us that they were raising previously non-negotiable items in their contract talks. These reports were substantiated by school districts in their survey responses. The most commonly addressed previously non-negotiable item being discussed is class size.

5. The role of the Alaska Labor Relations Agency (ALRA) has not been as timely and has been less extensive than originally envisioned. ALRA has had lesser of a role than anticipated with education-related issues due primarily to two factors. One, the agency's current organization was formed only nine days after the effective date of Chapter 180, SLA 1990. Two, with a change in administrations, there was a change in the make-up of the board which contributed to further adjudicatory delays.
6. ALRA has received favorable comments for its advisory role and mediation function. In spite of the frustration over delays in issuing decisions on unfair labor practices (ULPs), there have been many positive comments about ALRA. Union members and school district administrators who have contacted ALRA report that there is a considerable body of knowledge about labor relations at the agency. They have found ALRA to be a reliable, unbiased source of information. The comment was also frequently made that despite the length of delay at ALRA, it is still a faster alternative than going to court to get a decision. It is significant to note that ULPs can be, and are being, filed by school districts almost as often as by unions.
7. ALRA's 15 education cases involve union certifications, regulations, and ULPs. The report contains a table summarizing ALRA's 15 education related cases.

#### FINDINGS AND RECOMMENDATIONS

1. Public school employees should remain under the provisions of the Public Employment Relations Act (PERA), classified as (a)(3) employees.
2. \* If certificated public school employees remain subject to the provisions of PERA, the legislature should consider adopting legislation to clarify what issues are negotiable.

# Audit Report

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**IMPACT OF THE  
PUBLIC EMPLOYMENT RELATIONS ACT  
ON LOCAL SCHOOL DISTRICTS**

**November 8, 1991**

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Audit Control Number:

05-4419-92

**Division of Legislative Audit**

**P.O. Box W, Juneau, Alaska 99811-3300**

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The bipartisan committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$4 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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November 22, 1991

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### A Report on the Impact of the Public Employment Relations Act on Local School Districts

November 8, 1991

Audit Control Number

(05-4419-92)

The audit reports on the impact that Chapter 180, SLA 1990 has had on labor relations between school employees and the State's local school districts. This legislation made public school employees subject to the provisions of the Public Employment Relations Act (PERA), AS 23.40, Article 2. The legislation also classified public school employees as (a)(3) workers under AS 23.40.200 which gave the school employees the legal right to strike. This was a right that they had previously not been granted.

The audit was conducted in accordance with generally accepted government auditing standards. We recommend in the report that legislation be passed that will continue to classify public school employees as (a)(3) employees under AS 23.40.200 and that they continue to be subject to the other provisions of PERA. We also recommend that the legislature consider passing legislation to clearly establish what items are negotiable between school district administrators and their employees. A further statement of our audit approach is included in the Objectives, Scope, and Methodology section of this report.

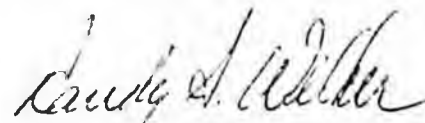
  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, we conducted a review of the effects of Chapter 180, SLA 1990 (Senate Bill 15) on the State's local school districts. This legislation made public school employees subject to the provisions of the Public Employment Relations Act (PERA), AS 23.40, Article 2. Public school employees were classified as (a)(3) workers. Under PERA, class (a)(3) employees are given the legal right to strike; whereas, previously when public school employees were covered by Title 14, the Alaska Supreme Court determined that they had no legal right to strike.

### Objectives

The objective of the review was to gain an understanding of the effects of Chapter 180, SLA 1990 on labor relations between public school employees and their respective school districts. Specific objectives of the review were to:

1. Determine how the legislation affected the length of time needed to reach a negotiated settlement compared to negotiations conducted under Title 14.
2. Determine if there has been an increase in the costs of attorneys or other legal costs attributable to negotiations under PERA.
3. Determine whether under PERA there has been an increased cost to school districts attributable to contract negotiations.
4. Compare the settlement process between school districts and employees under Title 14 with PERA.
5. Assess the involvement of the Alaska Labor Relations Agency (ALRA) with public school employees and school districts.
6. Review and report on the number and content of Unfair Labor Practice (ULP) filings submitted to ALRA.
7. Report on the effect of PERA classification on the general attitudes of both labor and management towards each other during the negotiations process.

### Scope

We focused our examination of education employee labor relations on the 54 school districts established in the State of Alaska. In our review, we placed additional emphasis on larger districts that have negotiated agreements or are currently negotiating under the provisions of PERA.

## Methodology

Our evaluation of the effects of Chapter 180, SLA 1990 involved review and analysis of the following documents:

1. Alaska Statute 14.20, Article 6. Negotiation and Mediation.
2. Alaska Statute 23.40, Article 2. Public Employment Relations Act.
3. Information pertaining to 1989's Senate Bill 15 which eventually was passed as Chapter 180, SLA 1990, an act "Including, for two years, public school employees in the Public Employment Relations Act as class (a)(3) employees entitled to a right to strike; requiring advisory arbitration before public school employees exercise the right to strike; and providing for an effective date."
4. Information pertaining to 1988's House Bill 170 which eventually was passed as Chapter 95, SLA 1988, an act "Extending collective bargaining rights to noncertificated school district employees."
5. The Alaska Supreme Court decision regarding *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977).
6. The Alaska Supreme Court decision regarding *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982).
7. Executive Order No. 77.
8. ALRA's 1990 Annual Report.
9. ALRA's ULP Case Management File.
10. ALRA's ULP Case Status Report.
11. Public Case Files at ALRA on filed education cases.

We also relied extensively on interviews with the following groups of individuals:

1. Organizations with an interest in education matters, which included the Alaska Association of School Boards (AASB), the Alaska Council of School Administrators (ACSA), and the National Education Association (NEA).
2. School district administrators, which included superintendents, personnel directors, and labor relations directors.

3. Presidents and members of negotiating teams for local teachers' unions.
4. Presidents and members of negotiating teams for local education support personnel unions.
5. ALRA's hearing examiner/administrator.

We prepared a questionnaire regarding the effects of placing public school employees under the provisions of PERA, which was mailed out to the presidents of local NEA-affiliated unions.

We also prepared a questionnaire regarding the effects of placing teachers under the provisions of PERA, which was mailed to the superintendents of 51 of the State's school districts. Because the questionnaire was designed based on their discussions, we did not mail the questionnaire to the superintendents of the three school districts we had interviewed in the survey phase of our audit work.

## ORGANIZATION AND FUNCTION

Title 14 of the Alaska Statutes sets out the duties and organization of the Department of Education. The statutes establish a seven-member State Board of Education appointed by the Governor, which sets the policy for education in Alaska's public schools. The State Board appoints the Commissioner of the Department of Education to implement and carry out its policy decisions.

There are 471 public schools administered by 54 school districts in Alaska. The school districts include 21 Regional Education Attendance Areas (REAs) and 33 City and Boroughs. The REAs are created in politically unorganized areas in rural Alaska and the city and borough school districts serve politically-organized areas of the State.

Alaska education highly emphasizes the importance of local control. Each school district has a locally elected school board that works within the state guidelines to set policies for their respective districts. In 1990, there were about 108,000 students attending public school between preschool and twelfth grade. These students were taught by about 6,400 public school teachers.

### Teachers and other school personnel were placed under Title 14 eighteen years apart

Certificated public school employees were given the right to bargain matters pertaining to their employment and the fulfillment of their professional duties in 1970. Chapter 18, SLA 1970 codified laws relating to school district labor relations under AS 14.20, Article 6 (commonly referred to as Title 14). Noncertificated public school employees were given the right to bargain matters of wages, hours, and other terms and conditions of employment in 1988 (Chapter 95, SLA 1988) when AS 14.20, Article 6 was amended.

In 1990 (Chapter 180, SLA 1990) public school employees were placed, for a two-year period, under the provisions of the Public Employment Relations Act (PERA) as class (a)(3) employees. An important aspect of labor relations under PERA is the role of the Alaska Labor Relations Agency (ALRA).

### ALRA acts as referee and adjudicator for public employee labor relations

The present organization of ALRA was created on July 1, 1990 after the governor issued and the legislature approved Executive Order 77. The order consolidated three separate agencies into ALRA responsible for administering PERA and the Railroad Corporation Act. ALRA is composed of a board of three members who serve staggered three-year terms. The governor appoints and the legislature confirms the board members. No more than two board members may be from a single political party and all must have backgrounds in labor relations. One member is drawn from management, one from labor, and one from the general public.

ALRA employs a small staff of hearing officers and examiners to process and review various allegations and petitions within its jurisdiction. Perhaps the most visible aspect of ALRA's responsibilities is its resolution and adjudication of unfair labor practices (ULP).

The ALRA's process for resolving ULPs is as follows:

1. Preliminary review of allegation. The party filing a charge lays the issue out to a hearing officer/investigator. The hearing officer fills out a checklist to determine that all requirements for a charge have been met. Requirements include that the charge is sworn, that there are written addresses for the parties to the charge, and that the charge is dated. The hearing officer has 14 days to conduct an investigation, but in actuality it has been taking longer than 14 days.
2. Determination of jurisdiction. If the facts alleged appear to be true, then ALRA must decide if it has jurisdiction to hear the case. If it is determined that ALRA has jurisdiction, the facts of the charge are again examined prior to contacting witnesses on both sides. The hearing officer then forwards the case to the hearing examiner with a recommendation to dismiss or hear the case.
3. Informal Mediation or Resolution. If it is decided to hear the case, the hearing examiner attempts to bring the two parties together to have them conciliate the issues that separate them.
4. Hearing is held. If conciliation is not possible, then a hearing is held. An audio tape and written testimony is kept of each hearing. The case may be heard either by the ALRA's hearing examiner or the ALRA board may choose to hear the case as a board. When the board chooses to not be present at the hearing, the hearing examiner prepares a proposed decision for the board. When comments are received back from each board member and an agreement is reached on the wording of the decision, it becomes final. The final decision is written and is appealable in court.

## BACKGROUND INFORMATION

### 1970 legislation first defined labor rights for teachers

In 1970, the terms and conditions by which teachers could collectively bargain were first established by the legislature in AS 14.20, Article 6. The statute sets out the negotiation and mediation processes to be followed for teachers (called certificated employees). Specifically, AS 14.20.550 requires that

*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.*

AS 14.20, Article 6 also set out procedures for school boards to follow in recognizing organizations to bargain on behalf of teachers (the statute refers to these organizations as bargaining agencies).

Noncertificated public school employees joined teachers in obtaining the right to bargain conditions of their employment in 1988, with the passage of Chapter 95, SLA 1988. This legislation amended AS 14.20, Article 6 to include noncertificated public school employees. Noncertificated employees were allowed to bargain matters of wages, hours, and other terms and conditions of employment.

### Title 14 sets out procedure for union recognition and certification

The statutes required school boards to conduct secret ballot elections to select union representation for teachers. The school boards had to hold an election if 25% of the district's teachers so requested. After such an election, the statute required school boards to recognize the union with the most votes.

### **A Short Glossary of Terms Used in This Report**

**Advisory arbitration:** An independent third party is called in to help settle a collective bargaining deadlock. After hearing both sides of the dispute, the arbitrator issues an advisory decision. Although the decision is not binding on either of the two sides, it often brings a realistic perspective to the negotiations.

**Binding arbitration:** As in advisory arbitration, a third party hears both sides, but then renders a decision that is binding on both parties.

**Mediation:** Involves third party intervention between conflicting parties. However, a mediator acts more informally than an arbitrator, often serving as a go-between for the two sides in order to promote reconciliation or compromise.

**Deadlock:** Point at which negotiations between two parties reaches a standstill. Often a mediator is brought in at this point to help the two sides to continue communicating and to mutually resolve differences.

**Impasse:** Point at which negotiations have broken down to the point that neither side to a dispute will concede on their issues. Impasse exists after a mediator and an advisory arbitrator have tried to resolve issues.

After recognition, school boards were required to negotiate within 20 days after receiving a written request from the union. Negotiation meetings were required to be open to the public unless both sides mutually agreed to have the meetings closed.

#### 1970 legislation also provided for mediation then arbitration

The statute required mediation, in a prescribed manner, of labor negotiations if and when the two sides reached a deadlock. The United States Federal Mediation and Conciliation Service would serve as the agency to resolve the dispute. The mediator would chair the mediation meetings and attempt to resolve the differences between the two sides. The mediator would prepare a written report, which would be issued to both sides. If either side rejected the report in its entirety, the mediator could make changes and prepare a final report. If either side rejected that final report, the governor could appoint an advisory arbitrator to hear the issues.

The statute also required that negotiated agreements provide for a grievance procedure. When setting up a grievance procedure, the statute required that binding arbitration be used as the final procedural step. The statute did maintain that it was not designed to abrogate school boards' rights to have final decision-making authority on policy.

#### 1972 legislation sets out public employee labor relations rights

Two years after teachers were given the right to bargain, public employees had their rights codified in AS 23.40, Article 2. The legislation, referred to as the Public Employment Relations Act (PERA), established three classes of public employees and gave specific bargaining rights to each class.

Class (a)(1) employees include police and fire protection employees and were designated as workers whose services cannot be suspended for any length of time. Class (a)(1) employees are not allowed to strike. However, if impasse is reached in negotiations even after mediation, then the bargaining parties must submit to binding arbitration.

Class (a)(2) employees, which include public school employees other than teachers or noncertificated employees, and public utility employees, were designated as workers whose services could be suspended for short intervals. Class (a)(2) employees are allowed to engage in a strike after unsuccessful mediation. But if either the employer or the State's labor relations agency can prove that the strike threatens health, safety, or the public welfare, they can apply for a court order to stop the strike. If the impasse continues after the suspended strike, the parties must submit to binding arbitration.

Class (a)(3) employees are those employees not specifically included in the two previous groups. Class (a)(3) employees are allowed to engage in a strike if a majority of the bargaining unit votes to do so by secret ballot.

### PERA rights differ significantly from Title 14 provisions

The rights conveyed to employees covered by PERA differed significantly from rights conveyed to certificated public school employees in Title 14. These rights, as listed below, differ in areas ranging from union selection to mandatory payment of dues:

1. The selection of unions (or bargaining agencies) - A major difference between PERA and Title 14 is in the area of union certification. PERA involves the Alaska Labor Relations Agency (ALRA) in selecting and certifying union representation rather than local school boards. If there is a request for union representation; ALRA, not the school board, conducts an election by secret ballot.
2. Mediation - Another difference is the process of mediation. Under PERA, when labor and management negotiating teams reach a deadlock, they can mutually select a mediator or request that ALRA appoint a mediator. The mediator tries to work with the two parties to resolve any open issues.
3. Unfair Labor Practices (ULPs) - PERA also conveys additional rights that were not mentioned in Title 14. One right under PERA is that neither the public employer or public employees may engage in ULPs. PERA defines what constitutes a ULP and assigns ALRA with the responsibility of investigating and adjudicating ULP charges. ALRA can try to help resolve ULP issues between the two parties informally or can go through a formal hearing process in accordance with the Administrative Procedures Act. ALRA has the power to issue and serve orders to stop prohibited practices or to apply for an injunction from superior court. In order to reach its decision on ULPs, ALRA has the power to subpoena witnesses. ALRA can dismiss unfounded ULP allegations.
4. Dues deduction - PERA also conveys the right to employees to bargain for an agency shop and to have union dues deducted from employees' payroll and conveyed to the representative union.

PERA was not automatically made applicable to all employers. Under the 1972 legislation, political subdivisions were allowed to "opt out" of PERA and substitute their own labor relations provisions. Some subdivisions, most notably the Municipality of Anchorage, opted out of PERA.

### Judicial decisions further define public school employees' rights

The requirements and application of Title 14 were further defined by two Alaska Supreme Court decisions. The first decision was in the case of the *Kenai Peninsula Borough School District v. Kenai Peninsula Education Association*, 572 P.2d 416 (Alaska 1977), commonly referred to as "Kenai '77" (see inset on page 11). In its decision, the court established what items were negotiable and what issues were non-negotiable in the collective bargaining process between teachers and school districts.

In the second case, *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982), referred to as the "Anchorage Strike Case" (see inset at right), the court ruled that teachers did not have the right to strike. These two court cases helped provide interpretation and guidance on items that had not been specifically addressed by the 1970 legislation.

#### Employees resent imposed contracts

Prior to 1990, public school employees were growing increasingly frustrated with their inability to bring closure or "finality" to the bargaining process. Under Title 14 and the accompanying court decisions, school districts had the right to impose a contract when collective bargaining impasse was reached. Public school employees had no formal means to respond to a contract imposition since they did not have a legal right to strike.

Despite not having the right to strike, teachers have been effective in using informal means to get imposed contracts lifted and have both sides return to the negotiations.

Informal means used by teachers have consisted of picketing their school district, filibustering school board meetings, taking votes to have an illegal strike, and working to their contract. When certificated staff work to their contract, they put in exactly their workday hours, but no more. This means that papers may not be graded and extracurricular activities for students may be curtailed. While effective, the informal means were long and drawn out and led to increasingly poor relations between the staff and school district.

#### **ALASKA SUPREME COURT RULES TEACHERS HAVE NO RIGHT TO STRIKE**

In 1979, school teachers in Anchorage went on strike. When they had not completed contract negotiations that year by the first day of school, they decided to walk out of classes. The strike lasted five days until the state superior court issued a temporary restraining order halting the walkout. The teachers then appealed the restraining order.

In the case, *Anchorage Education Association v. Anchorage School District*, 648 P.2d 993 (Alaska 1982) the supreme court ruled that the teachers did not have the legal right to strike. The court held that PERA did not pertain to teachers, even though AS 23.40.200 (d) lists public school employees as falling under its provisions.

The courts ruled that the statute referred to public school employees other than teachers, such as principals and counselors. The courts held that if the legislature had wanted PERA and its strike provisions to apply to teachers, it would have specifically so stated.

The decision went on to say, "No court has held that the common law permits public employees to legally strike in the absence of explicit statutory consent." Another reason cited by the court for their decision was the absence of an established oversight agency for the teachers, under the provisions of Title 14, which the court observed has historically contributed to the fairness of strikes.

Although the court admitted that teachers were not being treated the same as other public employees who were covered by PERA, it added that, *unequal treatment is permissible if it is substantially related to the legitimate purposes of the legislation.* The court observed in making its ruling that apparently the legislature felt Title 14 adequately provided cooperative labor relations for teachers.

## KENAI '77 CASE DEFINES NEGOTIABLE ITEMS

In the mid 1970s, the Kenai School district filed suit against the local teachers union. The district sought a ruling from the courts regarding what items were negotiable and what items fell within the district's powers and responsibilities to make final decisions on policies. The school board claimed that while employment-related issues were subject to bargaining, items that affected educational policy should not be subject to bargaining. The union contended that district policy was a proper subject for collective bargaining.

In ruling on the case in 1977 [Kenai Peninsula Borough School District v. Kenai Peninsula Education Association, 572 P.2d 416 (Alaska 1977)], the Alaska Supreme Court observed that under the general law concerning bargaining between labor unions and private employers, the "scope of negotiable issues is broad." However, the court said that when the public employment sector is concerned, "and particularly education, the question of what is properly bargainable is thrown into more doubt." The courts expressed concern that the autonomy of school boards could be gradually eroded by the collective bargaining process over time.

In deciding the case, the Alaska Supreme Court quoted a passage from an United States Supreme Court decision that stated,

*Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-house training, pupil-teacher ratios, length of schoolday, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views.*

The court held that while school boards are required to negotiate in good faith, school boards are not required or permitted to delegate decision-making to unions. The court stated, "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."

While observing that it would be helpful if the legislature would provide more specific guidance on what items may be negotiated (see Recommendation No. 2 in this report), the court made a decision of what collective bargaining items are negotiable and which are non-negotiable.

The court then went on to list more than 30 items that could be bargained by the union and then listed nine items that it felt were nonnegotiable policy items:

- 1) relief from non-professional chores,
- 2) class size and teacher load,
- 3) an Ombudsman for teachers,
- 4) evaluation of administrators,
- 5) use and number of Teacher Aides,
- 6) use and number of Para-Professionals,
- 7) pupil to teacher Ratio Formula,
- 8) use of specialists, and
- 9) the school year calendar.

### Binding arbitration considered one method of achieving finality

Public school employees lobbied the legislature for a number of years to have a formal means to bring finality to their contract negotiations. The method preferred by the

employees was binding arbitration (see glossary on page 7 for definition of binding arbitration).

School district administrators and school boards adamantly opposed binding arbitration. Administrators are opposed to binding arbitration because they felt it contributes to escalating personnel costs in other states where it is used. Administrators have also found that in many instances where they have gone to advisory arbitration, they have been the losers in the financial decision, suggesting they would fare no better if the arbitrator's rulings became binding.

Currently many school districts feel that they are constrained in what they can pay to employees because revenues are limited under the State's school foundation program. The legislature, to some extent, has recognized the validity of this viewpoint. In 1991, they provided 15 single-site school districts a total of \$2,131,200 to supplement funding the districts under the foundation program.

School districts who have a taxing authority have found taxpayers unwilling to support additional property or sales taxes. While funding has not increased in recent years, costs for school districts have been rising. Some of the costs are uncontrollable, particularly rapidly increasing costs of the Teacher's Retirement System. School districts are concerned that if their employees have binding arbitration as the means to finality, salaries and benefits will be set at amounts that are impossible to fund.

#### 1989's Senate Bill 15 attempts to resolve finality issue

In this background of public school employee frustration with the provisions of Title 14 and school district concerns about binding arbitration, Senate Bill 15 was introduced in January 1989. The original version of the bill made substantial changes to Title 14. It included giving the ALRA oversight responsibilities for union elections and a provision of "last-best-offer" mediated arbitration that would be binding on both parties. The bill was altered substantially as it moved through the Senate. The revisions continued as the bill moved from the Senate to the House for consideration. In one committee version of the bill, public school employees were placed under the provisions of PERA as class (a)(2) employees with a limited right to strike followed by binding arbitration.

To avoid having binding arbitration imposed, two organizations that represent school boards and school administrators, the Alaska Association of School Boards and the Alaska Council of School Administrators, respectively, agreed to drop their opposition to the bill. Their agreement was predicated on the bill containing a right to strike [or (a)(3) PERA status] for teachers and other school personnel rather than binding arbitration [(a)(1) or (a)(2) PERA status].

These two organizations and the National Education Association-Alaska (NEA-Ak), representing teachers and other school employees, reached an agreement on a bill that would classify public school employees under PERA as class (a)(3) employees. Such classification

would give them the right to strike. The House Finance Committee version of the bill reflected the agreement reached between the three interested organizations. However, the bill was changed when it reached the House Rules Committee.

House Rules Committee add a repeal date clause

The House Rules Committee passed out legislation that would make the reclassification of school district employees under PERA effective for only two years. At the end of the two-year period, the employees would again be subject to the provisions of Title 14 unless the legislature acted to extend their coverage under PERA. There was expressed intent for the two years to serve as a trial period. One representative stated that he viewed the "legislation as an experiment in finality in collective bargaining," and that he "hoped it would put a stop to the charges and counter charges seen on both sides of this issue." SB 15, as passed out of the House Rules Committee, placed public school employees under PERA as class (a)(3) workers for a two-year period.

SB 15 was then revised again on the floor of the House. An amendment, characterized as a "technical amendment" prohibited school districts from opting out of the bill. The amendment addressed concerns that since the original passage of PERA in 1972 allowed political subdivisions to "opt-out," school boards might argue that they should be entitled to the same option. The amendment was intended to clarify the intent of the legislature that the law would apply to all school districts. Senate Bill 15 as passed by the House and Senate, was signed into law by the Governor with an effective date of June 22, 1990.

## REPORT CONCLUSIONS

The Legislative Budget and Audit Committee directed that we review and report on the impact of the Public Employment Relations Act (PERA) on various aspects of labor relations between public school employees and the State's 54 school districts. We based our report conclusions on the information that we gathered through interviews with education organization groups, school district administrators and members of local unions representing both certificated and noncertificated staff. We also relied on the results of a questionnaire we mailed to 51 school districts. We received a response from 38 or 75% of districts polled.

### Length of time involved in negotiations has generally remained unchanged

There has been no significant consistent change in the length of time it takes to negotiate a contract under the provisions of PERA compared to Title 14. The issues being negotiated and the amount of available funding have more of an impact on the time spent bargaining than does the process used. Eighteen school districts responding to our survey reported that the length of time to negotiate a contract remained the same under PERA as it had under Title 14. Eleven districts reported that they either had not negotiated under PERA and therefore had no basis to form an opinion or that they simply had no opinion. Eight respondents felt that the length of time had increased while one respondent felt that the length of time had decreased.

Union members generally reported that the length of time to negotiate a contract had not changed much under PERA, but they felt that the productivity of negotiation meetings had been greatly enhanced. They attributed this change to the presence of the unfair labor practice (ULP) process which kept both union and management aware of the need to bargain honestly and in good faith.

### Legal service costs at the district level generally not affected

Local unions reported that they have not experienced an increase in legal costs, while 27 (71%) of school districts also report no increase in legal costs. Local unions typically have not hired attorneys to either negotiate on their behalf or to act in legal disputes. Instead, any local union which is a party to an ULP charge or court case is assessed \$10.00 for each local member and the state branch of the union pays the balance of the legal cost. The National Education Association (NEA), which represents most education employees in Alaska, report that they have had only a minimal increase in legal costs due to ULPs.

We found a total of \$245,000 had been spent by school districts on legal costs in response to PERA; \$120,000 paid by Alaska Association of School Boards (AASB) and \$125,000 paid by individual school districts. AASB stated that they had just hired a \$120,000 labor relations attorney to assist their member school boards in labor matters. Among the 11 (29%) school district respondents who reported an increase in legal costs, eight reported the increase was due to negotiations and six reported the increase was due to preparations for

a ULP. We contacted the three school districts who had gone all the way to the hearing process with a ULP. One school district indicated they had hired their own in-house attorney in response to a ULP. They have budgeted \$100,000 for that position. The second school district would not offer an exact estimate but said the amount was immaterial. The third school district stated they had spent about \$9,000 in preparation for a ULP. In addition to school districts who had legal costs as a result of a ULP, another school district stated they had paid \$16,000 for an attorney-prepared presentation for their school board and in preparation of upcoming negotiations.

The Alaska Labor Relations Agency (ALRA) also has costs that are attributable to the time they spend investigating and hearing ULP charges. Since they do not have a system to keep track of the time spent on each case, we chose to allocate ALRA's FY 91 expenditures based on the number of education-related cases handled compared to the total number of cases filed with the agency. Based on this method, ALRA has spent an estimated \$35,000 to investigate and hear education ULP cases.

#### Use of professional negotiators has remained about the same

We did not find any increase in costs to school districts attributable to hiring a professional contract negotiator. Of the 38 school districts responding to our survey, 8 (21%) hire either a consultant or an attorney to negotiate on their behalf. Of those, three had not yet negotiated a contract under PERA, and one reported that their negotiation costs remained the same. Of the remaining four who use a hired consultant or attorney, one had already reported an increase in costs under the legal services previously discussed. The other three districts reported no increase in their negotiator's fees.

We found no school district which had decided to use a hired negotiator when it had not used one previously, as a result of being placed under the provisions of PERA. Since there has been no significant change in the length of time it takes to negotiate a contract under PERA, it seems reasonable that the costs to negotiate those contracts would not alter significantly. Also, many negotiators receive a fixed fee for their services irrespective of the length of time it takes to reach settlement or the results of the settlement.

#### The major difference with PERA are the issues being negotiated

The major difference in negotiations and contract settlement under PERA is the nature of the issues being negotiated. With the passage of PERA, there is a lot of uncertainty on the part of both administrators and unions about what can be negotiated in collective bargaining. Both parties are unsure if the items listed as non-negotiable in the Kenai '77 court decision still apply.

Some feel that the court case is now void since it pertained to Title 14. The National Education Association of Alaska (NEA-Ak) say that they have no plan to push for reconsideration of the issues dealt with in the Kenai '77 decision. However, individual local unions told us that they were raising previously non-negotiable items in their contract talks.

These reports were substantiated by six school districts which in their survey response related that previously non-negotiable items were being raised during bargaining. The most commonly addressed non-negotiable item being discussed is class size. Currently, ALRA is considering the negotiability of a specific issue whose status is unclear.

According to information provided by NEA-Ak, 31 negotiated contracts have been settled under the provisions of PERA. This total includes contracts for both certificated staff and support staff. Nine additional contracts are currently being negotiated and ten districts have not negotiated under the provisions of PERA. As of this time under PERA, there has been no contracts imposed on unions by the school districts nor have there been any union strikes against the school districts. Of the 37 school districts who responded to our questionnaire, only 3 (8%) said that they had gone as far as advisory arbitration to reach contract settlement.

Only 5 (13%) of our school district respondents felt they had conceded more in negotiations under PERA than they would have conceded under Title 14. When we contacted those school districts, we found that the concessions were in the way of contract language and the union classification of employees rather than of a direct financial nature.

When polled, only one school district said that being under PERA was an improvement over being under Title 14. The one district that preferred PERA thought the law provided more clearly defined ground rules for labor relations. There were 31 (82%) school districts who felt that being under PERA was a disadvantage because of increased bureaucracy. They also did not like the potential for ULPs and strikes.

#### ALRA role has involved delay and has been less extensive than originally envisioned

While ALRA has had some involvement in school district labor relations, the amount of contact has been less than what was originally anticipated by the ALRA hearing examiner. The hearing examiner said that while she had expected up to 50% of ALRA cases to involve education issues, in actuality, less than 25% of ALRA's cases have been education-related.

According to ALRA's administrative hearing examiner, the small percentage of education cases can be attributed to two factors. One factor is that not every school district has negotiated a contract under PERA; therefore, ALRA has had jurisdiction over only some of the State's 54 school districts. A second factor is that both education unions and school districts are just learning about PERA and how ALRA is available to answer questions and hear issues.

There has been some frustration expressed by the education unions and school district administrators over the length of time involved in the ALRA hearing process. Two of the education cases that have advanced to the hearing process have taken as long as eight months to one year for a decision from the ALRA board.

ALRA EDUCATION-RELATED CASES AND ISSUES			
Type of Action	Date of Filing	Parties to Case	Status as of 10/7/91
Unfair Labor Practice	7/20/90	<i>Konai Peninsula Borough School District v. Kenai Peninsula Educational Support Association</i>	Closed
Unfair Labor Practice	7/25/90	<i>Lower Kuskokwim Education Association v. Lower Kuskokwim School District</i>	Closed
Unfair Labor Practice	7/25/90	<i>Classified Employees Association v. Matanuska-Susitna Borough School District</i>	Closed
Unfair Labor Practice	7/27/90	<i>Yukon Flats School District v. Yukon Flats Education Association</i>	Open
Unfair Labor Practice	8/14/90	<i>Kenai Peninsula Education Association v. Kenai Peninsula Borough School District</i>	Closed
Unfair Labor Practice	8/20/90	<i>Anchorage Education Association/NEA-Alaska v. Anchorage School District</i>	Suspended
Unfair Labor Practice	11/26/90	<i>Kashunamiut School District v. Chevak Education Association</i>	Dismissed
Unfair Labor Practice	2/25/91	<i>Mid-Kuskokwim Education Association v. Kuspuq School District</i>	Open
Unit Clarification	4/16/91	<i>Classified Employees Association/NEA-Alaska v. Matanuska-Susitna Borough School District</i>	Closed
Amended Clarification	5/2/91	<i>Matanuska Susitna Education Association and Matanuska Susitna Nurses Association Merger</i>	Requires Posting
Representation Petition	5/24/91	<i>In re IBEW, petition for Decertification and Certification (Fairbanks North Star Borough School District)</i>	Closed
Regulatory	5/29/91	<i>Anchorage Education Association</i>	Added to project list
Unit Clarification	6/26/91	<i>Yakutat Education Association/NEA-Alaska v. Yakutat City School District</i>	Open
Representation Petition	8/7/91	<i>Teamsters Local 959 v. Fairbanks North Star Borough School District</i>	Prehearing Upcoming
Representation Petition	8/21/91	<i>Alaska Vocational Technical Teachers' Association v. State of Alaska</i>	No Action Necessary

One reason for the delay in case resolution is that ALRA, as it is currently organized, was formed only nine days after the effective date of Chapter 180, SLA 1990. And there has been a turnover of board members since that time. Executive Order No. 77 combined the labor relations functions of three separate entities under the one agency -- ALRA. There was a period immediately following this when offices were being moved, furnished, and staffed. Shortly after the agency was settled in and ready to work effectively, a new administration replaced the board members with new appointees. Because of these changes, ALRA has not had full opportunity to become as effective as originally envisioned by the legislature when they placed school employees under PERA.

ALRA has received favorable comments for its advisory role and mediation function

In spite of the frustration over delays in issuing decisions on ULPs, there have been many positive comments about ALRA. Union members and school district administrators who have contacted ALRA report that there is a considerable body of knowledge about labor relations at the agency. They have found ALRA to be a reliable, unbiased source of information. The comment was also frequently made that despite the length of delay at ALRA it is still a faster alternative than going to court to get a decision. It is significant to note that ULPs can be, and are being, filed by school districts almost as often as by unions.

ALRA's 15 education cases involve union certifications, regulations, and ULPs

The table on the opposite page summarizes ALRA's 15 education related cases. Eight of the cases involve ULP allegations (the sidebar on the right explains the types of cases filed at ALRA other than ULPs). Only three of the ULP allegations went to a final hearing. The other five ULP allegations either have been resolved by mutual consent of the two parties, dismissed by ALRA, or suspended pending completion of contract grievance procedures.

The one case that has gone to the hearing process and has had a decision rendered was a case filed by the *Classified Employees Association v. Matanuska-Susitna Borough School District*. This case is of particular interest because the school district raised the question, "When the terms of a collective bargaining agreement that pre-dates application of the PERA conflicts with the Act, does the agreement or the Act govern?" In this particular instance, the collective bargaining agreement that was being questioned had been negotiated under Title 14 and not under PERA. The school district believed that any definitions of confidential employees in PERA would not apply since it had a preexisting agreement. The classified employees association felt that the PERA definition was applicable.

In their decision based on the hearing, ALRA said they did not perceive any conflict between PERA and the agreement; therefore, ALRA could reach a decision on the case without addressing the question of which would apply in the event there was a conflict. After ALRA decided that they could determine whether certain employees were designated as confidential, the issue was subsequently converted to a unit clarification petition by mutual consent of the two parties.

**ALRA HANDLES OTHER CASES  
BESIDES ULPs**

Union representation is the subject of three petitions filed at ALRA. Representation petitions are requests by unions that they be recognized as the bargaining agent for a group of employees.

Unit clarifications are the content of two of the cases filed at ALRA. Unit clarifications deal with which school district employees are considered confidential and therefore are prohibited from joining a union because of their access to management information.

Amendment to a unit certification is one case filed at ALRA. This case involves an agreement between two local unions and the school district regarding the merger of the two bargaining groups.

Regulatory request is one of the filed actions at ALRA. This case results from a petition from a local union requesting ALRA define in regulation their concept and approach of advisory arbitration.

ALRA is still considering two ULPs as of the date of this report. Both cases have gone to a hearing and a decision is pending; one case has been open for eight months and the other case has been open for a year and three months. The first case deals with a school district that refused to open negotiations with the certificated employees association when notice of intent to bargain was received one day late.

The second pending ALRA ULP case is of considerable interest because it deals with an item that was considered as negotiable in the "Kenai '77" court case. The school district filed the case against their local education association. The school district argued that while they have to bargain procedural requirements on voluntary transfers, they do not have to bargain substantive criteria. The education association responded that the wording in the contract that the district is questioning has been there for years and is clearly a permissible subject to bargain. When ALRA makes their decision on this case, it could be the first step in defining how the "Kenai '77" court case applies to PERA.

#### Unions feel that playing field is level, administrators prefer Title 14 process

The general attitude of public school employees is that while they would prefer to have binding arbitration as their means to finality, they find having the right to strike an acceptable alternative. Public school employees said there has been a perceptible change at the negotiating table now that they are under the provisions of PERA. There is a feeling that PERA has brought equality to the two sides and that more serious negotiations are now taking place. The phrase used most often by education personnel is that PERA "has levelled the playing field." Education personnel say that neither side has the upper hand in negotiations; school districts can impose and school personnel can strike. They also say that the knowledge of either side being able to file ULPs has made each side less likely to resort to "game-playing" in the negotiation process.

The general attitude of school district administrators is a great deal more mixed. On their responses to the questionnaire, only 3 (8%) of the administrators felt that it would become a common practice for teachers in their district to go on strike. Yet, 28 (74%) of the respondents said that they would prefer to have their employees return to Title 14, and 29 (76%) said they were opposed to having their employees remain in PERA with a class (a)(3) classification.

When questioned in person, the respondents had attitudes that were different than those reflected in the survey. Some school district administrators said that in public they will support the position expressed by the Commissioner of Education and by their individual school boards, but their personal feeling was different. Many school district administrators stated that it is acceptable to them if public school employees remain under the provisions of PERA as class (a)(3) employees. School administrators consistently remain strongly opposed to binding arbitration for their employees, but they find the right to strike an acceptable compromise.

## AUDITOR COMMENTS

### School district experience with PERA has been limited by two-year trial period

Because of the cyclical nature of school district contracts, not every district has had the opportunity to negotiate under the provisions of PERA during the eighteen months prior to the time of our review. Twenty percent of the school districts have not yet begun to negotiate a contract under the provisions of PERA.

Further, since the Alaska Labor Relations Agency (ALRA) was reorganized essentially at the same time that school district personnel came under PERA, that agency has not had the opportunity to fully demonstrate its effectiveness in overseeing school district labor relations. All unfair labor practice (ULP) charges must be settled before the two parties can proceed to the next step of the negotiation process. Since ULP charges for one district have been open for more than a year, contract negotiations have been stalled.

Despite the limited period involved, we believe PERA's impact on public school employees has been beneficial enough to warrant recommending that employees remain classified under AS 23.40.200 as (a)(3) employees (see Recommendation No. 1 in the Findings and Recommendation section of this report). However, if the legislature is still unsure about the benefits and impact of PERA, we would recommend extending the provisions of Chapter 180, SLA 1990 at least another three years and as many as six in order to provide more historical experience for setting public policy in this area.

### A right to strike does not necessarily lead to strikes

Even though there has been no strikes since the Anchorage School District court decision, we were told that provisions of Title 14 should not be considered as having prevented strikes. Individuals experienced with school district labor relations in both Alaska and other parts of the United States, reported that statutory prohibitions against strikes did not necessarily prevent them from happening. One example cited was the State of Michigan, where teachers often strike illegally despite statutory prohibitions.

In our interviews with school employees, we were told that in the past illegal strikes were often a very real possibility in some communities. In several instances where a school district had imposed a contract on their employees, votes had been conducted for illegal strikes. We were told by different employee unions that conducted strike votes, that from 70% to 100% of their members had voted for illegal strikes in the past. In these instances, strikes had been avoided when the school district administration heard about the results of the strike vote and agreed to return to negotiations.

Just as not having a right to strike does not prevent strikes, having that right does not necessarily cause strikes. Strikes are caused by high labor expectations and low funding available to management and administrators to meet those expectations. We were told by

many individuals from both labor and management that strikes occur when the collective bargaining system breaks down. Nobody makes the decision to go on strike, lightly. Everyone acknowledges that strikes are very disruptive to a community.

In small, rural communities employees fear for their personal safety if they were to go on strike. According to labor representatives, having the right to strike actually forces them to weigh how serious they are about items under negotiation. They must continually evaluate if the issues involved are important enough to them that they would rather strike than settle. As disruptive as all strikes are, illegal strikes are potentially even more disruptive. Most often illegal strikes take place in situations where there is no labor relations oversight agency such as the ALRA to moderate and oversee the situation.

Major benefit of PERA is not the right to strike, but in changes of attitude

Since public school employees are neither more nor less likely to go on strike by having the right to strike, then the real benefit of being under PERA is the perceived attitude change. All public school employees who spoke to us felt they had been patronized when negotiating under AS 14.20.500. In their view, both sides now recognize that there is an equality of power at the negotiating table. Public school employees feel that being under PERA offers additional benefits, such as oversight by ALRA, a more clearly defined negotiating process, and the right to bargain for a standard assessment of dues and fees.

Public school employees includes more than teachers

It is important to note that Chapter 180, SLA 1990 affected not just certificated staff but also non-certificated personnel. Non-certificated staff includes secretaries, bookkeepers, maintenance workers, and other public school employees. Prior to 1990, when the definition section of PERA excluded teachers from the provisions of PERA, it also was interpreted as excluding all non-certificated staff.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Public school employees should remain under the provisions of the Public Employment Relations Act (PERA), classified as (a)(3) employees.

Chapter 180, SLA 1990 contained an automatic repeal provision of two years. The effect of this repeal clause would be to again subject the labor relations for public school employees to the provisions of AS 14.20, Article 6, if no legislative action is taken.

In our view, the legislation should be enacted to lift the two-year repeal provision that was originally part of Chapter 180, SLA 1990. We further suggest that public school employees remain classified as (a)(3) employees, entitled to a right to strike after submitting to advisory arbitration, as provided for under PERA (AS 23.40).

Returning public school employees to the provisions of AS 14.20.550 would result in treating the largest public employment occupational group differently than all other public employees. In our view, this would be inconsistent with the legislature's previously established public policy in this area. AS 23.40.070 states in part that

*...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, ... 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.*

Other public employees covered by the provisions of PERA have the means to conclude negotiations through either binding arbitration or the right to strike. AS 14.20, Article 6, as currently written, does not provide public school employees such a method to achieve finality. Under this statute school districts had the right to, and did, impose employment contracts on teachers. In testimony before the Senate Labor and Commerce committee and in interviews with us, teachers reported that imposed contracts cause severe morale problems. In the past, imposed contracts have reduced wages and benefits and have pushed teachers to consider calling illegal strikes. Such circumstances do not suggest to us that AS 14.20, Article 6 promoted **harmonious and cooperative relations** between the school districts and its employees.

PERA has promoted harmonious and cooperative relations

As discussed in the Auditor Comments section, we recognize that two years has not provided an adequate trial period for all aspects of the legislation. However, we feel that it has been

a sufficient period to show that PERA has successfully worked for public school employees. Based on our interviews with school district personnel, administrators, and the responses to our survey, on balance we feel that the 1990 legislation did promote harmonious and cooperative relations between school district personnel and administration.

It was widely conceded that teachers have more bargaining power under PERA than under Title 14. However, few school districts that reached agreement under the statute's provisions reported that they felt they had made major financial concessions. Although almost all districts responded that they favored a return to Title 14, from our interviews we felt this was because the district's enjoyed the wide degree of discretion and latitude provided by the statute rather than out of concern that they were at a great negotiating disadvantage under PERA.

#### Presence of Alaska Labor Relations Agency also beneficial

In our view, another aspect of PERA that promotes both cooperative labor relations and good faith bargaining is the jurisdictional role of the Alaska Labor Relations Agency (ALRA). Although as we report in the Auditor Comments and Report Conclusion sections, ALRA has in some respects been slow to respond to the demands of the education community; we feel that its structure and approach are of great potential benefit. Placing public school employees back under the provisions of Title 14 as currently written, will eliminate this important benefit of PERA.

AS 14.20, Article 6 has not promoted harmony or cooperative relations between school districts and its employees. There had been a growing frustration on the part of employees, prior to the 1990 legislation, with the labor relation provisions of Title 14.

These employees had been lobbying the legislature for fifteen years for a means to resolve their dissatisfaction. PERA status and classification as (a)(3) employees under AS 23.40.200 does represent a compromise that, for the most part, has satisfied school district employees. We anticipate that if school district employees are returned to the labor relations provisions of AS 14.20, the lobbying effort will begin anew. In our view, the legislature made an important step towards settling public policy in this area with passage of Chapter 180, SLA 1990. To return public school employees to Title 14 after the two year trial period would not be in the State's best interests.

#### Laws applicable to school employees and other public employees should be more alike

In their ruling on the Anchorage strike case (see inset on page 10), a majority of the Alaska Supreme Court presumed that the legislature had a public policy purpose for classifying teachers differently than other public employees. The court felt that absence of an oversight agency, no specific mention of teachers in PERA, and a lack of a clear right to strike under Title 14 was indicative of the legislature's desire to treat teachers differently. However, in our view the placement of teachers in Title 14 compared with statutory declaration of policy contained in AS 23.40.070 is inconsistent. Besides the language of AS 23.40.070, we are

also persuaded by the observations of Chief Justice Rabinowitz, who wrote in a dissenting opinion in the Anchorage strike case that

*If public school teachers are so essential to society that they must be denied the right to strike then they should also be given the right to compulsory arbitration. On the other hand, if teachers are not so essential as the 'critical' employees then they should enjoy the same limited strike rights given to other 'semi-critical' public employees.*

In line with Chief Justice Rabinowitz's reasoning, we believe that retaining public school employees under PERA is in the best interests of the State and more consistent with previously established public policy in the area of public employee labor relations.

#### Recommendation No. 2

If certificated public school employees remain subject to the provisions of PERA, the legislature should consider adopting legislation to clarify what issues are negotiable.

When the legislature first developed labor relations statutes for teachers in 1970, it provided that nothing in the law 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 policy (AS 14.20.610). As observed by the courts in the Kenai '77 case, to a degree this statutory provision conflicts with the requirements of AS 14.20.550 that districts bargain with employees regarding their employment and professional duties.

Admittedly, in view of the emphasis that state public policy has traditionally placed on local control of schools, this conflict between employee rights and board prerogatives is difficult to resolve. As discussed on page 11, the Alaska Supreme Court made its distinctions about what they thought could be negotiated without abrogating the local board's legal authority over policy. However, the courts did so rather reluctantly, stating in their decision that *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.*

At the present time under PERA, there is even more uncertainty on the part of public school employees and administrators as to what issues are subject to negotiation. It is uncertain under PERA if the guidelines set down in the Kenai '77 case still apply. We suggest the legislature should assess this situation and consider legislation that sets out negotiable issues as compared to the policy prerogatives of local school boards. If the legislature does not address this issue, then it is most likely that future decisions regarding negotiable items will be made either by ALRA or again by the courts.

## APPENDIX A

### RESULTS OF SCHOOL DISTRICT SURVEY

Listed below are 20 questions on the topic of moving teachers into class (a)(3) of PERA. This classification change gave teachers the right-to-strike. This classification allows both teachers and school boards to file Unfair Labor Practice charges with the Alaska Labor Relations Agency. Another effect of this change is that the Alaska Labor Relations Agency certifies union elections.

Please circle the response to each question that reflects your school district's experience with Title 23. If you wish to offer additional comments, please feel free to attach a memorandum. Thank you for your time.

1. *Who negotiates on behalf of your school district?*

Superintendent	23
Personnel Director	4
Attorney	3
Hired Consultant	5
School Board Member(s)	17
Business Manager	3
School Principal	2
Labor Relations Director	1

2. *Do you feel that it costs more to negotiate a contract under Title 23 than it did to negotiate a contract under Title 14?*

Yes	13
No	12
No Opinion	13

3. *Under Title 23 as compared to Title 14 has the time involved in negotiating labor agreements with teachers:*

Not Applicable	11
Increased	8
Decreased	1
Remained the same	18

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY

(cont.)

4. *Do you feel that your district has conceded more in negotiations under Title 23 than it would have under Title 14?*

Not Applicable	16
Yes	5
No	17

5. *Do you feel that it will become a common practice for teachers in your district to go on strike?*

Yes	3
No	33
No Opinion	2

6. *Have you seen items that were non-bargainable under Title 14 now being addressed in negotiations under Title 23?*

Yes	6
No	19
No Opinion	13

7. *Have you filed an Unfair Labor Practice charge with the Alaska Labor Relations Agency against your teachers union?*

Yes	3
No	35

8. *Has the school district been charged with an Unfair Labor Practice?*

Yes	3
No	35

## APPENDIX A

### RESULTS OF SCHOOL DISTRICT SURVEY (cont.)

9. *Have you experienced any direct increase in legal services costs that was attributable to Title 23?*

Yes	11
No	27

10. *If your previous answer was "Yes", were the legal costs attributable to:*

Negotiations	8
Preparations for ULP charge	6

11. *Do you feel that the negotiations process is more clearly defined under Title 23 than under Title 14?*

Yes	2
No	32
No Opinion	4

12. *Under Title 14 did you ever impose a contract on your teachers?*

Yes	4
No	30
No Opinion	4

13. *Have you had any experience with the Alaska Labor Relations Agency certifying a union election?*

Yes	2
No	36

14. *Has being under Title 23 affected the way in which your administration deals with teachers?*

Yes	5
No	31
No Opinion	2

APPENDIX A

RESULTS OF SCHOOL DISTRICT SURVEY  
(cont.)

15. *Have you received any formal training about the provisions of Title 23?*

Yes	26
No	12

16. *Do you feel that being under Title 23 is an improvement over being under Title 14?*

Yes	1
No	32
No Opinion	5

17. *Have you gone to advisory arbitration under Title 23?*

Yes	3
No	35

18. *Would you prefer a return to Title 14 over remaining under Title 23?*

Yes	28
No	9
No Opinion	1

19. *Would you prefer that teachers be classed as (a)(1) or (a)(2) under Title 23, which would permit binding arbitration?*

Yes	2
No	33
No Opinion	3

20. *Would it be acceptable to you if the two-year repeal provision were lifted and teachers remained classified as (a)(3) employees under Title 23?*

Yes	8
No	29
No Opinion	3

## APPENDIX B

### RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY

Listed below are 20 questions on the topic of moving public school employees into class (a)(3) of Title 23. This classification change gave public school employees the right to strike. This classification allows both public school employees and school boards to file Unfair Labor Practice charges with the Alaska Labor Relations Agency. Another effect of this change is that the Alaska Labor Relations Agency certifies union elections.

Please circle the response to each question that reflects your local union's experience with Title 23. If you wish to offer additional comments, please feel free to attach a memorandum. Thank you for your time.

1. *What local union are you filling out this survey on behalf of?*

Responses 38

2. *Do you feel that it costs your union more to negotiate a contract under Title 23 than it did to negotiate a contract under Title 14?*

Yes 0  
No 34  
No Opinion 4

3. *Under Title 23 as compared to Title 14 has the time involved in negotiating labor agreements:*

Not Applicable 14  
Increased 1  
Decreased 15  
Remained the same 8

4. *Do you feel that your union has gained more in negotiated contract concessions under Title 23 than it would have under Title 14?*

Not Applicable 12  
Yes 11  
No 15

## APPENDIX B

### RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY (cont.)

5. *Do you feel that it will become a common practice for your union members to go on strike?*

Yes	1
No	37

6. *Do you believe that the decision reached in the Kenai court decision on what items are bargainable and nonbargainable still applies now that public school employees are under the provisions of Title 23 rather than the provisions of Title 14?*

Yes	18
No	8
No Opinion	12

7. *Under Title 23, has your union addressed any items at the negotiating table that would not have been addressed under Title 14?*

Yes	5
No	28
Not Applicable	5

8. *Have you filed an Unfair Labor Practice charge with the Alaska Labor Relations Agency against your school district?*

Yes	6
No	32

9. *Has your local union been charged with an Unfair Labor Practice by the school district?*

Yes	2
No	36

APPENDIX B

RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY  
(cont.)

10. *Have you experienced any direct increase in legal services costs that was attributable to Title 23?*

Yes	1
No	37

11. *Under Title 14 did your union ever take a vote to hold an illegal strike?*

Yes	5
No	33

12. *Do you feel that the negotiations process is more clearly defined under Title 23 than under Title 14?*

Yes	34
No	3
No Opinion	1

13. *Under Title 14 was a contract ever imposed on your union?*

Yes	16
No	22

14. *Has a contract been imposed on your union now that you are under the provisions of Title 23?*

Yes	0
No	38

15. *Have you had any experience with the Alaska Labor Relations Agency certifying a union election?*

Yes	3
No	35

## APPENDIX B

### RESULTS OF PUBLIC SCHOOL EMPLOYEES SURVEY (cont.)

16. *Have you received any formal training about the provisions of Title 23?*

Yes	24
No	14

17. *Do you feel that being under Title 23 is an improvement over being under Title 14?*

Yes	36
No	1
No Opinion	1

18. *Would you prefer a return to Title 14 over remaining under Title 23?*

Yes	0
No	37
No Opinion	1

19. *Would you prefer being classed as (a)(1) or (a)(2) under Title 23, which would permit binding arbitration?*

Yes	32
No	3
No Opinion	3

20. *Would it be acceptable to you if the two-year repeal provision were lifted and you remained classified as (a)(3) employees under Title 23?*

Yes	36
No	0
No Opinion	2

WALTER J. HICKEL, GOVERNOR

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DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

January 7, 1992

Randy S. Welker  
Division of Legislative Audit  
P.O. Box W  
Juneau, AK 99811-3300

RECEIVED  
JAN 7 1992

LEGISLATIVE AUDIT

RE: Audit Control Number 05-4419-92

Dear Mr. Welker:

This is a reply to your preliminary audit report, "Impact of the Public Employment Relations Act on Local School Districts", dated November 8, 1991. The Department has reviewed the findings and recommendations and provides the following response:

Recommendation No. 1

Public school employees should remain under the provisions of the Public Employment Relations Act (PERA), classified as (a)(3) employees.

The Department does not concur with Recommendation No. 1. Clear direction for negotiations between local school boards and unions was established by Title 14 and further defined by two Alaska Supreme Court decisions as referenced in the audit report. Placement of public school employees under PERA (AS23.40) has the effect of re-opening issues previously set by past practice and the court decisions. Having a right to strike does not necessarily cause strikes. Under any circumstance, teacher strikes are not good for students.

Local school boards have lost their authority to negotiate evenly with unions under Title 23, and prefer, as evidenced by your report, to negotiate under Title 14. Yet the "opt out" provision which applies to municipalities is denied to school districts. Teachers have achieved and maintained the highest average teacher salaries in the nation under Title 14, and as such have not suffered at the hands of local boards. According to the September 1991, Institute of Social and Economic Research (ISER) report to the legislature, "salaries for many Alaska teachers remain substantially higher than national averages". In fact, "The average fiscal year 1989 teacher's salary and benefits cost the school district \$50,000 in Anchorage, \$53,000 in Fairbanks, and \$58,000 in Juneau. Using ISER Anchorage/U.S. and McDowell's (1988) within Alaska differentials, these salaries are 22 percent, 24 percent, and 37 percent higher, respectively, than the U.S. average of \$36,000." The report does indicate that teacher salary schedules and total compensation varies throughout the State. However, due to local control, "the difference reflects to some extent different attitudes about encouraging teachers to remain and make a commitment to the community."

SB 15 should be allowed to sunset in order to return to a system which has overwhelming local support and interpretation and guidance established by the court.

Randy S. Welker  
Page 2  
January 7, 1992

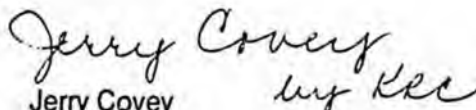
Recommendation No. 2

If certificated Public School Employees remain subject to the provisions of PERA, the Legislature should consider adopting legislation to clarify what issues are negotiable.

The Department does not concur with Recommendation No. 2. SB 15 should sunset due to the many uncertainties associated with public school employees remaining under PERA as (a)(3) employees.

Other provisions such as 2-year tenure, rehire, dismissal, non-retention, and teacher retirement which are related to total compensation and employment security are already provided for under Title 14 or have been granted by the Legislature.

Sincerely,

  
Jerry Covey  
Commissioner

cc: Duane Guiley, Director, EFSS  
Mike Maher, Special Assistant



# NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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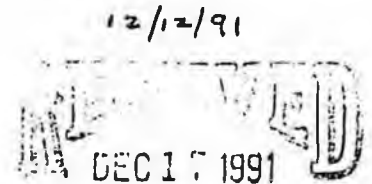
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Legislative Auditor  
Legislative Budget and Audit  
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LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for providing NEA-Alaska with a copy of the "CONFIDENTIAL" PRELIMINARY REPORT ON:

**"IMPACT OF THE PUBLIC EMPLOYMENT RELATIONS ACT ON LOCAL SCHOOL DISTRICTS."**

We find the Report extremely comprehensive, thorough, and precise in its attention to the detail which pertains to the various nuances of the public school district collective bargaining process. LB & A staff are to be commended for this energetic effort.

We are also gratified to learn that LB & A intends to supplement the Report with a survey of public school employee bargaining agent union presidents, similar to the survey of superintendents. The results of this particular survey will bring more balance and broadened insights.

It is appropriate to provide some brief comments on some components of the Report before responding to the specific recommendations.

- > On page 5, in the third paragraph, the number of public school teachers in Alaska is probably understated by 700+.
- > On page 7, it may be more accurate to say that impasse "may" exist after a mediator and advisory arbitrator have tried to resolve issues; and, is probably more accurately described when both parties acknowledge that they are unwilling to make further modification of their positions on the issues in dispute.
- > On page 8, in the second paragraph, seldom, if ever, was an actual written report produced by the mediator under AS 14.20.550.
- > On page 9, from our perspective, it is also appropriate to emphasize that PERA contains provision for finality through right to strike or binding arbitration as one of its significant differences from AS 14.20.550.
- > On page 10, the conclusion in the third paragraph is somewhat general in nature and while it may be true in some instances, it is certainly not accurate to all districts and/or each round of negotiations in a district.
- > On page 12, in the paragraph relative to school district taxing authority it may be more accurate to say there "may be a reluctance" rather than an "unwillingness" to support additional property taxes.

- Recent national polls in fact show that the general public is willing to pay more taxes for public schools and the recent school bond vote in Anchorage is indicative of their willingness to support the operation of schools.
- In the same paragraph, it should also be noted that teachers contribute 8.65% of their pay to the retirement system and that part of that cost increase is due to benefit improvements and the RIP.
- > On page 21, in the second paragraph, settlement of a pending ULP is not necessarily a prerequisite for continuation of negotiations. Naturally, resolution of ULPs is desirable for the successful potential of the negotiations process.
- > In the last paragraph on page 21 the reasons given for causing strikes are not the exclusive reasons although they are certainly contributing ones. The presence of unresolved ULPs and provocative and offensive conduct are frequently major contributing factors when employees strike.

RECOMMENDATION # 1: Public School Employees Should Remain Under the Provisions of the Public Employment Relations Act (PERA), Classified as (a) (3) Employees.

NEA-Alaska agrees with this recommendation and will be working aggressively in the legislative process for the removal of the "sunset" provision from the current legislation. We will continue training programs for our members in better understanding of their rights and responsibilities under the PERA. We will seek its full implementation on behalf of all employees covered by it with a minimum of conflict and confrontation.

We will continue to work closely with the ALRA to facilitate their procedures and seek resolutions to problems and conflicts at the earliest administrative levels.

We will seek the opportunity for joint training and seminars with AASB and ACSA on our common concerns under the PERA. Pilot efforts in this regard in Anchorage and Fairbanks in the fall of 1990 were moderately successful.

RECOMMENDATION # 2: If Certificated School Employees Remain Subject to the Provisions of the PERA, the Legislature Should Consider Adopting Legislation to Clarify What Issues are Negotiable.

It is desirable to have clarity on the scope of negotiations and which issues are mandatory or permissive topics of negotiations. NEA-Alaska is confident that the "Kenai" decision will continue to provide a general frame of reference for the parties. However, over the extended period of time both circumstances and dynamics of process change.

The diversity and the magnitude of differences in public education in Alaska school districts may in fact require some flexibility in the articulation of mandatory and permissive subjects of negotiations. The policy responsibilities of school boards as employers will continue to provide sufficient guidance on disputes pertaining to negotiability.

There are two examples from the Kenai decision which may serve to emphasize the need for some flexibility in definition over the extended period and because of changing circumstances.

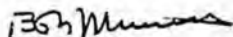
The Kenai decision makes class size a non-mandatory topic for negotiations because it is more in line with policy than with the economic interests of employees. However, increasing student enrollments, limited funding, reductions to student programs and services are just a few components which all contribute to significantly increasing class sizes, especially in urban areas. Administrators, school boards, employees and the general public are all interested in finding viable solutions to the problem.

Because a solution has not been found and because the problems continue to exacerbate it is becoming one of a "condition of employment" as well. Increasing class sizes increase negligence and liability potential, contribute to the possibility of increasing student discipline problems, mean more out of pocket employee expenses for classroom supplies and materials, contribute to an increased workload in homework, tests, preparation, and may constrain one's ability to achieve annual performance goals thereby contributing to possible negative annual evaluations. There is a point where the class size problem becomes a condition of employment and should be negotiable.

A similar scenario exists on the issue of employee workload, especially for rural secondary teachers who may be required to teach subjects out of their areas of certification. Again, adverse impacts on employee evaluations can be the direct result and a similar conclusion on negotiability is valid.

Thank you again for the opportunity to respond to the Preliminary Audit Report. I hope that our comments and recommendations are helpful to your process.

Respectfully submitted:



Bob Manners  
Executive Director

nca\121091BM\emr

hearing officer and holding that university acted improperly in changing minimum hours. *State v. P. Employment Rel.* A.D.2d 710, 457 1.

14. Persons entitled

Widow of an employee who has a valid contract with the state. *Secretary of State v. [redacted]* showed that a valid binding contract was in existence between union and state, that contract reaffirmed the basic right of all employees to work in a safe envi-

ronment, and that employee would have enjoyed an immediate direct benefit by not being subjected to a condition that took his life. *Civil Service Employees 1985*, 130 Misc.2d 833, 497

15. Injunction

Injunction may be enjoined from ordering police officers to submit to examination pending outcome of arbitration on improper practice with State Public Employment Relations Board. *Schenectady Police Benev. Ass'n v. City of Schenectady*, 1990, \_\_\_ A.D.2d \_\_\_, 651 N.Y.S.2d 613.

§ 210. Prohibition of strikes

[See main volume for text of 1, 2(a) to (d)]

(e) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation, the date or dates thereof and of his right to object to such determination pursuant to paragraph (g) of this subdivision; he shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

(f) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of such determination, the chief fiscal officer of the government involved shall deduct from the compensation of each such public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated this subdivision; such rate of pay to be computed as of the time of such violation. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his absence from work or other withholding of services on such day or days. In computing the aforesaid thirty to ninety day period of time following the determination of a violation pursuant to subdivision (d) of paragraph two of this section and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall be disregarded and not counted.

(g) Objections and restoration. Any employee determined to have violated this subdivision may object to such determination by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him pursuant to paragraph (e) of this subdivision) his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to

establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

[(h) Redesignated (g)]

[See main volume for text of 3 and 4]

(As amended L.1983, c. 254, §§ 2, 3.)

Historical and Statutory Notes

1983 Amendment. Subd. 2, par. (e). L.1983, c. 254, § 2, eff. June 8, 1983, in sentence beginning "The chief executive", substituted "(g)" for "(h)" following "pursuant to paragraph".

Subd. 2, par. (f). L.1983, c. 254, § 3, eff. June 8, 1983, redesignated former par. (g) as (f).

Subd. 2, par. (g). L.1983, c. 254, § 3, eff. June 8, 1983, redesignated former par. (h) as (g) and former par. (g) as (f), and, in par. (g) as redesignated, in sentence beginning "If the chief executive officer sustains" deleted "restore to the employee the tenure suspended pursuant to par. (f) of this subdivision, and" following "officer shall forthwith".

Subd. 2, par. (h). L.1983, c. 254, § 3, eff. June 8, 1983, redesignated former par. (h) as (g).

Strikes by Certain Transit Employees. Section 34 of L.1986, c. 929, eff. Dec. 31, 1986, and to expire as provided by section 45 of L.1986, c. 929 [set out as

a note under section 209], provided: "For the purposes of subdivision three of section two hundred ten of the civil service law and section seven hundred fifty-one of the judiciary law, any public employer as defined in subdivision five of section two hundred nine of the civil service law whose public employee organizations are covered by such subdivision shall be deemed to be a government exempt from certain provisions of article fourteen of the civil service law pursuant to section two hundred twelve of such law. Where an employee organization is determined by the court in the exercise of its authority under section seven hundred fifty-one of the judiciary law to have violated the provisions of subdivision one of section two hundred ten of the civil service law, the court shall apply the provisions set forth in subdivision three of such section two hundred ten."

West's McKinney's Forms

The following forms appear in Selected Consolidated Laws Forms under section 210 of the Civil Service Law:

- Order to Show Cause in Article 78 Proceeding to Annual Determination of Public Employment Relations Board that Union Condoned Illegal Strike, see Form 3.
- Petition in Article 78 Proceeding to Annual Determination of Public Employment Relations Board that Union Condoned Illegal Strike, see Form 4.

Law Review Commentaries

Interest arbitration: The alternative to the strike. Arvid Anderson and Loren A. Krause. 76 Fordham L.Rev. 163 (1987).

New directions for the regulation of public employee strikes. *Dripps*, 60 N.Y.U.L. Rev. 690 (1986).

## Notes of Decisions

## Law governing in

## 1. Constitutionality—Generally

Provision of the Taylor Law, section 200 et seq., by which the chief executive officer of the governmental unit involved is empowered to determine whether an illegal strike has occurred and which employees have participated, and which empowers the chief executive officer to evaluate objections to his determination, and provides for judicial review of his final determination, did not deny due process by making the chief executive officer the judge in his own case. *Wolkenstein v. Reville*, C.A.N.Y. 1982, 694 F.2d 95, certiorari denied 103 S.Ct. 2462, 462 U.S. 1105, 77 L.Ed.2d 1332.

## 1a. Law governing

Railway Labor Act, 46 U.S.C.A. § 151, preempted application of anti-strike provisions of this section to employees of rapid transit operating authority. *Staten Island Rapid Transit Operating Authority v. I.C.C.*, C.A.N.Y. 1983, 718 F.2d 633.

## 4. Employees within section

United Transp. Union v. Long Island R. Co., 634 F.2d 19 (main volume) reversed 102 S.Ct. 1349, 456 U.S. 678, 71 L.Ed.2d 647.

New York State Inspection, Sec. and Law Enforcement Emp., Dist. Council 82, AFSCME, AFL-CIO v. State, 448 N.Y.S.2d 524 (main volume) affirmed 67 N.Y.2d 505, 457 N.Y.S.2d 210, 448 N.E.2d 464.

## 5. Prohibition of strikes in general

Absent a finding by the superintendent of schools that a board member who is an employee in another district has engaged in a strike, there is no basis in either law or fact to conclude the board member has violated this section. *Matter of Cahill*, 1981, 20 Educ. Dept. Rep. 550.

## 6. Private right of action

Taylor Law, this article, does not give rise to private cause of action against the union and officials for damages arising out of illegal public employee strike. *Burns Jackson Miller Summit & Spitzer*

v. *Lindner*, 1983, 69 N.Y.2d 314, 464 N.Y.S.2d 712, 461 N.E.2d 469.

Economic loss suffered by law firms as result of illegal strike by public transit workers was not recoverable in private action for public nuisance because class included all members of public who were affected by strike. *Id.*

Interference with law firms' business as result of illegal strike by city transit employees was but incidental result of defendants' conduct and, although conduct was in violation of Taylor Law, there was no common-law cause of action for such incidental interference when legislature had, in establishing otherwise comprehensive labor plan for governance of public employer-employee relations, failed to do so. *Id.*

## 21. Generally

Where reliance on sudden concern for overly meticulous and abnormal observance of statutory commands is purely a subterfuge, incidental circumstances that continued performance of duties in normal manner might entail violation of statute does not legally preclude finding that there has been "strike." *McKinney's Civil Service Law § 209*, Local 262, Transport Workers Union of America, AFL-CIO v. New York State Public Employment Relations Bd., 1978, 68 N.Y.2d 354, 461 N.Y.S.2d 262, 448 N.E.2d 116.

## 26. Payroll deductions—Generally

School district which divided annual salary of teachers by 200 and doubled amount in order to arrive at amount deductible from compensation of teachers for each day teachers had violated Taylor Law by participating in strike complied with statute allowing deduction equal to twice daily rate of pay for each day or part thereof in which public employees participated in strike; teachers were required to work only 180 days during school year. *Barner v. Jeffersonville-Youngsville Cent. School Dist.*, 1986, 117 A.D.2d 162, 602 N.Y.S.2d 286.

Where there were more than 20 working school days in October 1980, during which month certain teachers engaged in an eight-day illegal strike, and these teachers all worked more than half of the required working days, Commissioner of Education properly determined

that Education Law § 8101 must be interpreted to require a deduction of 1/200 of a teacher's annual salary for each of the days of unauthorized absence as a penalty. *Board of Educ. of Gluckstown Cent. School Dist. v. Ambach*, 1983, 97 A.D.2d 188, 470 N.Y.S.2d 779, affirmed 53 N.Y.2d 780, 481 N.Y.S.2d 72, 470 N.E.2d 870.

## 29. — Thirty to ninety day period

For purposes of determining validity of payroll deductions made by school board as penalty for teachers' act of engaging in illegal strikes, measurement of 90 to 90-day time period within which payroll deductions could be taken did not commence until employees concerned had been notified individually of determination that they had committed a violation. *Plainview-Old Bethpage Congress of Teachers v. Board of Educ. of Plainview-Old Bethpage Central School Dist.*, 1984, 63 N.Y.2d 921, 483 N.Y.S.2d 677, 473 N.E.2d 29, reargument denied 64 N.Y.2d 765, 485 N.Y.S.2d 1031, 475 N.E.2d 472.

This section providing that statutory penalty imposed on public employees found to have participated in an illegal strike must be collected not earlier than 30 nor later than 90 days following date of a determination barred State from resuming payroll penalty deductions after expiration of 90-day period to adjust for inadvertent errors in calculating the amount of penalty originally deducted from employees' wages, since time requirements imposed by this section were related to the essence and substance of this section, and could not be viewed as merely directory. *King v. Carey*, 1982, 67 N.Y.2d 605, 467 N.Y.S.2d 216, 448 N.E.2d 464.

Where all challenged payroll deductions from school district employees' paychecks were made less than 90 days from sending of notification of strike determination, deductions were made in violation of this section governing payroll deductions for participation in illegal strikes. *Plainview-Old Bethpage Congress of Teachers v. Board of Educ. of Plainview-Old Bethpage Cent. School Dist.*, 1984, 100 A.D.2d 849, 474 N.Y.S.2d 93, affirmed 63 N.Y.2d 921, 483 N.Y.S.2d 677, 478 N.E.2d 29, reargument denied 64 N.Y.2d 765, 485 N.Y.S.2d 1031, 475 N.E.2d 472.

Time limitations contained in this section, stating that all penalties deducted from a striking employee's paycheck

shall be deducted no earlier than 30 days and no later than 90 days after the date of the determination that the strike was illegal, are mandatory rather than directory. *Swital v. Board of Educ. of Bay Shore Union Free School Dist.*, 1983, 99 A.D.2d 839, 461 N.Y.S.2d 62.

In regard to this section, stating that all penalties deducted by a public employer from a striking employee's paycheck shall be deducted no earlier than 30 days and no later than 90 days after the date of determination that the strike was illegal compliance with the 90 day statutory time period is measured as of the date paycheck is issued, not the date it is delivered. *Id.*

## 30. — Refunds

Where public employees who had twice their pay deducted from salary for each day they were presumed to have engaged in illegal strike by virtue of failure to work on date of strike were subsequently exonerated, none of amount deducted could be retained by state as an ordinary deduction for time not worked. *Buttler v. Carey*, 1983, 91 A.D.2d 1116, 458 N.Y.S.2d 338.

## 31. Objections to determination of chief executive officer—Generally

Determinations that teachers had violated Taylor Law by participating in strike were not invalid on ground that they had been prepared by district superintendent rather than by superintendent of schools, who was directed by statute to prepare such determinations. *Barner v. Jeffersonville-Youngsville Cent. School Dist.*, 1986, 117 A.D.2d 162, 602 N.Y.S.2d 285.

## 34. — Hearing and hearing officer

Both provisional and probationary employees, who were discharged or had their probationary periods extended for allegedly violating Taylor Law during labor dispute with public hospital, by participating in sickout, were entitled to hearing to determine whether each had a valid excuse for not being present on day in question, due to stigma of being labeled law breaker by participating in the sickout, even though provisional employees would not be automatically entitled to reinstatement. *New York City Health and Hospitals Corp. v. Local 2607 of Dist. Council 37 of American Federation of State, County and Mun. Employees*, 1988, 189 Misc.2d 876, 626 N.Y.S.2d 1002.

64. Determination of public employment relations board

Conclusion of Public Employment Relations Board that union's invoking reference to provisions of Vehicle and Traffic Law in order to justify drivers refusing to drive buses which violated requirements of law was merely pretext for concerted refusal of drivers to operate buses was amply supported in record. Local 252, Transport Workers Union of America, AFL-CIO v. New York State Public Employment Relations Bd., 1983, 58 N.Y.2d 354, 461 N.Y.S.2d 262, 448 N.E.2d 116.

Public Employment Relations Board's finding that strike occurred when bus drivers refused to drive buses which violated requirements of Vehicle and Traffic Law was supported by substantial evidence, including evidence that union was responsible for job action, job action was timed to occur immediately following expiration of interim impasse arrangement and only violations posing no imminent danger to safety of public or drivers were involved in charge. *Id.*

67. Forfeiture of dues checkoff privileges

Although there was no direct proof that union representing employees in

county's highway and infirmary departments encouraged strike, there was ample circumstantial evidence to provide a rational basis for determination that union encouraged, participated in and condoned the strike and was subject to penalty of one year forfeiture of dues checkoff privileges. *Egan v. Newman*, 1983, 92 A.D.2d 1007, 461 N.Y.S.2d 464.

Although this section under which Public Employment Relations Board imposed forfeiture of union dues checkoff privileges because union encouraged and condoned unlawful strike does not contain the word "potential" the Board is not limited to considering only actual impact of strike on public health, safety and welfare. *Id.*

Imposing forfeiture of dues checkoff privileges for one year for public employee's union's encouraging and condoning unlawful strike was not too severe a penalty where no regular highway maintenance duties were performed during the strike and infirmary was left grossly understaffed and only volunteer effort allowed it to provide minimal services and union officers directly participated in the strike even after restraining orders had been served. *Id.*

§ 211. Application for injunctive relief

Notes of Decisions

Collateral estoppel 14  
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1984, 62 N.Y.2d 11, 476 N.Y.S.2d 817, 464 N.E.2d 121, reargument denied 62 N.Y.2d 676, 479 N.Y.S.2d 1028, 463 N.E.2d 712.

8a. — Jurisdiction

Trial court had jurisdiction to punish association of civil service employees for contempt for failure to obey temporary restraining orders, where agents of the association were served with orders to show cause containing the restraining orders. *Rockland County v. Civil Service Employees Ass'n, Inc.*, 1984, 62 N.Y.2d 11, 476 N.Y.S.2d 817, 464 N.E.2d 121.

13. Res judicata

One union's opportunity to intervene in state court litigation in which it was determined that employees of rapid transit operating authority could be enjoined from striking did not bind union to state court judgment so as to preclude district court from determining that authority was "carrier" within meaning of Railway Labor Act, 45 U.S.C.A. § 161, and,

8. Contempt proceedings—Generally

In action against association of civil service employees in which county sought to punish the association for criminal contempt for failure to obey temporary restraining orders, evidence, including proof that the association was moving force behind the strike, provided all the financial support for the strike, assisted in the organization and managing of the strike, and proof that without the support and assistance of the association, the local organization, of which the association was the parent, could not have carried out work stoppage, was sufficient to establish beyond a reasonable doubt that the association itself participated in the strike in violation of the restraining orders. *Rockland County v. Civil Service Employees Ass'n, Inc.*,

thus, that its employees were exempt from anti-strike provisions of § 210. *Staten Island Rapid Transit Operating Authority v. I.C.C.*, C.A.N.Y.1983, 718 F.2d 539.

Prior state court adjudication that employees of rapid transit operating authority could be enjoined from striking under New York law did not preclude district court from determining that authority which operated strip of railroad was "carrier" within meaning of, 46 U.S.C.A. § 161, so that its employees were exempt from anti-strike provisions of § 210. *Staten Island Rapid Transit Operating Authority v. I.C.C.*, C.A.N.Y. 1983, 718 F.2d 539.

§ 212. Local government procedures

Historical and Statutory Notes

Strikes by Certain Transit Employees. See section 34 of L.1986, c. 929, set out on a note under section 210.

§ 213. Judicial review and enforcement

(a) Final orders of the board made pursuant to this article shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as hereinafter provided. Final orders shall be (i) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (ii) enforceable in a special proceeding, upon petition of such board, by the supreme court, provided, however, that an order of the board which determines whether an employer or employee is subject to this article may be deemed final when made.

[See main volume for text of (b) to (c)]

(As amended L.1989, c. 64, § 1.)

Historical and Statutory Notes

1989 Amendment. Subd. (a). L.1989, c. 64, § 1, substituted references to final orders for references to orders, and provided that orders which determine whether an employer or employee is subject to this article may be deemed final when made.

Effective Date of Amendment by L.1989, c. 64: Applicability. Section 2 of L.1989, c. 64, provided: "This act [amending this section] shall take effect immediately [April 21, 1989] and shall only apply to any proceeding commenced on or after such effective date."

Notes of Decisions

Final orders; 2a

Sanctions 14

2a. Final orders

Order of Public Employment Relations Board determining that State Insurance

Note 12

he wishes to form, join or participate in a union, agency shop proposal requiring under threat of dismissal a teacher to either join or pay dues to association was illegal and Board did not act in arbitrary manner when it held that board of education did not commit an unfair labor practice by refusing to negotiate agency shop proposal. *F. Helshy, 1977, 68 Misc.2d 9, 340 N.Y.S.2d 30, affirmed 42 A.2d 1009, 340 N.Y.S.2d 30.*

If a party to negotiations another with consulting and practice by failing to bargain obviously unconstitutional condition of employment, direct board to bargain on that item would be erroneous, and an order by the board directing party to bargain concerning obviously illegal item would be erroneous. *Id.*

13. Teachers, nontenured or probationary

Nontenured teacher may be refused tenure and dismissed without reason being given therefor, except where it has been established that dismissal was for constitutionally impermissible reasons or in violation of statutory prescription, including the Taylor Law. *City School Dist., Perkasie v. Perkasie Faculty Ass'n, 1977, 59 A.D.2d 729, 398 N.Y.S.2d 681.*

A public employer may terminate a probationary teacher for good reasons or bad reasons, so long as it

does not do so for an illegal reason, such as the exercise of rights protected by this article. *Sag Harbor Union Free School Dist. v. Helshy, 1976, 51 A.D.2d 377, 388 N.Y.S.2d 635.*

and to discipline without explanation a license for rights due of Chautauque v. Chautauque Teachers Ass'n, N.Y.S.2d 600.

nontenured based solely participation in teachers' association activities. *Port Jervis City School Dist. v. New York State Public Employment Relations, 1972, 68 Misc.2d 1065, 328 N.Y.S.2d 760.*

Board had jurisdiction to hear an improper practice charge that nontenured teacher's employment was terminated solely as retaliation for his activities as member of teachers' association. *Brentwood Bd. of Ed. v. Helshy, 1971, 68 Misc.2d 739, 327 N.Y.S.2d 881.*

Board lacked jurisdiction to consider dismissal of probationary teachers because of their activities in support of teachers' association. *Board of Ed. Central School Dist. No. 1 of Town of Grand Island, Erie County v. Helshy, 1970, 61 Misc.2d 473, 314 N.Y.S.2d 941.*

§ 210. Prohibition of strikes

1. No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike.

2. Violations and penalties; presumption; prohibition against consent to strike; determination; notice; probation; payroll deductions; objections; and restoration. (a) Violations and penalties. A public employee shall violate this subdivision by engaging in a strike or violating paragraph (c) of this subdivision and shall be liable as provided in this subdivision pursuant to the procedures contained herein. In addition, any public employee who violates subdivision one of this section may be

subject to removal or other disciplinary action provided by law for misconduct.

(b) Presumption. For purposes of this subdivision an employee who is absent from work without permission, or who abstains wholly or in part from the full performance of his duties in his normal manner without permission, on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates.

(c) Prohibition against consent to strike. No person exercising on behalf of any public employer any authority, supervision or direction over any public employee shall have the power to authorize, approve, condone or consent to a strike, or the engaging in a strike, by one or more public employees, and such person shall not authorize, approve, condone or consent to such strike or engagement.

(d) Determination. In the event that it appears that a violation of this subdivision may have occurred, the chief executive officer of the government involved shall, on the basis of such investigation and affidavits as he may deem appropriate, determine whether or not such violation has occurred and the date or dates of such violation. If the chief executive officer determines that such violation has occurred, he shall further determine, on the basis of such further investigation and affidavits as he may deem appropriate, the names of employees who committed such violation and the date or dates thereof. Such determination shall not be deemed to be final until the completion of the procedures provided for in this subdivision.

(e) Notice. The chief executive officer shall forthwith notify each employee that he has been found to have committed such violation the date or dates thereof and of his right to object to such determination pursuant to paragraph (h) of this subdivision; he shall also notify the chief fiscal officer of the names of all such employees and of the total number of days, or part thereof, on which it has been determined that such violation occurred. Notice to each employee shall be by personal service or by certified mail to his last address filed by him with his employer.

[(f). Repealed]

(g) Payroll deductions. Not earlier than thirty nor later than ninety days following the date of such determination, the chief fiscal officer of the government involved shall deduct from the compensation of each such public employee an amount equal

to twice his daily rate of pay for each day or part thereof that it was determined that he had violated this subdivision; such rate of pay to be computed as of the time of such violation. In computing such deduction, credit shall be allowed for amounts already withheld from such employee's compensation on account of his absence from work or other withholding of services on such day or days. In computing the aforesaid thirty to ninety day period of time following the termination of a violation pursuant to subdivision (d) of paragraph two of this section and where the employee's annual compensation is paid over a period of time which is less than fifty-two weeks, that period of time between the last day of the last payroll period of the employment term in which the violation occurred and the first day of the first payroll period of the next succeeding employment term shall be disregarded and not counted.

(h) *Objections and restoration.* Any employee determined to have violated this subdivision may object to such determination by filing with the chief executive officer, (within twenty days of the date on which notice was served or mailed to him pursuant to paragraph (e) of this subdivision) his sworn affidavit, supported by available documentary proof, containing a short and plain statement of the facts upon which he relies to show that such determination was incorrect. Such affidavit shall be subject to the penalties of perjury. If the chief executive officer shall determine that the affidavit and supporting proof establishes that the employee did not violate this subdivision, he shall sustain the objection. If the chief executive officer shall determine that the affidavit and supporting proof fails to establish that the employee did not violate this subdivision, he shall dismiss the objection and so notify the employee. If the chief executive officer shall determine that the affidavit and supporting proof raises a question of fact which, if resolved in favor of the employee, would establish that the employee did not violate this subdivision, he shall appoint a hearing officer to determine whether in fact the employee did violate this subdivision after a hearing at which such employee shall bear the burden of proof. If the hearing officer shall determine that the employee failed to establish that he did not violate this subdivision, the chief executive officer shall so notify the employee. If the chief executive officer sustains an objection or the hearing officer determines on a preponderance of the evidence that such employee did not violate this subdivision, the chief executive officer shall forthwith restore to the employee the tenure suspended pursuant to

paragraph (f) of this subdivision, and notify the chief fiscal officer who shall thereupon cease all further deductions and refund any deductions previously made pursuant to this subdivision. The determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules.

3. (a) An employee organization which is determined by the board to have violated the provisions of subdivision one of this section shall, in accordance with the provisions of this section, lose the rights granted pursuant to the provisions of paragraph (b) of subdivision one of section two hundred eight of this chapter.

(b) In the event that it appears that a violation of subdivision one of this section may have occurred, it shall be the duty of the chief executive officer of the public employer involved (i) forthwith to so notify the board and the chief legal officer of the government involved, and (ii) to provide the board and such chief legal officer with such facilities, assistance and data as will enable the board and such chief legal officer to carry out their duties under this section.

(c) In the event that it appears that a violation of subdivision one of this section may have occurred, the chief legal officer of the government involved, or the board on its own motion, shall forthwith institute proceedings before the board to determine whether such employee organization has violated the provisions of subdivision one of this section.

(d) Proceedings against an employee organization under this section shall be commenced by service upon it of a written notice, together with a copy of the charges. A copy of such notice and charges shall also be served, for their information, upon the appropriate government officials who recognize such employee organization and grant to it the rights accompanying such recognition. The employee organization shall have eight days within which to serve its written answer to such charges. The board's hearing shall be held promptly thereafter and at such hearing, the parties shall be permitted to be represented by counsel and to summon witnesses in their behalf. Compliance with the technical rules of evidence shall not be required.

(e) In determining whether an employee organization has violated subdivision one of this section, the board shall consider (i) whether the employee organization called the strike or tried to prevent it, and (ii) whether the employee organization made or was making good faith efforts to terminate the strike.

(f) If the board determines that an employee organization has violated the provisions of subdivision one of this section, the board shall order forfeiture of the rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this chapter, for such specified period of time as the board shall determine, or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, without a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation; provided, however, that where a fine imposed on an employee organization pursuant to subdivision two of section seven hundred fifty-one of the judiciary law remains wholly or partly unpaid, after the exhaustion of the cash and securities of the employee organization, the board shall direct that, notwithstanding such forfeiture, such membership dues deduction shall be continued to the extent necessary to pay such fine and such public employer shall transmit such moneys to the court. In fixing the duration of the forfeiture, the board shall consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization; and the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures provided in section two hundred nine and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization. In the event membership dues are collected by the public employer as provided in paragraph (b) of subdivision one of section two hundred eight of this chapter, the books and records of such public employer shall be prima facie evidence of the amount so collected.

(g) An employee organization whose rights granted pursuant to the provisions of paragraph (b) of subdivision one, and subdivision three of section two hundred eight of this article have

been ordered forfeited pursuant to this section may be granted such rights after the termination of such forfeiture only after complying with the provisions of clause (b) of subdivision three of section two hundred seven of this article.

(h) No compensation shall be paid by a public employer to a public employee with respect to any day or part thereof when such employee is engaged in a strike against such employer. The chief fiscal officer of the government involved shall withhold such compensation upon receipt of the notice provided by paragraph (e) of subdivision two of section two hundred ten; notwithstanding the failure to have received such notice, no public employee or officer having knowledge that such employee has so engaged in such a strike shall deliver or caused<sup>1</sup> to be delivered to such employee any cash, check or payment which, in whole or in part, represents such compensation.

4. Within sixty days of the termination of a strike, the chief executive officer of the government involved shall prepare and make public a report in writing, which shall contain the following information: (a) the circumstances surrounding the commencement of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating or encouraging the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee.

Added L.1967, c. 392, § 2; amended L.1969, c. 24, § 8; L.1969, c. 492, § 1; L.1971, c. 503, §§ 10-14; L.1977, c. 677, § 4; L.1978, c. 465, § 1.

<sup>1</sup> So in original. Probably should read "cause".

Historical Note

1978 Amendment. Subd. 2, par. (f). L.1978, c. 465, § 1, eff. July 5, 1978, repealed par. (f), which related to a probationary period for certain public employees who have been determined to have violated this subdivision.

1977 Amendment. Subd. 3, pars. (f) and (g). L.1977, c. 677, § 4, inserted "and subdivision three" in pars. (f) and (g).

1971 Amendment. Subd. 2. L.1971, c. 503, § 10, eff. June 17, 1971, in par. (c), inserted "and of his right to object to such determination pursuant to paragraph (h) of this subdivision"

following "the date or dates thereof" and, in par. (g), added sentence beginning "In computing the aforesaid."

Subd. 3, par. (a). L.1971, c. 503, § 11, eff. June 17, 1971, added "of subdivision one" following "of paragraph (b)."

Subd. 3, par. (f). L.1971, c. 503, § 12, eff. June 17, 1971, inserted "of subdivision one" following "of paragraph (b)" in two instances.

Subd. 3, par. (g). L.1971, c. 503, § 12, eff. June 17, 1971, inserted "of subdivision one" following "of paragraph (b)."

Subd. 4. L.1971, c. 503, § 14, eff. June 17, 1971, renumbered former subd. 5 as 4. Former subd. 4 was renumbered section 217.

Subd. 5. L.1971, c. 503, § 14, eff. June 17, 1971, renumbered subd. 6 as 4.

1969 Amendments. Subd. 1. L. 1969, c. 24, § 8, eff. Apr. 1, 1969, inserted "public employee or."

Subd. 2. L.1969, c. 392, § 1, eff. May 10, 1969, in par. (f), added provision relating to the effect of probation with regard to teachers and others subject to the education law.

Subd. 3, pars. (b) and (c). L.1969, c. 24, § 8, eff. Apr. 1, 1969, substituted "that it appears that" for "of" and inserted "may have occurred" in both pars.

Subd. 3, par. (e). L.1969, c. 24, § 8, eff. Apr. 1, 1969, deleted clause (iii) relating to probation by the public employer.

Subd. 3, par. (f). L.1969, c. 24, § 8, eff. Apr. 1, 1969, among other changes substituted "or, in the discretion of the board, for an indefinite period of time subject to restoration upon application, with notice to all interested parties, supported by proof of good faith compliance with the requirements of subdivision one of this section since the date of such violation, such proof to include, for example, the successful negotiation, with-

out a violation of subdivision one of this section, of a contract covering the employees in the unit affected by such violation" for "but in no event to exceed eighteen months", and added sentences beginning "In fixing the duration of the forfeiture", "In determining the financial resources", and "In the event membership dues."

Subd. 3, par. (g). L.1969, c. 24, § 8, eff. Apr. 1, 1969, substituted "article" for "chapter" where first appearing.

Subd. 3, par. (h). L.1969, c. 24, § 8, eff. Apr. 1, 1969, added par. (h).

Subd. 5. L.1969, c. 24, § 8, eff. Apr. 1, 1969, added subd. 5 (subsequently renumbered 4).

Effective Date of 1971 Amendment; Preservation of Existing Benefits or Rights. See note under section 208.

Effective Date of Section. Section 1 of L.1967, c. 392, provided that this section was effective Sept. 1, 1967.

Termination of Probation or Tenure Penalty. L.1978, c. 466, § 2, eff. July 5, 1978, provided: "Notwithstanding any inconsistent provision of law, the probationary period of any public employee or loss of tenure imposed pursuant to the provisions of former paragraph (f) of subdivision two of section two hundred ten of the civil service law, repealed by this act (L.1978, c. 466), is hereby terminated."

Cross References

Contempt by employer organization, punishment. see Judiciary Law § 761.

New York Codes, Rules and Regulations

Strikes against public employers, see 4 NYCRR Part 206, set out in the Appendix to this book.

Forms

The following forms appear in West's McKinney's Selected Consolidated Laws Forms under section 210 of the Civil Service Law:

Order to Show Cause in Article 78 Proceeding to Annul Determination that Employee of School District Had Participated in Strike and for Refund of Money Deducted from Salary Pursuant to Civil Service Law, see Form 1.

Petition in Article 78 Proceeding to Annul Determination that Employee of School District Had Participated in Strike and for Refund of Money Deducted from Salary Pursuant to Civil Service Law, see Form 2.

Law Review Commentaries

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I. GENERALLY

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1. Constitutionality—Generally

Withholding of paychecks under this article after striking teachers returned to work following illegal strike did not constitute involuntary servitude under U.S.C.A.Const. Amend. 13. *Tepper v. Galloway*, D.C.N.Y.1979, 491 F.Supp. 1211.

Public school teachers failed to establish that this article's procedures were unconstitutional based upon bias on the part of chief executive officer arising out of alleged pecuniary interest. *Id.*

Public Employment Relations Board's opinion on the overall fairness or effectiveness of the Taylor Law, which prohibits strikes by public employees is a policy decision not specifically relevant to the question of the constitutionality of a provision of the Law. *Civil Service Employees Ass'n v. Helsby*, D.C.N.Y.1977, 439 F. Supp. 1272.

This section's prohibition against strikes by public employees or their representative organizations is not violative of the equal protection clause of either the United States or the New York State Constitution. *City of New York v. De Lury*, 1969, 23 N.Y.2d 176, 295 N.Y.S.2d 901, 213 N.E.2d 128, application denied 23 N.Y.2d 700, 296 N.Y.S.2d 658, 244 N.E.2d 472, appeal dismissed 89 S.Ct. 1223, 394 U.S. 455, 22 L.Ed.2d 414, rehearing denied 90 S.Ct. 37, 396 U.S. 872, 24 L.Ed.2d 120.

This article mandating that public employees shall not strike and that labor organizations representing them shall not cause or encourage a strike is reasonably designed to effectuate a valid state policy in an area where it has authority to act, and does not offend due process requirements of State or Federal Constitution. *Id.*

Subdivision 1 of this section mandating that public employees shall not strike and that labor organizations representing them shall not cause or encourage a strike is reasonably designed to effectuate a valid state policy in an area where it has authority to act, and does not offend due process requirements of State or Federal Constitution. *Id.*

Former section 108 prohibiting strikes by public employees was not unconstitutional as a bill of attainder or as imposing excessive fines and inflicting cruel and unusual punishment. *Di Maggio v. Brown*, 1967, 19 N.Y.2d 283, 279 N.Y.S.2d 191, 225 N.E.2d 871.

More nonenforcement of former section 108 was insufficient to disclose denial of equal protection, absent showing that provisions of said section were enforced as against ferocious officers, and not enforced as to others over 20-year period of this section, pursuant to an intentional and invidious plan of discrimination by Department of Marine and Aviation or by City of New York. *Id.*

This section prohibiting strikes by public employees does not violate Constitutions of either New York or the United States. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton, et al., Saratoga County*, 1972, 40 A.D.2d 71, 37 N.Y.S.2d 700.

This section prohibiting public employees' strikes and imposing administrative sanctions in form of salary

Note 2

reductions to constitutional. *Lawson v. Board of Ed. of Vestal Central School Dist. No. 1, Town of Vestal*, 1970, 35 A.D.2d 878, 315 N.Y.S.2d 877, appeal dismissed 92 S.Ct. 230, 404 U.S. 907, 30 L.Ed.2d 100.

This section forbidding strikes by public employees did not violate due process on ground that Board acted as both prosecutor and hearing officer. *Buffalo Teachers' Federation, Inc. v. Helsby*, 1970, 35 A.D.2d 318, 316 N.Y.S.2d 125.

Prohibition against strikes by public employees or employee organizations does not violate equal protection. *Id.*

Provisions of this section setting forth procedures applicable to strikes by public employees and employee organizations were not overbroad and vague. *Id.*

Public employees may be prohibited from striking without violating either State or Federal Constitutions. *Case v. Kady*, 1971, 37 Misc.2d 703, 321 N.Y.S.2d 712, affirmed 38 A.D.2d 691, 328 N.Y.S.2d 615.

Penalty provisions of this section prohibiting public employees or employer organizations from engaging in a strike does not violate either New York Constitution or United States Constitution. *Chillo v. Board of Ed. of City School Dist. of City of Niagara Falls*, 1971, 66 Misc.2d 749, 321 N.Y.S.2d 952.

This section prohibiting strikes by public employees is constitutional. *Board of Ed. of City of New York v. Shanker*, 1967, 64 Misc.2d 611, 293 N.Y.S.2d 432, affirmed 29 A.D.2d 634, 296 N.Y.S.2d 453.

Former section 108 prohibiting strikes by public employees was constitutional as applied to municipal welfare department employees. *City of New York v. Social Service Emp. Union*, 1965, 48 Misc.2d 120, 266 N.Y.S.2d 277, affirmed 25 A.D.2d 653, 271 N.Y.S.2d 585, motion granted 18 N.Y.2d 675, 273 N.Y.S.2d 421, 219 N.E.2d 871.

Subdivision 2 of former section 22-a, which prohibited public em-

ployees including those in service of any authority, from striking was constitutional as applied to rapid transit motormen as well as other public employees. *New York City Transit Authority v. Jones*, 1969, 2 Misc.2d 733, 154 N.Y.S.2d 269, affirmed 3 A.D.2d 710, 161 N.Y.S.2d 501.

2. — Forfeiture of dues checkoff

This section providing that Public Employment Relations Board was required to order forfeiture of dues checkoff privilege for teachers federations found to have engaged in unauthorized strikes but granting discretion to local boards to impose forfeiture penalty was not unconstitutional as violation of U.S.C.A.Const. Amend. 14 where this section had rational basis in fostering harmonious labor relations, procedures employed by boards were substantially equivalent, and penalty was not applied in discriminatory fashion. *Buffalo Teachers Federation, Inc. v. Helsby*, C.A.N.Y.1982, 676 F.2d 28.

Issues raised in challenge to the dues check-off suspension procedures provided by this article were within the sphere of economic affairs were a "rational basis" is sufficient to uphold this section. *Civil Service Employees Ass'n v. Helsby*, D.C.N.Y. 1977, 439 F.Supp. 1272.

Sanction, for violation by teachers collective bargaining representative of this section prohibiting strikes by public employees, of suspending the representative's right to dues check-off for six months, while at same time ordering school district to cease and desist from refusing to negotiate in good faith with the representative, did not constitute denial of equal protection of the laws on theory harsher penalty was imposed upon the representative than upon the school district which had also been responsible for the strike, in view of fact that sanctions imposed could reflect difference between law violations by public employer and law violations by private employee organization. *Greenburgh No. 11 Federation of Teachers, Local 1552, Am. Federation of Teachers, AFL-CIO v. Hel-*

Note 2

by, 1973, 41 A.D.2d 320, 342 N.Y.S.2d 698.

J. Construction

Arbitration of dispute concerning deduction of extracurricular activity pay as part of penalty following teachers' strike to determine whether after-school activities had been struck and had in fact been suspended during strike would violate public policy, since no-strike provisions of this section are mandatory and exclusive, at least as respects administrative discipline. *Mincola Union Free School Dist. v. Mincola Teachers Ass'n*, 1978, 63 A.D.2d 1065, 495 N.Y.S.2d 603.

Where literal reading of this section would give result plainly unintended by legislature, construction which would give effect to legislative intent and would not be unjust or inequitable upon petitioners would be adopted. *Wilson v. Board of Ed., Union Free School Dist. No. 23, Town of Oyster Bay, Nassau County*, 1972, 30 A.D.2d 965, 333 N.Y.S.2d 898.

This section providing time period within which payroll deductions are to be made following date of determination of violation of no-strike law is to be given a strict construction. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton et al., Saratoga County*, 1971, 66 Misc.2d 631, 321 N.Y.S.2d 905, modified on other grounds 40 A.D.2d 71, 337 N.Y.S.2d 706.

4. Employees within section

Employees of state-owned rail common carrier serving five counties within metropolitan New York City area were subject to provision of this section prohibiting strikes by public employees rather than provision in the Railway Labor Act, 45 U.S.C.A. § 151 et seq., allowing for such self-help since operation of the service was an "integral governmental function" and federal interest in operation of the service, which derived a small percentage of its revenue from interchange of freight with interstate rail carriers, was not "demonstrably greater" than that of the state.

*United Transp. Union v. Long Island R. Co.*, C.A.N.Y.1980, 631 F.2d 10.

This section which prohibits strikes by public employees is applicable to nonjudicial employees of unified court system. *McFoy v. Helsby*, 1960, 31 A.D.2d 262, 311 N.Y.S.2d 60, affirmed 28 N.Y.2d 790, 321 N.Y.S.2d 902, 270 N.E.2d 722.

County employees receiving benefits from county employment and training administration, a separate agency of county government which is federally funded, were subject to this section prohibiting strikes. *Mronella v. Mills*, 1977, 89 Misc.2d 1062, 393 N.Y.S.2d 162.

5. Prohibition of strikes in general

The state, in governing its internal affairs, has power to prohibit any strike if the prohibition is reasonably calculated to achieve a valid state policy in an area which is open to state regulation. *City of New York v. De Lory*, 1968, 29 N.Y.2d 175, 295 N.Y.S.2d 961, 213 N.E.2d 128, application denied 23 N.Y.2d 755, 298 N.Y.S.2d 958, 244 N.E.2d 472, appeal dismissed 89 S.Ct. 1223, 391 U.S. 455, 22 L.Ed.2d 413, rehearing denied 89 S.Ct. 37, 396 U.S. 872, 24 L.Ed.2d 126.

This article, in prohibiting striking, imposes a concomitant obligation on part of employer to bargain in good faith. *City of New York v. Viazul*, 1975, 49 A.D.2d 163, 373 N.Y.S.2d 577.

Inasmuch as strike of union representing employees of public authority was illegal, it was not relevant whether union president complied with bylaws in seeking to terminate it; furthermore, even if president violated bylaws, court could not direct that strike lawfully continue. *Blair v. Local 100 of Transport Workers Union of America, IBM*, 196 Misc.2d 1018, 416 N.Y.S.2d 912.

Proscriptions of this article apply to all public employees (respective of whether they render "critical" services). *New York City Off-Track Betting Corp. v. Local 2021 of Dist. Council 37, Am. Federation of State, County and Municipal Emp.*

("ASMICE"), *AFI-CIO*, 1970, 69 Misc.2d 606, 410 N.Y.S.2d 974.

Failure of board of education and city to bargain with teachers in good faith would not give teachers a right to strike in violation of this section. *Kuntz v. Newburgh Teachers Ass'n*, 1973, 75 Misc.2d 360, 347 N.Y.S.2d 605.

This section forbidding concerted work stoppages could not be intentionally violated, legally or morally, on the theory that it was being "tested." *Id.*

Strike by public employees is illegal even in absence of statute prohibiting the same. *Cano v. Kata*, 1971, 67 Misc.2d 793, 321 N.Y.S.2d 712, affirmed 30 A.D.2d 691, 328 N.Y.S.2d 816.

Ability of employees to strike is not essential to right of association and is subordinate to right of state to prohibit such activity among state employees. *Zeluck v. Board of Ed. of City School Dist. of City of New Rochelle*, 1970, 62 Misc.2d 1061, 307 N.Y.S.2d 329, affirmed 36 A.D.2d 416, 329 N.Y.S.2d 409.

It is within state's power to determine that all strikes by public employees are harmful without distinguishing between them as to degree. *Id.*

6. Private right of action

Existence of the Taylor Law does not preclude private plaintiff from recovering damages from union and officials incurred as a result of illegal public employee strike under traditional common law precepts. *Burns Jackson Miller Summit & Spitzer v. Lindo v.*, 1982, 88 A.D.2d 56, 452 N.Y.S.2d 50.

The Taylor Law does not give rise to existence of private cause of action against union and officials for damages arising out of illegal public employee strike. *Id.*

Court was not persuaded by mechanical application of concept of "standing to sue" to deny rights of plaintiff public officials to bring action against defendant union officials

for having allegedly conspired and caused unlawful acts of work stoppage and coercion at city pollution control plants. *Caso v. Gotham*, 1971, 67 Misc.2d 205, 323 N.Y.S.2d 742, reversed on other grounds 30 A.D.2d 965, 333 N.Y.S.2d 607.

Unions' violation of former section 109 prohibiting strikes by public employees did not grant corporate plaintiffs a cause of action against unions based on an illegal strike. *Amur Productions Corp. v. Quill*, 1965, 61 Misc.2d 640, 273 N.Y.S.2d 318.

Unions' actions in causing strike of public service employees in violation of former section 109 and in defiance of injunction did not give rise to a cause of action, founded on theory of prima facie tort, to plaintiff corporation and others who had no direct contractual relationship with defendants and whose damages were no different in character from those sustained by the public generally. *Id.*

7. Criminal prosecution

A strike by firemen may be the subject of a criminal prosecution given the existence of a statute which can be said to define the crime. *People v. Viazul*, 1974, 78 Misc.2d 1030, 359 N.Y.S.2d 143.

This article, which authorizes collective bargaining for public employees, does not provide the exclusive remedy for public employees strikes, despite contention of union officials that law precludes application of criminal penalties to public employees strikes since it did not specifically provide for criminal sanctions. *Id.*

A strike by firemen may properly be the subject of a prosecution for reckless endangerment notwithstanding contention that reckless endangerment, Penal Law §§ 120.20 and 145.25, were not intended to apply to conduct not involving the performance of a physical act. *Id.*

Although this article authorizing collective bargaining for public employees does not provide criminal penalty, when criminal liability would otherwise attach to conduct, a

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crime has been committed notwithstanding that conduct is termed a "strike." *Id.*

**11. EMPLOYEE VIOLATIONS**

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**21. Generally**

Even if strike by employees of New York City Off-Track Betting Corporation was preceded by "lock out," strike was not justified under this section, in view of fact that this section contained no such defense and that, if there had been improper conduct on the part of the Off-Track

Betting Corporation, the employees' rights could have been vindicated under remedies provided by this article. *New York City Off-Track Betting Corp. v. Local 2021 of Dist. Council 37, Am. Federation of State, County and Municipal Emp. ("AFSCME"), AFL-CIO, 1979, 59 Misc.2d 688, 410 N.Y.S.2d 974.*

Public school employees, including school teachers, who participated in four-day strike and who were appropriately penalized under this section were not required to make up their absences by working an additional four days for no compensation; thus, employees could not be required to render services, without additional compensation, on the two contingency days which were placed in the school calendar to guard against possibility that the schools would be closed by weather or other contingencies, notwithstanding that employees would in fact be working two days less than the 180 days set forth in the teachers' contract. *Plainville-Old Bethpage Congress of Teachers, Local 1101, AFT, AFL-CIO v. Board of Ed., Central School Dist. No. 4, Plainville, 1973, 78 Misc.2d 975, 383 N.Y.S.2d 136.*

Determinations as to legality of work stoppage by public employees are administrative determinations. *Kierman v. Armstrong, 1973, 73 Misc.2d 929, 342 N.Y.S.2d 977.*

College teachers could not justify strike in violation of this section prohibiting strikes by public employees by charging administration with unfair labor practices, since federal labor laws were not applicable. *Case v. Katz, 1971, 67 Misc.2d 703, 324 N.Y.S.2d 712, affirmed 33 A.D.2d 691, 328 N.Y.S.2d 615.*

**22. Due process in general**

It appears without question that an employee charged with violation is assured his due process rights at some stage, although perhaps not always prior to the imposition of Taylor Law penalties against him. If found guilty of a violation as a matter of law he is entitled to a judicial review long held appropriate to ex-

Note 23

amine such a determination. If the finding of guilt is based on evidence introduced at a hearing, he is assured of his due process rights at such hearing and thereafter a judicial review thereof in order to examine that determination. Additionally, in the event of his exoneration in consequence of the hearing, the statute expressly assures the employee that any penalties imposed shall cease forthwith and any payroll deductions shall be refunded. *Sanford v. Rockefeller, 1974, 36 N.Y.2d 547, 304 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1972, 421 U.S. 913, 44 S.Ct.2d 461, 465.*

Due process entitlements of public employees are fully protected by this article, notwithstanding the absence of a prepenalty hearing, since an individual's case and the administrator's reaction to it remain open to judicial review, specifically by an Article 78 proceeding, since the sanctions of this section are reversible in both monetary terms and in status, since the persons affected are not unemployed or unemployable, and since, on the government's side, there is a grave condition when a mass strike by public employees is contemplated. *Board of Ed. of City School Dist. of City of New York v. United Federation of Teachers, Local No. 2, AFT, AFL-CIO, 1979, 40 N.Y.2d 1018, 410 N.Y.S.2d 536, 389 N.E.2d 1057.*

Procedures contained in this section prohibiting strikes relating to notice, hearing, penalties and review are adequate as affording required degree of due process. *Hurke v. Carey, 1981, 82 A.D.2d 953, 410 N.Y.S.2d 773.*

Failure to afford adversary hearing before imposition of penalties upon public employees who engaged in illegal strike did not deny due process in view of right to object after determination of culpability and imposition of penalties and opportunity for review of any adverse determination by special proceeding. *Kierman v. Bronstein, 1973, 73 Misc.2d 929, 342 N.Y.S.2d 977.*

**23. Probation, former provisions relating to**

*Subd. 2, par. (f), which related to probation for a term of one year following determination of violation, was repealed by L.1978, c. 465, § 1, eff. July 5, 1978.*

Suspension of tenure rights during probation, which was a sanction available against plaintiff school supervisors although subsequently deleted from this section did not represent a cruel and unusual punishment. *O'Brien v. Board of Ed. of City School Dist. of City of New York, D. C.N.Y.1980, 408 F.Supp. 1003.*

Probation provision of this section requires court to substitute for minimal protections of section 3012 of the Education Law the more elaborate rights during penalty probation which other non-teaching civil service employees receive; applicable protections are set forth in classified service rule. *Toller v. Central School Dist. No. 1 of Town of Conkling, 81 A.1, 1976, 40 N.Y.2d 487, 387 N.Y.S.2d 87, 354 N.E.2d 820.*

The probation period under this section has no maximum or minimum term of length; it lasts for precisely one year and is not fashioned, as was classified service rule, to enable employer to arrange for flexible periods of probation such as are available for proper evaluation of new employees. *Id.*

Under this section providing that teachers who have been placed on probation for engaging in illegal strike are entitled to pretermination rights of nonteacher probationary public employees, where tenured teacher had been placed on probation and school board decided to terminate his employment because he had pled guilty to charge of disorderly conduct, board should have waited until completion of probationary term, and, having acted 24 days before end of one-year probationary period, board should have conducted hearing. *Heis v. Gaskon, 1978, 81 A.D.2d 1042, 403 N.Y.S.2d 291.*

Decisive date for commencement of probationary period for public em-

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players who have engaged in illegal strike in time when public employee is notified that he has been determined that he has participated in strike in violation of this section. *Balsack v. Dutchess County*, 1970, 56 A.D.2d 317, 389 N.Y.S.2d 391.

Teacher, who was discharged more than six months prior to effective date of 1978 amendment of this section which terminated probation and restored tenure to those teachers who were on probation on effective date of said legislation but which was not intended to restore to tenured positions those teachers who had been placed on probation and discharged prior to its effective date, was not within this section's coverage. *Hoffman v. Board of Ed. of New York City School Dist.*, 1979, 88 Misc.2d 847, 414 N.Y.S.2d 931.

This section to effect that probationary period of public employee or loss of tenure would be terminated would not be retroactively applied to former teacher who was terminated before the legislation became effective. *Marland v. Ambach*, 1978, 68 Misc.2d 844, 409 N.Y.S.2d 528.

This section to effect that probationary period of public employee or loss of tenure imposed pursuant to subdivision of this section would be terminated has no retroactive effect but only prospective application in case of individuals who are presently serving on probationary status as a result of strike activity. *Id.*

Under this section providing that an employee who has engaged in an unlawful strike shall be on probation for a term of one year during which period he shall serve without tenure, tenured period is not discretionary and does not have minimum and maximum periods such as are allowed in initial appointments, and thus absent extension of term of probation, any probationer whose probationary term ends without his discharge acquires tenure. *Schender v. Trianborough Bridge and Tunnel Authority*, 1978, 83 Misc.2d 1099, 403 N.Y.S.2d 1002.

Legislature did not intend by enacting the section providing that em-

ployee engaging in unlawful strike shall be on one-year term of probation to allow extension of probation for but 12 weeks to employees under State Civil Service Commission jurisdiction and as long as six months under New York City Civil Service Commission jurisdiction, but rather Legislature intended that any employee engaging in any illegal strike would be placed on probation for term of but one year irrespective of portion of state in which he was employed, and thus bridge and tunnel authority was not entitled, even with consent of employees placed on such probation, to extend term of probation for six months or at all. *Id.*

Provisions of collective bargaining agreement relative to probationary service did not apply to teachers placed on probation for violating the Taylor Law by participating in a strike. *Marland v. Ambach*, 1978, 83 Misc.2d 323, 402 N.Y.S.2d 755, reargument denied 86 Misc.2d 611, 409 N.Y.S.2d 586.

Record amply supported decision of the Commissioner of Education to affirm former teacher's appeal from decision of city school district chancellor to deny the teacher at the end of a one-year probationary period which had been imposed on the teacher as a result of her participation in a strike. *Id.*

Probationary status resulting from a violation of the prohibition against strikes by public employees is the equivalent of probationary status on original appointment. 1978 Op.Atty. Gen. 33.

A hearing is not required when a teacher is discharged at the end of a Taylor Law, Civil Service Law § 200 et seq., probationary period. 1978, 37 Educ.Rept.Rep. 270.

24. Determination by chief executive officer—Generally

"An initial determination is made by the chief executive officer of the government involved on the basis of such investigation and affidavits as he may deem appropriate". He may determine either that there has been no violation or that a violation has

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occurred. If it be the latter, he then determines, 'on the basis of such further investigation and affidavits as he may deem appropriate', the names of the employees and the dates of violation. Notice in person or by certified mail is then given to each employee charged, together with advice of his right to object to the initial determination. Within 20 days thereafter each employee charged may file a written objection with the chief executive officer. Such objection shall consist of the employee's sworn affidavit containing a short and plain statement of the facts on which he relies to show that such determination was incorrect, supported by available documentary proof." *Sanford v. Rockefeller*, 1974, 35 N.Y.2d 547, 364 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1972, 421 U.S. 973, 44 L.Ed.2d 461, 465.

Under this article, date of strike "determination" is fixed at the date on which notices are sent to affected employees. *Tepper v. Galloway, D. C.N.Y.* 1979, 481 F.Supp. 1211.

Determination that Long Island state parkway police officer, who allegedly was ill with bronchitis during three-day strike, who was somewhat vague as to when he obtained note from his doctor and who testified that he normally paid the doctor by check but who was unable to produce any canceled checks relating to treatment for bronchitis attack, had engaged in the strike was not arbitrary or unreasonable. *Marlin v. Osterman*, 1975, 49 A.D.2d 973, 373 N.Y.S.2d 894.

Record did not establish that superintendent of schools made a determination required by this section, that the teachers had violated the no-strike law until notice was given to them by letter mailed less than 10 days prior to payroll deductions based on violations. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton et al., Saratoga County*, 1971, 66 Misc.2d 634, 321 N.Y.S.2d 905, modified on other grounds 40 A.D.2d 71, 337 N.Y.S.2d 703.

25. — Notice to employees

Board of education employees were not entitled to reimbursement for deductions made from their salaries absent showing that they did not receive notice forthwith following determination that they violated this article. *Genovese v. Anker*, 1978, 84 A.D.2d 884, 408 N.Y.S.2d 820.

Provision of this section for service upon civil service employees by certified mail of notice of determination of strike participation is not unconstitutional where it provides means reasonably intended to notify employees of determination affecting their rights. *Civil Service Emp. Ass'n, Inc. v. Walach*, 1975, 48 A.D.2d 923, 369 N.Y.S.2d 510.

Notice to civil service employees of determination of strike participation was not constitutionally or statutorily deficient because of minor mispelling of names or fact that addressing of notices was performed with surname followed by Christian name without intervening comma. *Id.*

Notice sent to teachers to effect that they had been found to have committed violation of statutory prohibition against strikes and that compensation would be withheld was sufficient to constitute compliance with this section requiring that such notice be given by chief executive officer of school district. *Lawson v. Board of Ed. of Vestal Central School Dist. No. 1, Town of Vestal*, 1970, 35 A.D.2d 878, 315 N.Y.S.2d 377, appeal dismissed 92 S.Ct. 230, 404 U.S. 907, 30 L.Ed.2d 180.

In respect to provision of this section stating that payroll deductions are to be made not earlier than 30 nor later than 50 days following the date of a determination by the school district's chief executive officer of a violation of the no-strike law, the determination was made when notification, by certified mail, was given the teachers, not when the district's chief executive officer informed the clerk of the district that, based on his information and observations, a strike was in effect over a certain period and that approximately 650 teachers



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deducted from their paychecks within 30 to 90 days of determination that strike was illegal is a statute of limitations which barred payroll deductions made against employees who engaged in an illegal strike after expiration of the 90-day period. *May v. State*, 1982, 80 A.D.2d 898, 418 N.Y.S.2d 627.

Subdivision 2(g) of this section to effect that deductions from compensation of employees who engage in an illegal strike should occur not earlier than 30 nor later than 90 days following the date of the determination of the violation is a time limitation binding upon the State which bars payroll deduction after its expiration. *New York State Inspection, Ser. and Law Enforcement Emp., Dist. Council 52, AFSCME, AFL-CIO v. State*, 1982, 81 A.D.2d 419, 418 N.Y.S.2d 524.

Thirty to 90 day period for deduction of mandatory strike penalties from strikers' paycheck pursuant to this section commenced with notification to strikers affected that strike determination had been made and that penalties would be deducted, and inasmuch as notices were served on all identified strikers between February 11 and March 5, 1979, penalty deduction of May 11, 1979 was within 90-day limitation. *House v. New York City Health and Hospitals Corp.*, 1981, 80 A.D.2d 807, 437 N.Y.S.2d 109.

Deduction from staff officers' paycheck which took place on March 2 and March 10, 1979, was not an ordinary one for "time not worked," but was a strike penalty deduction and was timely in that it was made within 14 days of its earliest notification to strikers and was premature in that it occurred before expiration of 20-day period in which employee served with violation notice may file objections to employer's finding of violation. *Id.*

For purposes of subd. 2(g) of this section providing that no earlier than 30 days or later than 90 days following date of determination that public employees have engaged in an illegal strike, chief fiscal officer of govern-

ment involved shall deduct from compensation of each such public employee an amount equal to twice his daily rate of pay for each day of unlawful activity, date of determination should be date of formal notification. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton, et al., Saratoga County*, 1972, 40 A.D.2d 71, 337 N.Y.S.2d 705.

With respect to this section providing that no earlier than 30 days nor later than 90 days following date of determination that public employees have engaged in an illegal strike, the fiscal officer of government involved shall deduct from compensation of employee an amount equal to twice his daily rate of pay for each day of unlawful activity, continuance of strike past 29th day of determination does not toll commencement of 30-90 day calendar period as prescribed by this section, nor is it mandated that deduction be made at earliest possible post-strike date. *Topper v. Wyandanch Union Free School Dist.*, 1980, 100 Misc.2d 959, 494 N.Y.S.2d 685.

Legislature in providing for payroll deductions from compensation of employees participating in unlawful strike made deliberate use of word "deduct" and did not intend it to be synonymous with "deduct," and where checks for employees reflecting fines called for by subd. 2(g) of this section were printed on last day of 90-day period in which fine could be imposed, there was timely deduction though checks were not delivered until later. *Fenney v. Rockefeller*, 1972, 71 Misc.2d 613, 336 N.Y.S.2d 312.

Even though subd. 2(g) of this section precluded payroll deductions sooner than 30 days and later than 90 days following date when superintendent made findings required by subd. 2(d) of this section, on May 26, 1970, and in that period there would occur no payroll payments from which deductions could be made, because teaching staff was paid on basis of ten calendar months excluding July and August, "final determination" issued on August 10, 1970, in

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effort to update termination of May 29, 1970, was ineffective to extend limitation period prescribed in subd. 2(g), and payroll deductions could not be made, even though teachers had absented themselves from their teaching duties from May 7 through May 21 and thereby subjected themselves to penalties prescribed in this section. *Wilson v. Board of Ed., Union Free School Dist. No. 23, Town of Oyster Bay, Nassau County*, 1971, 60 Misc.2d 130, 319 N.Y.S.2d 721.

Deductions from salaries that are imposed as penalties for violating this article should be taken no earlier than 30 days nor later than 90 days from the date the chief executive officer of the local government involved gives notice to employees that they have been determined to have engaged in a strike. *Id.*

## 30. — Refunds

Uncontroverted documentary proof of illness of school district employee and testimony of doctor whom he produced at supplemental hearing overcame presumption under subd. 2(b) that employee was absent by reason of strike and entitled employee to refund of money deducted from his salary by the board of education. *Pasare v. Board of Ed., Union Free School Dist. No. 8 (Monseville), Town of Hempstead*, 1971, 46 A.D.2d 922, 362 N.Y.S.2d 611.

Article 78 review invoked by civilian employees of Correction Department who demanded refund of salary withheld following a strike for each of the days wherein director of Governor's Office of Employee Relations had determined that they had not engaged in strike was exclusive remedy of employees, and thus state officials' invocation of procedures set forth in the applicable union contracts was of no avail where this section provided for Article 78 review of a determination to refund deductions made subsequent to a strike, and where such review was approved as the constitutional safeguard of prehearing monetary seizure under this article. *Betzler v. Carey*, 1981, 100 Misc.2d 881, 441 N.Y.S.2d 200.

Civilian employees of Correction Department who had twice their daily rate of pay withheld for period during which strike took place at correction facility were entitled to an immediate refund of the penalty, twice the daily rate of pay withheld, rather than only the single daily rate of pay actually refunded for the days for which they were determined by director of Governor's Office of Employee Relations not to have been on strike, in that state officials could not utilize the mechanism afforded under structure of this section to determine whether each employee was otherwise illegally absent without regard to the strike considerations which bring this section into play, but, rather, since penalty imposed under this section for engaging in the strike was twice the daily rate of pay, such penalty had to be immediately restored to nonstrikers. *Id.*

Civilian employees of State Correction Department were not improperly joined together in their actions demanding refund of salary withheld following a strike for each of the days wherein director of Governor's Office of Employee Relations had determined that they had not engaged in strike, in that employees presented a common question of law as to whether they were entitled to refund of the salary withheld for the days on which determinations had been made they were not on strike, and the individual fact questions were not pertinent to the issue of law presented. *Id.*

Where none of six school teachers before court either in his individual capacity, or on whose behalf a class action was sought to be maintained, had filed an objection and demand for hearing within 20 days, as provided in this section prohibiting public employees from striking, on uniform factual situation that existed as to 687 school teachers who engaged in strike, Article 78 proceedings seeking return of payroll monies deducted was maintainable as class action to avoid multiplicity of suits. *Crillo v. Board of Ed. of City School Dist. of City of Niagara Falls*, 1971, 60 Misc.2d 710, 321 N.Y.S.2d 952.

31. Objections to determination of chief executive officer—Generally

This section requires that written charges be served upon employee found by chief executive officer to have engaged in strike and permits employee to object to determination by filing with chief executive officer an affidavit and supporting proof. *Zeluck v. Board of Ed. of City School Dist. of City of New Rochelle*, 1970, 62 Misc.2d 274, 367 N.Y.S.2d 320, affirmed 3d A.D. 615, 319 N.Y.S.2d 109.

32. — Affidavits of employees

Affidavit of civil service employee, which stated that he telephoned his location to find out if he should report to work and was told that plant was not operating as result of strike, was sufficient to entitle employee to a hearing to determine whether he engaged in unlawful strike in violation of this article. *Zurella v. Koch*, 1980, 71 A.D.2d 749, 425 N.Y.S.2d 692.

City manager did not act arbitrarily and capriciously in determining, without a hearing, that police officers had engaged in a strike in violation of this section where officers' affidavits did not refute charges in such a manner as to raise a question of fact. *Dowling v. Bowen*, 1970, 53 A.D.2d 862, 395 N.Y.S.2d 355.

Affidavit submitted by teachers, who were notified by superintendent of schools of determination of their violation of this section, was sufficient to raise a question of fact requiring hearing. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton, et al., Saratoga County*, 1972, 40 A.D.2d 71, 337 N.Y.S.2d 706.

School teachers were not unreasonably denied public hearing at which to present facts in opposition to school officials' determination that school teachers were engaged in illegal strike on dates they were absent without permission where petitioners made no factual statements in their affidavits of objection to officials' determinations and did not make any statements in Article 78 petition ex-

cluding their absence from school on dates at issue. *Smyle v. Savitt*, 1973, 73 Misc.2d 259, 342 N.Y.S.2d 101.

Acting superintendent of schools did not act arbitrarily in dismissing school teachers' objection to superintendent's determination that school teachers had violated this section by absence from work without permission where teachers' affidavits in opposition did not contain any factual statements or documentary proof overcoming statutory presumption that an employee who is absent from work without permission on date when a strike occurs was engaged in such strike. *Id.*

Affidavits submitted by teachers, who were notified by superintendent of schools of determination of their violation of no-strike law, were sufficient to require superintendent to appoint a hearing officer to determine if the teachers had in fact violated this section. *St. Pierre v. Board of Ed. of Central School Dist. No. 1, Town of Milton et al., Saratoga County*, 1971, 60 Misc.2d 634, 321 N.Y.S.2d 905, modified on other grounds 40 A.D.2d 71, 337 N.Y.S.2d 706.

33. — Determination of objections by chief executive officer

After an employee files written objections, the chief executive officer to then presented with three options: (1) If he determines that the proof establishes that the employee did not violate subdivision two of this section, he shall sustain the objection; (2) If he determines that beyond any question of fact the proof fails to establish that the employee did not violate the subdivision he shall dismiss the objection and so notify the employee; or (3) If he determines that the proof raises a question of fact which if resolved in favor of the employee, would establish that the employee did not violate the subdivision he shall appoint a hearing officer to determine in fact whether there was a violation. *Sanford v. Rockefeller*, 1974, 35 N.Y.S.2d 617, 361 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1072, 421 U.S. 973, 44 L.Ed.2d 464, 465.

34. — Hearing and hearing officer

The hearing officer shall conduct a hearing which will serve as the vehicle for making his determination. Although the statute does not make explicit provision with respect thereto, this would be an evidentiary hearing at which the employee would be accorded all his due process rights, following which the hearing officer determines whether there has been a violation. The burden of proof at such hearing shall be borne by the employee and a determination in his favor must be based on a preponderance of the evidence. *Sanford v. Rockefeller*, 1974, 35 N.Y.S.2d 617, 361 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1072, 421 U.S. 973, 44 L.Ed.2d 464, 465.

Public employees who engaged in a strike contrary to the injunctive provisions of this section were not entitled to a prepenalty hearing. *Id.*

Hearing officer in proceeding for dismissal of maintenance workers and teachers at correctional facility for violation of Taylor Law, section 200 et seq. of this chapter, was not able to judge by observation of demeanor and otherwise the credibility and probative worth properly to be accorded testimony of witnesses, particularly where ultimate issue was subjective state of mind of witnesses. *Vitek v. Terribilo*, 1981, 63 N.Y.S.2d 1603, 412 N.Y.S.2d 474, 425 N.E.2d 802.

Specification charging individual civil service employees with nonperformance of their work duties, rather than with immorally or dishonestly, did not deprive them of "liberty" or "property" so as to require that employees be given due process hearing prior to discharge; charges of insubordination, however, carried sufficient stigma so as to require due process hearing even for probationary employees. *Civil Service Emp. Ass'n, Inc. v. Wallach*, 1975, 48 A.D.2d 923, 369 N.Y.S.2d 619.

35. — Judicial review

After the hearing officer determines there has been a violation, the

employee, if necessary and if he be so advised, becomes entitled to a full-blown Article 78 judicial review of the hearing officer's determination. On the one hand, if the chief executive officer has determined that without question of fact the employee is guilty of the violation charged, that determination may be called up for review. No evidentiary hearing having been had, the issue will be whether the chief officer proceeded without or in excess of jurisdiction, whether his determination was made in violation of lawful procedure, or whether it was affected by an error of law (CPLR 7803, subds 2, 3). On the other hand, if the adverse determination has been made by a hearing officer following a hearing, in addition to the three foregoing issues, the employee may also question whether the hearing officer's determination is, on the entire record, supported by substantial evidence (CPLR 7803, subd. 4). *Sanford v. Rockefeller*, 1974, 35 N.Y.S.2d 617, 361 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1072, 421 U.S. 973, 44 L.Ed.2d 464, 465.

To the argument that subdivision 2 of this section nevertheless remains defective because there is no definite provision for a hearing at any stage; that a postpenalty hearing will only be held at the unfettered discretion of the reviewing officer, the short answer is that the officer's discretion is, rather, open to review; his determination summarily rejecting the excuses contained in the employee's affidavit is subject to Article 78 review as specifically provided for in paragraph (b) of subdivision 2. *Id.*

Employees who alleged in petition that they were arbitrarily and illegally denied hearings pursuant to subd. (2)(b) of this section on their objection to determination that they had been absent from work without authorization during period of strike at correctional facilities raised triable issue of fact on theory that, during strike, various employees were at work, on duty with National Guard, or on workers' compensation leave

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or on personal leave which would render determination contrary to law. *Linke v. Carey*, 1981, 82 A.D.2d 933, 410 N.Y.S.2d 771.

Penalty imposed under this section prohibiting strikes by public employees and providing for penalties applies only employee and not employee organization, and right of review belongs to individual employee and not to employee organization, and employer organization is thus not proper party to commence proceeding for review of imposition of such penalty. *Nassau Educational Chapter Civil Service Emp. Ass'n, Inc. v. Board of Ed. of Farmingdale Union Free School Dist.*, 1978, 61 A.D.2d 1019, 409 N.Y.S.2d 113.

To extent that public employee organization was aggrieved because actions of school board might have violated collective bargaining agreement, employee organization was required to pursue grievance procedures afforded by agreement, rather than proceeding for review of imposition of penalties against individual employees. *Id.*

Teacher, who sought review of determinations of superintendent of schools, the first stating that she had engaged in strike and imposing penalties and, second transferring her to "Permanent Substitute Pool" status, was deprived of due process in that she was not given a full hearing where she was not afforded opportunity to confront and cross-examine witnesses, sworn statements were not taken, stenographic minutes were not taken at hearing and findings of fact were not made, and appropriate remedy was a new hearing at which her rights would be safeguarded. *Rendell v. Alioto*, 1973, 42 A.D.2d 397, 334 N.Y.S.2d 725.

System of review by objection provided by this section allowing for administrative review of initial determination that an employee of school district has violated this section proscribing teachers' strikes and expressly providing for review by the courts is not necessarily inadequate

to satisfy requirements of due process. *Lawson v. Board of Ed. of Vestal Central School Dist. No. 1, Town of Vestal*, 1970, 35 A.D.2d 878, 316 N.Y.S.2d 877, appeal dismissed 92 S.Ct. 230, 404 U.S. 861, 30 L.Ed.2d 150.

Failure of teachers, who were found by school district to have participated in strike in violation of this section, to seek administrative review of that determination as provided by this section foreclosed any consideration in Appellate Division of Supreme Court as to whether or not there had been any strike and whether or not individual teachers given notice of violation had participated therein, so as to warrant payroll deductions. *Id.*

Claim of dismissed employees of bridge and tunnel authority that they were coerced into accepting without objection determination that they had engaged in strike in violation of this section did not entitle them to relief, inasmuch as authority properly raised defense of statute of limitations and more than four months had elapsed since such determination became final. *Schender v. Triborough Bridge and Tunnel Authority*, 1978, 93 Misc.2d 1009, 909 N.Y.S.2d 1002.

Article 78 proceeding challenging deductions from teachers' salaries as result of alleged strike was not available to those teachers who did not file a protest within 20 days from service of notice of determination. *Mashloff v. Central School Dist. No. 1 of Town of Wappinger, Poughkeepsie, Fishkill, La Grange, Dutchess County*, 1971, 67 Misc.2d 149, 323 N.Y.S.2d 1005.

Where affidavits have been filed in opposition to a determination that a public employee has violated this section prohibiting public employees from engaging in strikes, because of various defenses advanced, the aggrieved employees must maintain individual Article 78 proceeding. *Giriblu v. Board of Ed. of City School Dist. of City of Niagara Falls*, 1971, 60 Misc.2d 749, 321 N.Y.S.2d 952.

Note 36

36. Presumption of violation by employee

In light of both the rebuttable presumption of this section that employee who abstains wholly or in part from full performance of duties when strike occurs shall be presumed to have engaged in such strike and testimony in record with inferences reasonably to be drawn therefrom, there was substantial evidence to support determination of hearing officer that maintenance workers and teachers at correctional facility violated Taylor Law, section 200 et seq. *Ylask v. Termello*, 1981, 63 N.Y.2d 1009, 442 N.Y.S.2d 474, 426 N.E.2d 502.

The statutory presumption, clearly rebuttable, in the practical realities of a strike situation does have a "supporting foundation in the probabilities". *Hanford v. Borkefeller*, 1974, 35 N.Y.2d 517, 301 N.Y.S.2d 450, 324 N.E.2d 113, appeal dismissed 95 S.Ct. 1972, 421 U.S. 973, 41 L.Ed.2d 461, 465.

Although, under this section, the absence of a public employee from work without permission during a general work stoppage is presumed to be violative of this section, such shifting of the normal burden of proof is not a denial of due process under the circumstances, considering, inter alia, that the public employee would otherwise be required to establish a negative proposition, that there was no legitimate excuse for the employee's absence, and would be required to do so under considerable practical handicaps regarding access to relevant evidence. *Id.*

This section prohibiting strikes creates statutory presumption that strike occurred, and that presumption must then be overcome by parties seeking to overturn determination of unlawful strike by substantial evidence. *Smith v. Bloom*, 1981, 51 A.D.2d 899, 445 N.Y.S.2d 46.

Presumption that an employee who is absent from work without permission or who abstains wholly or in part from full performance of his duties in his normal manner without

permission on a date when a strike occurs is presumed to have engaged in such strike is rebuttable. *Zarelli v. Koch*, 1990, 74 A.D.2d 719, 426 N.Y.S.2d 582.

Substantial evidence supported determination of hearing officer that certain civil service employees failed to rebut statutory presumption that they engaged in unlawful strike in violation of this article. *Id.*

Notwithstanding contention that petitioner conscientious officer's failure to perform her duties during illegal work stoppage created a presumption under this section that was not rebutted by her that she participated in it, evidence was introduced by petitioner of Article 78 proceeding to show that she, in fact, was assigned to an in-service training class which was cancelled on morning of illegal work stoppage, and respondent Director of Employee Relations thus had burden of going forward with further proof to contradict that assertion, but he failed to meet that burden. *McNeil v. Wolcott*, 1979, 67 A.D.2d 699, 412 N.Y.S.2d 403.

Absent submission of sufficient evidence to refute statutory presumption that teachers were engaged in a strike, there was no burden on the employer to offer evidence to the contrary. *Anderson v. Kluener*, 1976, 51 A.D.2d 1015, 381 N.Y.S.2d 116.

Presumption under subd. 2(b) of this section that petitioner, a school district employee, was absent from work on the days in question without permission was amply refuted by him, and, since there was absolutely no evidence offered to the contrary, the school district's determination that he had participated in a strike and should be docked therefor was arbitrary, capricious and properly annulled. *Zarelli v. Savitt*, 1974, 46 A.D.2d 788, 361 N.Y.S.2d 30.

Question upon review of determination in disciplinary case that teacher participated in strike is sufficiency of rebuttal evidence, in essence, whether there is substantial evidence upon record to support determination that teacher did not

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overcome statutory presumption that teacher absent when strike occurred participated in it. *Kaplan v. Kinzler*, 1674, 77 Misc.2d 607, 353 N.Y.S.2d 613.

Presumption pursuant to subd. 2(b) of this section that "an employee who is absent from work without permission or who abstains wholly or in part from the full performance of his duties in his normal manner without permission on the date or dates when a strike occurs, shall be presumed to have engaged in such strike on such date or dates" did not deny due process in view of opportunity for rebuttal. *Kernan v. Bronstein*, 1973, 73 Misc.2d 629, 342 N.Y.S.2d 977.

### 37. Conduct of employer constituting strike—Generally

Public employees' temporary working conditions were not so extreme as to justify their refusal to work in place assigned or tasks assigned to them and, even though employees were engaged in other work of their own choosing, their refusal to perform their duties except on their own terms justified finding by the Director of Office of Employee Relations that they had engaged in a strike in violation of this section. *Acosta v. Wollett*, 1980, 77 A.D.2d 769, 430 N.Y.S.2d 899, affirmed 65 N.Y.2d 761, 417 N.Y.S.2d 241, 431 N.E.2d 980.

Failure to accept out-of-office assignments because of a bona fide fear of personal injury and/or future reprisals is not a violation of this section. *Van Vlack v. Ternullo*, 1980, 74 A.D.2d 827, 425 N.Y.S.2d 347, reversed on other grounds 53 N.Y.2d 863, 442 N.Y.S.2d 471, 425 N.E.2d 862.

Police officers who stopped city buses, sanitation trucks and sewer maintenance vehicles, detained them for long and time-consuming inspections, issued summonses and ordered drivers back to their garages, which conduct occurred over a three-day period and was commensurate with a campaign to induce city to rescind an order which had demoted certain high-ranking police officials for

budgetary reasons, and who had concomitantly abstained from performance of other duties necessary to the effective functioning of the police, engaged in a "strike" within meaning of this section. *Dowling v. Bowen*, 1976, 53 A.D.2d 862, 385 N.Y.S.2d 356.

Evidence was insufficient to support determinations of acting city manager and city manager of city of Yonkers that employees of the city by failure to report for work on certain days went on strike in violation of former section 22-a. Application of *Hagot*, 1950, 276 App.Div. 1014, 95 N.Y.S.2d 500.

Failure of teachers to attend "Back-to-School Night" for parents as they were required to do constituted a strike. *Baltimore-Merrick Central High School Dist., Town of Hempstead, Nassau County v. Baltimore-Merrick United Secondary Teachers, Inc.*, 1975, 85 Misc.2d 282, 378 N.Y.S.2d 981.

College teachers who had taught 12 classroom hours last academic year, whose collective bargaining agreement thereafter expired, and who were refusing to teach three additional classroom hours in the current academic year were engaged in "strike" in violation of this section prohibiting strikes by public employees. *Caso v. Katz*, 1971, 67 Misc.2d 793, 321 N.Y.S.2d 712, affirmed 38 A.D.2d 691, 328 N.Y.S.2d 675.

Where none of 40,000 purported "resignations" by teachers were individually executed or transmitted to Board of Education but were delivered to teachers' union, teachers did not resign, but engaged in a "strike" against the Board of Education, in violation of this section. *Board of Ed. of City of New York v. Shanker*, 1907, 51 Misc.2d 941, 283 N.Y.S.2d 518.

### 38. — Absence from work as

School teacher who chooses to remain absent from work to avoid the pressures preceding an impending strike and to avoid deciding which side to support effectively yielded to

interests of the strikers and, consequently, whether presumed to be engaged in strike or whether simply condoning strike by his absence, petitioner was in violation of this section. *Zauer v. Board of Ed. of Farudogah Union Free School Dist.*, No. 22, 1980, 76 A.D.2d 929, 429 N.Y.S.2d 725.

Absenteeism, in such, could constitute basis for finding of "strike" under this section prohibiting strikes by public employees. *Civil Service Emp. Ass'n v. Heblly*, 1970, 33 A.D.2d 339, 308 N.Y.S.2d 223.

Eighty-one municipal employees who absented themselves from work en masse to attend hearing on application for increased compensation and who did so because they in good faith believed that they had to go to a judicial tribunal as witnesses rather than because they sought to induce betterment in their employment did not violate this section prohibiting strikes by public employees. *Rosenberger v. Sullary Dist. No. 6, Town of Hempstead*, 1967, 28 A.D.2d 892, 262 N.Y.S.2d 579, affirmed 22 N.Y.2d 815, 292 N.Y.S.2d 911, 259 N.E.2d 652.

No-strike provisions of this section may apply to a concerted refusal by public employees to perform work even though the work is not a bargained-for condition of employment under collective bargaining agreement and is thus voluntary. *Baltimore-Merrick Central High School Dist., Town of Hempstead, Nassau County v. Baltimore-Merrick United Secondary Teachers, Inc.*, 1975, 85 Misc.2d 282, 378 N.Y.S.2d 981.

Absence en masse of teachers for an unfulfilled period of time to consult with and petition members of state legislature in attempt to bring about changes in conditions of employment or compensation would constitute a violation of former section 16R prohibiting strikes by public employees. *Prozior v. Board of Ed. of City of New York*, 1960, 25 Misc.2d 945, 209 N.Y.S.2d 960, affirmed 12 A.D.2d 923, 215 N.Y.S.2d 718, affirmed 9 N.Y.2d 911, 217 N.Y.S.2d 80, 176 N.E.2d 86.

### 39. — Evidence sufficient

In proceeding to mount determination of the State Director of Employee Relations that petitioners engaged in an illegal strike when they refused to work in a temporary office building because of allegedly hazardous and uncomfortable working conditions, findings that petitioners engaged in an unjustified "concerted stoppage of work or slow down" in violation of this section was supported by substantial evidence. *Accata v. Wollett*, 1981, 65 N.Y.2d 761, 447 N.Y.S.2d 241, 431 N.E.2d 986.

Substantial evidence supported findings of hearing officer, adopted by Commissioner of Department of Marine and Aviation of City of New York, that ferryboat officers, appointed to their respective job titles pursuant to this section and employed on ferries operated by Department of Marine and Aviation of City of New York, were engaged in a "strike" within former section 16R. *Di Maggio v. Brown*, 1967, 10 N.Y.2d 289, 270 N.Y.S.2d 169, 226 N.E.2d 871.

Substantial evidence supported conclusion that custodians employed by school district participated in strike, thereby violating this section. *Smith v. Bloom*, 1981, 94 A.D.2d 890, 416 N.Y.S.2d 46.

Hearing examiner's finding that petitioner failed to overcome by a preponderance of the credible evidence the presumption that he had engaged in an illegal strike, justifying city manager's deduction from petitioner's salary six days' pay, was supported by the record, since doctor's note that petitioner was ill on such days, though uncontroverted, was clearly hearsay, and the hearing examiner was free not to accept petitioner's testimony as credible. *Myintski v. Rayo*, 1979, 72 A.D.2d 741, 421 N.Y.S.2d 251.

Evidence, including evidence of abnormally high absence rate of teachers on the days in question, sustained finding that strike of teachers had in fact taken place, thus authorizing deductions from their salaries therefor.

Andreoni v. Kinader, 1976, 51 A.D.2d 1015, 381 N.Y.S.2d 116.

Evidence required conclusion that activities of striking members of Westchester County Department of Public Welfare were designed to and did interfere with the function of the Department. Westchester County v. Arhmann, 1967, 53 Misc.2d 612, 279 N.Y.S.2d 457.

### III. EMPLOYEE ORGANIZATION VIOLATIONS

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#### 61. Generally

Showing by school teacher organizations, which had been charged by the public employee relations board with engaging in an illegal strike, and which in that proceeding had raised affirmative defense that public employer had refused to negotiate in good faith, was insufficient to entitle them to injunction prohibiting the board from conducting further proceedings during pendency of criminal contempt proceedings against certain witnesses, whose testimony was allegedly essential to their affirmative defense, on ground that compelling them to participate in administrative proceeding with witnesses who would allegedly invoke their privilege against self-incrimination would operate as a denial of due process against them. Hudson Teachers Ass'n v. Helsby, 1972, 30 A.D.2d 1012, 313 N.Y.S.2d 577.

Determination of chief executive officer of employer of teachers that teachers did not engage in a strike was an administrative decision, without a hearing, and was not binding

on Public Employment Relations Board in a proceeding against an employee organization. Buffalo Teachers' Federation, Inc. v. Helsby, 1970, 35 A.D.2d 318, 316 N.Y.S.2d 125.

Where specifications against misclassification of civil service employees stated charges relating to strike of public employees, no penalty could be imposed without proof of strike. Civil Service Emp. Ass'n v. Helsby, 1970, 33 A.D.2d 339, 308 N.Y.S.2d 221.

Where disciplinary proceedings against individual employees allegedly violating prohibition of this section against strike were determined in their favor, association of civil service employees could not equitably be punished for alleged violation of such prohibition. *Id.*

#### 62. Jurisdiction of public employment relations board

Teachers' federation was not denied equal protection by being subject to Public Employment Relations Board with authority to suspend federation's right to have membership dues deducted from members' paychecks as penalty for violating ban on strikes while other public employees within the city mayor's office were subject to checkoff forfeiture only upon judicial finding of criminal contempt where separate procedures bore rational relation to legitimate state interest in fostering harmonious labor relations between public employers and employees and in protecting public by assuring uninterrupted government operations and where legislature simply recognized particularized needs of city by creating different mechanisms for forfeiture. Shanker v. Helsby, C.A.N.Y.1962, 670 F.2d 31.

Jurisdictional dispute did not exist between the State Labor Relations Board and the Public Employment Relations Board, in action for judgment declaring the rights of union and its member employees with respect to employer's deducting two days' pay for one day strike, so as to preclude the Public Employment Relations Board from conducting procedures against the union and its members to determine whether there was

a strike and, if so, whether the union's right to dues check-off by the employer should be forfeited to any extent. Local 930, Am. Federation of State, County and Municipal Emp., AFL-CIO v. Erie County Water Authority, 1972, 38 A.D.2d 487, 330 N.Y.S.2d 695.

Public Employment Relations Board has no responsibility with respect to violations of this section by individual public employees, but it is authorized to institute proceedings on its own motion to determine whether an employee organization has violated this section. Buffalo Teachers' Federation, Inc. v. Helsby, 1970, 35 A.D.2d 318, 316 N.Y.S.2d 125.

#### 63. Notification to employee organization

Due process did not require personal service on employee organization of charges arising out of alleged violation of public employees' no strike law, and where this section did not expressly mandate such service Public Employment Relations Board had implied power to adopt rule authorizing service by mail. Buffalo Teachers' Federation, Inc. v. Helsby, 1970, 35 A.D.2d 318, 316 N.Y.S.2d 125.

Scope of punishment or penalty proceeding before administrative board is limited to charges and specifications as served upon alleged wrongdoer prior to hearing. Civil Service Emp. Ass'n v. Helsby, 1970, 33 A.D.2d 339, 308 N.Y.S.2d 223.

#### 64. Determination of public employment relations board

Substantial evidence supported determination of Public Employment Relations Board that police officer's union violated this section by instigating, encouraging, or condoning two strikes by policemen. Police Benev. Ass'n of City of Yonkers, Inc. v. New York State Public Employment Relations Bd., 1980, 51 N.Y.2d 770, 432 N.Y.S.2d 695, 112 N.E.2d 382.

Determination of Public Employment Relations Board that union engaged in a strike during a specified time period was not in accord with the evidence. Local 252, Transport

Workers Union of America, AFL-CIO v. New York State Public Employment Relations Bd., 1982, 89 A.D.2d 551, 461 N.Y.S.2d 17.

Speculation by the Public Employment Relations Board that union could have done more to end public transit strike in less than the day and a half of its duration, viewed in context of whole hearing record, did not rise to level of "substantial evidence" to support its determination that union condoned the illegal strike. Amalgamated Transit Union, Division 1142 v. Newman, 1980, 73 A.D.2d 105, 431 N.Y.S.2d 292.

Evidence that teachers' union had voted to strike on specified date if its demands were not fully met and that strike followed on appointed day when board of education failed to accede to union's demands sustained determination that strike threat and strike had been purposely utilized in negotiating weapons by union, in violation of this article and were not precipitated by acts of the board. Yonkers Federation of Teachers, Local 900, Am. Federation of Teachers, AFL-CIO v. Helsby, 1974, 48 A.D.2d 132, 357 N.Y.S.2d 111.

Record on review of public employment relations board's determination that association of civil service employees had violated provision against strike failed to establish participation by officials of association, either by instigating or condoning absenteesism. Civil Service Emp. Ass'n v. Helsby, 1970, 33 A.D.2d 339, 308 N.Y.S.2d 223.

#### 65. Provocation by public employer

New York Public Employment Relations Board may not impose any forfeiture of dues checkoff on an employee organization when extreme employer provocation causes a union-sanctioned illegal strike. Shanker v. Helsby, D.C.N.Y.1981, 515 F. Supp. 874.

Although city failed to make constructive offers of settlement until the eleventh hour of negotiations with firemen's collective bargaining agents, provocation was not so extreme as to warrant a strike in view

Note 65

of the disastrous impact strike would have on the well-being of the population of the city. *City of New York v. Vizzini*, 1975, 49 A.D.2d 873, 373 N.Y.S.2d 577.

65. Wildcat strikes

Public Employment Relations Board will not penalize public employee organization if its members have staged a "wildcat" strike. *Buffalo Teachers Federation, Inc. v. Helshy*, D.C.N.Y.1981, 516 F.Supp. 215.

67. Forfeiture of dues checkoff privileges

For constitutionality of provisions for forfeiture of dues checkoff privileges, see annotations under note number 2, *supra*.

Union president, by voicing opposition to binding arbitration provisions of New York ordinance setting forth procedures for enforcement of this article, thus resulting in an amendment which precluded board of education from electing coverage under the city office of collective bargaining and instead required it to remain subject to the state Public Employment Relations Board, did not estop teachers' union from challenging, on equal protection grounds, the differences between state board and city board procedures with respect to forfeiture of dues checkoff privileges for union which engages in an illegal strike. *Shanker v. Helshy*, D.C.N.Y. 1981, 515 F.Supp. 571.

Local boards created by public employer to enforce this article in their jurisdiction are free to devise their own "substantially equivalent" procedures for revocation of dues checkoff privilege for a union which engages in an illegal strike. *Id.*

Statutory scheme for punishing illegal public employee strikes, by revocation of employee organization's dues checkoff privilege, does not violate equal protection clause in applying mandatory standard for imposing penalty under jurisdiction of Public Employment Relations Board and permissive standard under jurisdic-

tion of local public employment boards or New York City office of collective bargaining, where scheme is rationally related to furthering legitimate state interest in harmonious public labor relations and their local control. *Buffalo Teachers Federation, Inc. v. Helshy*, D.C.N.Y.1981, 516 F.Supp. 215.

Since this section which grants Public Employment Relations Board power to impose dues checkoff forfeiture is not listed among sections of this article that remain applicable to public employers ceasing membership, such local boards are free to devise their own "substantially equivalent" procedures to revoke dues checkoff privilege. *Id.*

Public employer that initiates contempt proceeding in jurisdiction of local public employment board may request court to impose forfeiture of dues checkoff privilege in lieu of initiating administrative proceedings, and court may impose that penalty in addition to levying a fine. *Id.*

Public Employment Relations Board did not abuse its discretion in imposing on union a forfeiture of dues checkoff privileges for period of three months because of public employees' strike, in light of union's willful defiance of this section, impact of strike on health, safety and welfare of community, finances of employee organization, and prosecution of public employer. *Dutchess County Emp. Union, Dutchess County Chapter, Civil Service Emp. Ass'n, Inc. v. Helshy*, 1978, 62 A.D.2d 1089, 493 N.Y.S.2d 823.

Under this section there is no limit on amount the employee union may be fined and there is no limit on period that the union may be deprived of its "dues check-off"; since the legislature apparently found that fiscal constraints were appropriate to punish union transgressions, the form, whether fines or damages, is not a controlling distinction. *Case v. District Council 37, Am. Federation of State, County and Municipal Emp.*, APL-C10, 1973, 43 A.D.2d 159, 350 N.Y.S.2d 173.

Note 2

§ 211. Application for injunctive relief

Notwithstanding the provisions of section eight hundred seven of the labor law, where it appears that public employees or an employee organization threaten or are about to do, or are doing, an act in violation of section two hundred ten of this article, the chief executive officer of the government involved shall (a) forthwith notify the chief legal officer of the government involved, and (b) provide such chief legal officer with such facilities, assistance and data as will enable the chief legal officer to carry out his duties under this section, and, notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer of the government involved shall forthwith apply to the supreme court for an injunction against such violation. If an order of the court enjoining or restraining such violation does not receive compliance, such chief legal officer shall forthwith apply to the supreme court to punish such violation under section seven hundred fifty of the judiciary law.

Added L.1967, c. 392, § 2.

Historical Note

Effective Date. Section 4 of L. 1967, c. 392, provided that this section was effective Sept. 1, 1967.

Library References

Labor Relations § 791 et seq. C.J.R. Labor Relations § 781 et seq.

Notes of Decisions

Generally 3  
Burden of proof, contempt proceedings 9  
Chief legal officer 4  
Construction 1  
Contempt proceedings  
    Generally 9  
    Burden of proof 9  
    Jury trial 10  
    Punishment 11  
Jury trial, contempt proceedings 10  
Law governing 2  
Preliminary injunction 7  
Proper parties 5  
Punishment, contempt proceedings 11  
Temporary restraining order 6  
Title to funds paid into court 12

tion be made by the chief legal officer of the governmental agency involved to punish employees for criminal contempt is mandatory and governmental agency involved may neither decide whether to so apply nor does agency have authority to alter, modify, ignore or forgive any determination made by trial court with respect to such application. *Board of Ed. of City of New York v. Shanker*, 1967, 51 Misc.2d 911, 283 N.Y.S.2d 538.

2. Law governing

County's application for injunctive relief against strike of employees was governed by this section rather than by the Labor Law § 507. *Orange County v. Civil Service Emp. Ass'n, Inc.*, 1970, 51 A.D.2d 1031, 381 N.Y.S.2d 313.

1. Construction

This section directing that when public employees strike an applica-

# COLLECTIVE BARGAINING IN THE PUBLIC SCHOOLS: REASSESSING LABOR POLICY IN AN ERA OF REFORM

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Recent calls for educational reform have sometimes presupposed that the spread of collective bargaining among teachers has contributed to the malaise in America's public schools. Binding arbitration, in particular, has been criticized as producing inflationary wage settlements and undermining the managerial discretion of local school boards. Critics such as Professors Wellington and Winter, however, have often applied to teachers' unions a general theory of the inordinate political power of public employee unions which fails to consider both the American tradition of local control of public schools and the growing body of empirical research into school labor relations. The authors draw on such research and introduce findings from their own study of Connecticut's public schools to refute the charge that collective bargaining has shifted the balance in school labor relations in favor of unionized teachers. While binding arbitration may be correlated with a wage effect mildly favorable to teachers, arbitration is an essentially conservative process closely following established salary trends. Moreover, arbitration has failed to have any significant effect on school governance or educational policy.

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Research for this paper was funded by the Harvard Law School Program in Dispute Settlement, under a grant from the Charles E. Culpeper Foundation, and the Division of Graduate Studies, Harvard Law School. Robert Batey, David Bloom, Gordon Clark, Susan Moore Johnson and David Rosenberg commented upon previous drafts of this paper. The authors are particularly grateful to Paul Weiler, both for his encouragement and criticism of this research, and for his inspiration as a teacher.

The authors would also like to thank Lamar Woodward, Sally Grinsberg-Waters, Bob Butterfield and Lee Williamson for their painstaking efforts in collecting research sources. Finally, the authors wish to thank the numerous organizations and individuals that cooperated with our research efforts.

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"[U]ntil we pay teachers at least as well as the middle echelon of executives we cannot expect the profession to attract its full share of the available range of talents. Salaries must be raised immediately and substantially. Almost as important as the level of pay is the fact that promotional policy for most school systems is routine and depends much more on seniority than on merit."

—*The Pursuit of Excellence: Education and the Future of America*.<sup>1</sup>

At last count, there were more than a dozen reports on the quality of public education in America.<sup>2</sup> A certain readiness for

1. ROCKEFELLER REPORT, *THE PURSUIT OF EXCELLENCE: EDUCATION AND THE FUTURE OF AMERICA* 26 (1958) (hereinafter cited as ROCKEFELLER REPORT).

2. See, e.g., E. BOYER, *HIGH SCHOOL: A REPORT ON SECONDARY EDUCATION IN AMERICA* (1983) (hereinafter cited as CARNegie REPORT); J. COLEMAN, T. HOFFER & S. KILGROVE, *HIGH SCHOOL ACHIEVEMENT: PUBLIC, CATHOLIC, AND PRIVATE SCHOOLS COMPARED* (1982); J. GOODLAD, *A PLACE CALLED SCHOOL: PROSPECTS FOR THE FUTURE* (1984); NATIONAL COMM'N ON EXCELLENCE IN EDUCATION, *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983) (hereinafter cited as NATION AT RISK);

reform now pervades state government, as reform proposals have been rushed to a place of prominence on numerous legislative agendas.<sup>3</sup> Figuring significantly into many of these proposals are prescriptions for improvement and reform of the teaching profession.<sup>4</sup> It is widely believed that the profession requires markedly improved compensation and working conditions if educational excellence is to be attained, but that more rigorous "accountability" measures—like merit pay—must accompany the added investment. It is believed, in short, that the teaching profession requires more support but more control.<sup>5</sup>

Reform, it has been said, is a way of life in the public schools.<sup>6</sup> As a casual review of the reform literature of the 1950's and 1980's reveals, the dilemma of public school teachers appears resistant to conclusive resolution.<sup>7</sup> The persistence of this dilemma must cause mild bewilderment in the community of labor scholars, however, for intervening between the educational revivals of the 1950's and 1980's were dramatic reforms in public sector labor law.<sup>8</sup> These

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NATIONAL SCIENCE BOARD COMMISSION ON PRECOLLEGE EDUCATION IN MATHEMATICS, SCIENCE AND TECHNOLOGY, NATIONAL SCIENCE FOUNDATION, EDUCATING AMERICANS FOR THE 21ST CENTURY (1983) [hereinafter cited as EDUCATING AMERICANS]; T. SIZER, HORACE'S COMPROMISE: THE DILEMMA OF THE AMERICAN HIGH SCHOOL (1983); TASK FORCE ON EDUCATION FOR ECONOMIC GROWTH, EDUCATION COMMISSION OF THE STATES, ACTION FOR EXCELLENCE (1983) [hereinafter cited as ACTION FOR EXCELLENCE]; TASK FORCE ON FEDERAL ELEMENTARY AND SECONDARY EDUCATIONAL POLICY, MAKING THE GRADE (1983); AGAINST MEDIOCRITY: THE HUMANITIES IN AMERICA'S HIGH SCHOOLS (C. Finn, Jr., D. Ravitch & R. Fancher, eds. 1984). See generally Boston Globe, June 30, 1984, at 6, col. 5.

3. According to a recent survey, every state is currently considering, or has enacted within the past year, educational reform measures. See U.S. DEPARTMENT OF EDUCATION, THE NATION RESPONDS 144-46 (1984) [hereinafter cited as THE NATION RESPONDS].

4. For example, there has been legislative consideration, or passage, of teacher salary increases in 34 states, master teacher or career ladder plans in 30 states, performance-based pay plans in 13 states, teacher preparation/certification changes in 47 states, professional development plans in 41 states, programs to address teacher shortages in 39 states, and plans to increase instructional time in 38 states. See *id.* at 23-137, 144-46.

5. For a general discussion of the admixture of corrective and supportive measures in the reform reports, see N.Y. Rev. of Books, Apr. 12, 1984, at 35, col. 1; N.Y. Times, Dec. 27, 1983, at C6, col. 1.

6. Cohen, *Reforming School Politics*, 48 HARV. EDUC. REV. 429 (1978).

7. See, e.g., ROCKEFELLER REPORT, *supra* note 1; Elliot, *Toward an Understanding of Public School Politics*, 53 AM. POL. SCI. REV. 1032, 1048 (1959) ("The profession by itself cannot, however, gain the other objective which must be reached if first-class teaching is to be the rule: it cannot raise the money needed to hire and retain excellent teachers. Good salaries, by themselves, do not produce good teachers . . . but bad salaries certainly are a factor in driving able teachers into more remunerative pursuits and in keeping potentially fine prospects out of the schools."), Pascow, *Tackling the Reform Reports of the 1980s*, PHI DELTA KAPPAN, June 1984, at 674, 675 ("The deplorable state of American education is not a theme that is unique to the current wave of reports. This theme has recurred regularly over the past 90 years or so.")

8. See *infra* text accompanying notes 19-34.

reforms were scheduled to address several of the problems that appear now to have endured—low teacher salaries, poor personnel relations in the schools and declining teacher morale.<sup>9</sup> The centerpiece of this labor reform was recognition of teachers' right to bargain collectively with school government over salaries and a broad range of employment conditions. Patterned after labor policy in private industry, teacher bargaining statutes inaugurated a version of "school system democracy" that promised decided change, even if the precise direction of that change was undetermined.

The ostensible results of these labor reforms have indeed been dramatic: teacher unionism and collective bargaining have proliferated during the past twenty years as most of the nation's teachers have been unionized and most of the nation's school districts have come to engage in collective bargaining.<sup>10</sup> Yet, current reform literature raises the disquieting suspicion that, for all the activity, teacher bargaining has produced few measurable improvements in the teachers' plight,<sup>11</sup> and worse, may have contributed to the crisis in public education.<sup>12</sup> If such a suspicion has substance, as a growing number of critics believe,<sup>13</sup> the first task of educational reform may be the restructuring of labor relations in the schools.

In this Article we present a critical assessment of the impact of collective bargaining on public school teachers and school government. In doing so, we draw upon a now-substantial body of empirical research into school labor relations, as well as introduce the findings of our recent research.<sup>14</sup> This analysis examines

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9. See, e.g., M. DONLEY, JR., *POWER TO THE TEACHER* 207 (1976) ("Where will all this collective bargaining lead? In the long run, it will lead, among other things, to fewer strikes by teachers, greater professionalism of educators, higher teacher morale, an enlarged role in the school for the teacher, and higher salaries for school personnel."); M. LIEBERMAN, *EDUCATION AS A PROFESSION* 334-53 (1956) (setting forth the potential effects of teacher bargaining); Wollett, *The Coming Revolution in Public School Management*, 67 *MICH. L. REV.* 1017, 1024, 1028 (1969) (predicting, *inter alia*, higher salaries, improved working conditions and higher quality teachers).

10. See *infra* text accompanying notes 25-34.

11. See, e.g., *CARNEGIE REPORT*, *supra* note 2, at 155-63 (commenting on low salaries and poor working conditions); J. GOODLAD, *supra* note 2, at 195-96 (commenting on low salaries and poor working conditions); *NATION AT RISK*, *supra* note 2, at 30-31 (commenting on low salaries); *EDUCATING AMERICANS*, *supra* note 2, at 29-37 (commenting on low salaries and poor working conditions); *ACTION FOR EXCELLENCE*, *supra* note 2, at 37-39 (1983) (commenting on low salaries and poor working conditions).

12. See *infra* text accompanying notes 152-202.

13. See *infra* notes 135-37 and accompanying text.

14. This work consists of a longitudinal ("before and after") study of educational collective bargaining in Connecticut, covering the years 1976-1984. This period encompasses

experience with teacher bargaining under two prevalent legal structures: 1) conventional collective bargaining in which teachers are simply denied the right to strike; and 2) collective bargaining in which the right to strike is denied, but the opportunity to submit bargaining disputes to binding arbitration is substituted for it. The latter structure constitutes the most significant innovation in teacher bargaining during the past decade, as it has presented a viable alternative to strike-based bargaining—which remains politically unacceptable in the large majority of states.<sup>15</sup>

In Part I of this Article, we review briefly the development of teacher collective bargaining and its associated legal structures. We then examine, in Part II, evidence concerning the effects of bargaining on teachers' salaries and the processes of school government. Part III sets forth recent research findings, including our own, regarding the relative impact that arbitration has on the collective bargaining process. Finally, in Part IV of this Article, we reflect on the past decades' experience with teacher bargaining and speculate on the relationship of bargaining to current educational reform.

Past experience with teacher collective bargaining, we shall maintain, indicates that bargaining is neither the boon to organized teachers nor the blight to school government that some have feared. Through collective bargaining, teachers have achieved moderate success in obtaining higher salaries and various forms of job protection, and have expanded somewhat their participation in school administration. But the teachers' unions have been measurably less effective than unions in private industry, and the feared seizure of school government powers by teachers' unions has simply not occurred. Earlier predictions that collective bargaining would have greater impact, we shall argue, failed to account for significant political and economic factors; among these factors are the limited political base of educators, the relative advantage enjoyed by fiscally conservative forces in the local school funding process, and the increasing sophistication of school management in the bargaining process.

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the three years prior to and the five years following introduction of binding arbitration procedures in Connecticut. Among the research methods included in this study are: 1) quantitative analysis of salary levels and salary distribution in Connecticut's 167 local school districts; 2) quantitative analysis of all arbitration proceedings and outcomes; 3) quantitative analysis of bargaining impasse and strike occurrence during the study period; 4) comprehensive surveys of professional labor negotiators, school superintendents, school board members, and local teacher union representatives; and 5) interviews with union, management, and state officials. All data used in this study is available from the authors.

15. See *infra* text accompanying notes 32-39.

Nor does the introduction of binding arbitration procedures promise dramatic change in the substantive outcomes of collective bargaining. For the most part, the results of arbitration reflect prevailing market forces. Arbitration appears to have a moderately inflationary effect on salary costs, and arbitrators show little willingness to act innovatively in matters of school administration. Binding arbitration may, nonetheless, prove to be a viable legislative response to the problem of teachers' strikes, as arbitration laws are highly successful in preventing strikes, and offer teachers a form of bargaining leverage that appears to be no less effective than strike activity.

In conclusion, we shall contend that the dominant factor in educational collective bargaining is its continued reliance on decentralized decision making. Regardless of legal variations in the structure of localized bargaining, it is the willingness of local government to support the educational program that determines the success of bargaining. Past experience reveals that such support is often weak, and highly variable among local school districts. As a consequence, current efforts at statewide—and costly—instructional reform cannot depend on local initiative, or the processes of local bargaining. If there is to be sustained improvement in public school instruction, state government must reclaim its legal authority to initiate and fund reform throughout the local school districts. Otherwise, reform efforts will once again be frustrated.

#### I. AN OVERVIEW OF EDUCATIONAL COLLECTIVE BARGAINING

No governmental function in the United States has stronger traditions of local control than the provision of public education. While formally a constitutional obligation of state government,<sup>16</sup> public education is commonly directed by one of more than 15,000 local boards of education.<sup>17</sup> These school boards are usually elected

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16. See Simon, *The School Finance Decisions: Collective Bargaining and Future Finance Systems*, 82 YALE L. J. 409, 423 (1973); Project, *Education and the Law: State Interests and Individual Rights*, 74 MICH. L. REV. 1373, 1375-77 (1976) [hereinafter cited as Project].

17. In 1980, there were 15,601 operating school districts in the United States. With the exception of Hawaii, which has one statewide school district, the number of local operating school districts varies from 17 in Nevada, to 1076 in Texas. See W. GRANT & L. EIDEN, *DIGEST OF EDUCATION STATISTICS 1982*, at 59 [hereinafter cited as *DIGEST OF EDUCATION STATISTICS*]. See generally Project, *supra* note 16, at 1380-81.

by citizens of the local school districts,<sup>18</sup> and perform their responsibilities more or less independently of other units of county and municipal government.<sup>19</sup> Traditionally, it is the school board that controls such matters as the opening and closing of neighborhood schools, the assignment of students, textbook selection, and the ultimate composition of the school curriculum.<sup>20</sup> Moreover, the school board formulates the school budget,<sup>21</sup> which is often the largest single expenditure of local government and the primary determinant of the local tax burden.<sup>22</sup>

The traditions of local control are also reflected in the legal structure of school labor relations. The role of state government is usually that of insuring minimum qualifications in the teaching staff, and minimum levels of employment benefits and job protection.<sup>23</sup> Otherwise, labor relations remain a distinctly local phenomenon. Only in Hawaii, do teachers negotiate the terms of employment at a statewide level. In the remaining states where bargaining is permitted, it occurs at the school district level between the district board of education and the elected union representative of district teachers.<sup>24</sup> As a consequence of this decentralized system of bar-

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18. Approximately 85% of local school board members are elected. See F. WIRT & M. KIRST, *THE POLITICS OF EDUCATION: SCHOOLS IN CONFLICT* 94 (1982) [hereinafter cited as *SCHOOLS IN CONFLICT*].

19. See generally Project, *supra* note '6, at 1380-81.

20. See Simon, *supra* note 16, at 423-24. In most states today, these school board powers are exercised subject to state *minimum* requirements. See F. WIRT & M. KIRST, *POLITICAL AND SOCIAL FOUNDATIONS OF EDUCATION* 112 (1975). See also, Project, *supra* note 16, at 1378-80.

21. See, e.g., Doherty, *Public Education*, in *COLLECTIVE BARGAINING: CONTEMPORARY AMERICAN EXPERIENCE* 487, 489 (G. Somers ed. 1980):

In most states school boards are fiscally independent, having a tax base and taxing authority separate from that of county and municipal government. In a large number of these states annual school budgets are submitted to the voters for approval, a matter of no small consequence for collective bargaining, particularly if a sufficient increase in the tax rate. In some areas (most of the New England states, for example, and several large cities), school districts are dependent upon town and city governments for financial support.

For a discussion of the fiscally-dependent school district, and the interrelationship of school budgeting and town funding, see Gould, *The Rejection and Funding of Teacher Contracts in Connecticut: A Statutory Enigma*, 9 *CONN. L. REV.* 608 (1977).

22. The state and local government direct expenditure for education constitutes 35.9% of their budgets. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 1984, at 281 [hereinafter cited as *STATISTICAL ABSTRACT*].

23. All states, for example, require that teachers be certified, thus establishing minimum qualifications in education and competence. See Project, *supra* note 16, at 1378. Similarly, most states provide teachers retirement benefits, sick leave benefits and some form of job protection. See generally *LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, STATE LEGAL STANDARDS FOR THE PROVISION OF PUBLIC EDUCATION: AN OVERVIEW* (1978).

24. See *supra* note 17.

gaining, most of the important personnel decisions in the schools remain subject to local determination.

Though highly diffuse in structure, teacher unionism and collective bargaining have experienced remarkable growth in recent decades. The task of organizing teachers was greatly facilitated by professional associations like the National Education Association (NEA) and its local affiliates, which were developed into functioning unions.<sup>25</sup> This process was accelerated by the emergence of the more militant American Federation of Teachers (AFT), an offshoot of the AFL-CIO, as a rival to the NEA. Since the early organizational successes of the AFT in New York City and other metropolitan school districts, the two unions have waged a continual campaign for membership.<sup>26</sup> Today, eighty-eight percent of the nation's school teachers belong to either the NEA or the AFT, and eighty-three percent are members of a local teachers' organization.<sup>27</sup> By contrast, a dwindling twenty-one percent of all private sector employees currently belong to a labor organization, a decline that has occurred simultaneously with the rise in teacher unionism.<sup>28</sup>

The increase in union density among public school teachers has been accompanied by a proliferation in the number of bargaining statutes and formal bargaining agreements. Since 1959, when Wisconsin first authorized teacher collective bargaining, thirty-three states have recognized a statutory duty to bargain,<sup>29</sup> and eleven

25. See generally A. CRESSWELL & M. MURPHY, *TEACHERS, UNIONS, AND COLLECTIVE BARGAINING IN PUBLIC EDUCATION* 53-102 (1980); Gee, *The Unionization of Mr. Chips: A Survey Analysis of Collective Bargaining in the Public Schools*, 15 WILLAMETTE L. J. 367, 374-80 (1979).

26. See M. LIEBERMAN & M. MOSKOW, *COLLECTIVE NEGOTIATIONS FOR TEACHERS* 55-61 (1966); A. CRESSWELL & M. MURPHY, *supra* note 25, at 84-86; Gee, *supra* note 25, at 378-80.

27. NATIONAL EDUCATION ASSOCIATION, *STATUS OF THE AMERICAN SCHOOL TEACHER*, 1980-81, 67 (1982) [hereinafter cited as *STATUS*]. Because membership in the national and local organizations was at high levels prior to the advent of collective bargaining, one cannot strictly equate such membership with the phenomenon of "unionism." See generally A. CRESSWELL & M. MURPHY, *supra* note 25, at 105-12. These membership figures might better be described as membership in organizations that either bargain (as most do) or support the right to bargain (for example, in states where bargaining is prohibited).

28. See Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1771-72 (1983).

29. See ALASKA STAT. § 14.20.550 (1975); CAL. GOV'T CODE § 3540 (West 1977); CONN. GEN. STAT. § 10-153a (1979); DEL. CODE ANN. tit. 14, § 4001 (1982); FLA. STAT. § 447.201 (1980); HAWAII REV. STAT. § 89-1 (1982); IDAHO CODE § 20.9 (1978); ILL. ANN. STAT. ch. 48, § 1701 (Smith-Hurd Supp. 1984); IND. CODE § 20-7.5-1-3 (1978); IOWA CODE § 20.9 (1978); KAN. STAT. ANN. § 72-5414 (1980); ME. REV. STAT. ANN. tit. 26, § 965 (1974); MD. EDUC. CODE ANN. § 6-108 (1978); MASS. GEN. LAWS ANN. ch. 150E, § 2 (West 1981); MICH. COMP. LAWS ANN. § 423.215 (West 1978); MINN. STAT. § 179.61 (1983); MONT. CODE ANN. § 39-31-305 (1983); NEB. REV. STAT. § 79-1292 (1981); NEV. REV. STAT. § 288.150 (1983); N.H.

states have recognized some form of teacher participation in school board decision-making.<sup>30</sup> Only four states continue to prohibit collective bargaining by teachers.<sup>31</sup> The nation's teaching force, moreover, has responded swiftly to the opportunities presented by the adoption of teacher bargaining laws. Current estimates indicate that approximately seventy percent of the nation's school systems operate under the provisions of a collective bargaining agreement.<sup>32</sup>

Teacher bargaining laws have usually been patterned after private sector precedent, particularly the National Labor Relations Act. Among the labor conventions borrowed from the private sector have been: 1) recognition of a single union with exclusive power to represent local school teachers; 2) recognition of management's duty to bargain in good faith with the union representative; and 3) recognition of limitations on the scope of the duty to bargain.<sup>33</sup> In defining the scope of the duty to bargain, states have often accepted the private sector distinction between mandatory and permissive subjects of bargaining. Some states have expressly enumerated the mandatory subjects of bargaining, but most states have adopted the private sector definition of the scope of the bargaining duty, which extends the duty to all "terms and conditions of employment."<sup>34</sup> In

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REV. STAT. ANN. § 273-A:3 (1975); N.J. REV. STAT. § 34:13A-6 (1982); N.Y. CIV. SERV. LAW § 200 (Consol. 1983); N.D. CENT. CODE § 15-38.1-12 (1969); OHIO REV. CODE ANN. § 4117.04 (1983); OKLA. STAT. ANN. tit. 70, § 509.2 (1982); OR. REV. STAT. § 243.656 (1979); 43 PA. CONS. STAT. § 1101.401 (1976); R.I. GEN. LAWS § 36-11-7 (1980); S.D. CODIFIED LAWS ANN. § 3-18-2 (1983); TENN. CODE ANN. § 49-5-501 (1978); VT. STAT. ANN. tit. 16, § 2001 (1977); WASH. REV. CODE § 41.59.140 (1983); WIS. STAT. § 111.91 (1982).

30. See ALA. CODE § 73 (1973) (mandatory consultation); Op. Att'y Gen. No. 74.11 (Ariz. May 20, 1974) (permissive consultation); Op. Att'y Gen. (Ark. Sept. 25, 1968) (permissive collective bargaining); Littleton Educ. Ass'n v. Arapahoe Cty. School Dist., 553 P.2d 793 (Col. 1976) (permissive collective bargaining); Op. Att'y Gen. (Ga. Sept. 1, 1966) (permissive consultation); Op. Att'y Gen. 65-84 (Ky. 1965) (permissive collective bargaining); Op. Att'y Gen. 74-413 (La. 1974) (permissive collective bargaining); Peters v. Board of Educ., 506 S.W.2d 429 (Mo. 1974) (permissive consultation); IBEW v. Town of Farmington, 405 P.2d 233 (N.M. 1965) (permissive collective bargaining); Op. Att'y Gen. (S.C. Sept. 27, 1978) (permissive collective bargaining); Op. Att'y Gen. (W.Va. June 26, 1974) (permissive collective bargaining).

31. See N.C. GEN. STAT. § 95-98 (1959); TEX. STAT. ANN. art. 5154C (Vernon 1947); Op. Att'y Gen. 60-003 (Utah 1960); Virginia v. County Bd. of Arlington City, 232 S.E.2d 30 (Va. 1977).

32. EDUCATIONAL RESEARCH SERVICES, INC., FRINGE BENEFITS FOR TEACHERS IN PUBLIC SCHOOLS, 1981-82, Pt. 3, at 36 (1982). This percentage, based on a national sample of school districts, increases to 75% if all written agreements, formal and informal, are included.

33. See Gee, *supra* note 25, at 452-53, 460-62.

34. See *id.* at 460-61; Simon, *supra* note 16, at 425. Twenty-seven states recognize a duty to bargain over terms and conditions of employment, subject in some states to certain qualifications. See ALASKA STAT. § 23.40.070 (1980); CAL. GOV'T CODE § 3543.2 (West 1981); CONN. GEN. STAT. § 10-153a (1979); DEL. CODE ANN. tit. 14, § 4001 (1981); FLA. STAT. § 447.301 (1980); HAWAII REV. STAT. § 89-3 (1970); ILL. STAT. ANN. ch. 48, § 1704 (Smith-

these states, the task of determining the specific scope of the duty to bargain has fallen upon the parties themselves and ultimately upon the courts.

In one significant respect, teacher labor relations have departed from the private sector paradigm: teachers are denied the right to strike, and are compelled to accept in its stead one or more of a variety of conciliatory procedures.<sup>35</sup> In only nine states is there recognition of a limited right to strike, and exercise of that right is usually contingent on the exhaustion of conciliatory procedures.<sup>36</sup>

The concomitant conferral of bargaining rights and proscription of strike rights is a major modification of the private sector model of collective bargaining. The right to bargain has long been premised on the parties' "freedom to contract," which is comprised of the employer's right to extend or withhold compensable employment and the employees' right to extend or withhold profit-productive labor. As the Supreme Court has observed in the context of private sector bargaining, "the use of economic pressure by the parties to a labor dispute is not a grudging exception to some policy of completely academic discussion . . . it is part and parcel of the process of collective bargaining."<sup>37</sup> Furthermore, private sector bargaining is seldom regulated by formal procedures or interlaced with compulsory conciliation mechanisms.<sup>38</sup> Rather, it typically involves a test of power and will, virtually unregulated by government.

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Hurd Supp. 1984); IOWA CODE § 20.9 (1978); KAN. STAT. ANN. § 72-5414 (1970); ME. REV. STAT. ANN. tit. 26, § 965 (1974); MD. EDUC. CODE ANN. § 6-408 (1978); MASS. GEN. LAWS ANN. ch. 150E, § 6 (1981); MICH. COMP. LAWS ANN. § 423.211 (West 1978); MINN. STAT. § 179.66 (1983); MONT. CODE ANN. § 39-31-305 (1983); NEB. REV. STAT. § 79-1288 (1980); N.H. REV. STAT. ANN. 273-A:1 (1979); N.J. REV. STAT. § 34:13A-5.3 (1982); N.Y. CIV. SERV. LAW § 203 (1983); N.D. CENT. CODE § 15.38.1-09 (1969); OHIO REV. CODE ANN. § 4117.03 (1983); OR. REV. STAT. § 243.656 (1979); 43 PA. CONS. STAT. § 1101.702 (1976); R.I. GEN. LAWS § 28-9.3-2 (1980); S.D. CODIFIED LAWS ANN. § 3-18-2 (1983); TENN. CODE ANN. § 49-5-601 (1978); WASH. REV. CODE § 41.59.020 (1983); WIS. STAT. § 111.91 (1982).

35. See *infra* note 45.

36. See ALASKA STAT. § 09.43.030 (1975) (mediation a prerequisite); HAWAII REV. STAT. § 89-12 (1982) (mediation and fact-finding are prerequisites); ILL. ANN. STAT. ch. 48, ¶ 1712 (Smith-Hurd Supp. 1984) (mediation a prerequisite); MINN. STAT. § 179.64 (1983) (mediation a prerequisite); MONT. CODE ANN. § 59-1603 (1983) (no prerequisite); OR. REV. STAT. § 243.726 (1979) (mediation and fact finding are prerequisites); 43 PA. CONS. STAT. §§ 1101.1002, 1101.1003 (1976) (mediation and fact finding are prerequisites); VT. STAT. ANN. tit. 21, § 1730 (1978) (mediation and fact finding are prerequisites); WIS. STAT. § 111.70(4) (1982) (mediation a prerequisite; strike impermissible unless both parties withdraw from binding arbitration).

37. *NLRB v. Insurance Agents' Int'l Union*, 361 U.S. 477, 495 (1960). See also Cox, *The Duty to Bargain in Good Faith*, 71 HARV. L. REV. 1401, 1409 (1958).

38. See generally McCann & Smiley, *The National Labor Relations Act and the Regulation of Public Employee Collective Bargaining*, 13 HARV. J. ON LEGIS. 479, 510-14 (1976).

The denial of teachers' right to strike has been justified on various grounds. At a rhetorical level it is said that "no one has the right to strike the sovereign."<sup>39</sup> But the more substantive opposition to teacher strikes is premised on the belief that organized public employees would have disproportionate political leverage if strikes were permitted. This theory, first articulated by Professors Wellington and Winter in their work, *The Unions and the Cities*,<sup>40</sup> has dominated thinking in public sector bargaining for more than a decade.<sup>41</sup> Central to this "disproportionate power" theory is the contention that neither market nor political restraints will enable local public employers to resist union bargaining demands backed by the threat of strikes.<sup>42</sup> Thus, the strike prohibition is thought necessary to preserve the political and economic integrity of local government.

Notwithstanding statutory prohibitions and public policy appeals, school teachers do strike. Between 1972 and 1980, for example, there were on average more than 145 strikes each school year.<sup>43</sup> Teacher strikes now occur regularly with the commencement of the

39. See, e.g., A. CRESSWELL & M. MURPHY, *supra* note 25, at 363; Hanslowe & Acierno, *The Law and Theory of Strikes by Government Employees*, 67 CORNELL L. REV. 1055, 1061 (1982).

40. H. WELLINGTON & R. WINTER, JR., *THE UNIONS AND THE CITIES* 24-29 (1971) [hereinafter cited as *THE UNIONS AND THE CITIES*]; see also Wellington & Winter, *The Limits of Collective Bargaining in Public Employment*, 78 YALE L.J. 1107, 1123-25 (1969) [hereinafter cited as *Limits of Collective Bargaining*]; Wellington & Winter, *Structuring Collective Bargaining in Public Employment*, 79 YALE L.J. 805, 807-09 (1970) [hereinafter cited as *Structuring Collective Bargaining*]. In brief form, the Wellington and Winter position is based on the argument that: 1) public services are monopolized by public employees and have no competition from nonunion enterprises; 2) the public will exert excessive political pressure on governmental officials to prevent work stoppages, even at the cost of expensive bargaining concessions; and 3) the costs of settlement are easily disguised in "an already incomprehensible municipal budget or tax structure."

41. On the predominance of the Wellington and Winter theory in public sector labor law and commentary, see R. SUMMERS, *COLLECTIVE BARGAINING AND PUBLIC BENEFIT CONFERRAL: A JURISPRUDENTIAL CRITIQUE* ix n.2 (IPE Monograph No. 7, 1976); Cohen, *Does Public Employee Unionism Diminish Democracy?*, 32 INDUS. & LAB. REL. REV. 189, 190-92 (1979); Kochan, *Empirical Research on Labor Law: Lessons from Dispute Resolution in the Public Sector*, U. ILL. L. REV. 161, 165-66 (1981); Perry, *Teacher Bargaining: The Experience in Nine Systems*, 33 INDUS. & LAB. REL. REV. 3 n.1 (1979); R. Freeman, *Unionism Comes to the Public Sector* 19-20 (1984) (unpublished report to the Sloan Foundation, Harvard University, National Bureau of Economic Research).

42. See *THE UNIONS AND THE CITIES*, *supra* note 40, at 18-21; *Structuring Collective Bargaining*, *supra* note 40, at 807-08. See also W. GARMS, J. GUTHRIE & L. PIERCE, *SCHOOL FINANCE: THE ECONOMICS OF PUBLIC EDUCATION* 114 (1978) [hereinafter cited as *SCHOOL FINANCE*]; Anderson, *Strikes and Impasse Resolution in Public Employment*, 67 MICH. L. REV. 943, 956-60 (1969); Hanslowe & Acierno, *supra* note 39, at 1063.

43. The figure is based on data assembled by the Bureau of Labor Statistics (BLS); BLS strike figures for the period 1972-80 are reproduced in PUBLIC SERVICE RESEARCH COUNCIL, *THE EFFECT OF COLLECTIVE BARGAINING ON TEACHER SALARIES* 12 (1981) [hereinafter cited as *COLLECTIVE BARGAINING*].

school year, and teachers lead all other public sector employees in their willingness to engage in job actions.<sup>44</sup> Such strike activity is still considered by many to be an essential element in collective bargaining, even though public school teachers are obviously troubled by the prospect of highly-publicized "law-breaking," and school boards by their obligation to invoke statutory sanctions.

As mentioned, most state legislators have attempted to circumvent the strike dilemma with a variety of compulsory, impasse resolution procedures. These procedures have relied on the intervention of third parties—mediators, factfinders, and arbitrators—to reconcile bargaining disputes and to avert strike activity.<sup>45</sup> In theory, management and employees are induced to settle because of the third party's conciliatory power and the public pressure that accumulates behind the intervenor's efforts. In theory, impasse procedures introduce into the bargaining process a degree of moderation and balance otherwise lacking.<sup>46</sup>

The more common impasse resolution procedures have suffered the same fate as statutory strike prohibitions. They are often ineffective in strongly contended bargaining disputes. Thus, more than seventy-five percent of strikes occurring in the period 1972-80 have occurred in states employing conventional, non-binding impasse res-

44. See B. COOPER, *COLLECTIVE BARGAINING, STRIKES AND FINANCIAL COSTS IN PUBLIC EDUCATION: A COMPARATIVE REVIEW* 40-44 (1982).

45. See ALASKA STAT. § 14.20.570 (1975) (mediation); CAL. GOV'T CODE § 3518 (1983) (mediation); DEL. CODE ANN. tit. 14, § 4014 (1982) (permissive mediation and factfinding); FLA. STAT. § 447.403 (1977) (mediation and factfinding); HAWAII REV. STAT. § 89-11 (1978) (mediation and factfinding); IDAHO CODE §§ 33-1274, 33-1275 (1977) (mediation and factfinding); IND. CODE § 20-7.5-1-11 (1976) (mediation and factfinding); KAN. STAT. ANN. § 72-5413 (1980) (mediation and factfinding); ME. REV. STAT. ANN. tit. 26, § 3965 (1981) (permissive mediation and factfinding); M.D. EDUC. CODE ANN. § 6-408(d) (1978) (mediation and factfinding); MASS. GEN. LAWS AN. ch. 150E, § 9 (1981) (mediation and factfinding); MICH. COMP. LAWS § 423.207 (1976) (mediation and factfinding); MONT. CODE ANN. §§ 39-31-307, 39-31-308 (1979) (mediation and factfinding); NEV. REV. STAT. § 288.190 (1981) (mediation and factfinding); N.H. REV. STAT. ANN. § 273-A:12 (1983) (permissive mediation and factfinding); N.J. REV. STAT. §§ 34:13A-6, 34:13A-7 (1982) (permissive mediation and factfinding); N.Y. CIV. SERV. LAW (McKinney 1977) (mediation and factfinding); N.D. CENT. CODE § 15-38.1-13 (1983) (mediation and factfinding); OHIO REV. CODE ANN. § 4117.14 (1983) (mediation and factfinding); OKLA. STAT. tit. 70, § 509.7 (1983) (factfinding); OR. REV. STAT. §§ 243.712, 243.722 (1983) (mediation and factfinding); 43 PENN. CONS. STAT. § 1101.501 (1976) (mediation and factfinding); R.I. GEN. LAWS § 28-9.3-9 (1981) (mediation for economic disputes); S.D. CODIFIED LAWS ANN. § 3-18-8.1 (1983) (mediation); TENN. CODE ANN. § 49-5513 (1978) (mediation and factfinding); VT. STAT. ANN. tit. 3, § 925 (1977) (mediation and factfinding); WASH. REV. CODE § 41.59.120 (1983) (mediation and factfinding).

46. See generally A. CRESSWELL & M. MURPHY, *supra* note 25, at 176-83; Anderson, *supra* note 42, at 564-69; *Structuring Collective Bargaining*, *supra* note 40, at 825-31; Note, *The Strike and Its Alternatives in Public Employment*, 1966 WIS. L. REV. 549, 562-63, 566-69.

olution procedures.<sup>47</sup> Evidence from these states indicates that elaborate conciliatory mechanisms will fail when teachers' unions are determined and school boards unyielding. For it is a characteristic of conventional impasse procedures that they leave intact the school board's freedom to say "no" to teacher demands, without fear of a legal strike reprisal.

There is one impasse procedure that has proven to be overwhelmingly successful in preventing strikes—binding arbitration.<sup>48</sup> Binding arbitration is a relatively recent phenomenon in American labor law, and one that has little precedent in the private sector.<sup>49</sup> It has a long history in other common law countries, however, and is now widely used in non-educational public sector bargaining in the United States.<sup>50</sup> This trend appears to be spreading to educational bargaining, as nineteen states have recognized some form of binding arbitration during the past decade, and seven of these compel binding arbitration to resolve bargaining disputes.<sup>51</sup>

47. The figure is based on a state-to-state comparison using strike data reported in *COLLECTIVE BARGAINING*, *supra* note 43, at 12. On the decline in the effectiveness of nonbinding impasse procedure, see L. McDONNELL & A. PASCAL, *ORGANIZED TEACHERS IN AMERICAN SCHOOLS* 63 (1979); Perry, *supra* note 41, at 9.

48. Based on GOV'T EMPL. REL. REP. (BNA) (1966-82) summaries through 1982, there had been no strikes in Connecticut, Iowa, Nebraska and Wisconsin following enactment of binding arbitration procedures. Four strikes had occurred in Minnesota, where striking is a permissible alternative to binding arbitration. It should be noted, however, that only Connecticut and Wisconsin had a significant amount of strike activity prior to enactment of binding arbitration legislation. For summaries of the powerful deterrence to strikes in public sector bargaining generally, see B. DOWNIE, *THE BEHAVIOURAL, ECONOMIC AND INSTITUTIONAL EFFECTS OF COMPULSORY INTEREST ARBITRATION* 73-78 (1979); Feuille, *Selected Benefits and Costs of Compulsory Arbitration*, 33 *INDUS. & LAB. REL. REV.* 64, 65 (1979).

49. See Morris, *The Role of Interest Arbitration in a Collective Bargaining System*, 1 *INDUS. REL. L. J.* 427, 479-80 (1976).

50. See, e.g., B. COOPER, *supra* note 44, at 64; Feuille, *supra* note 48, at 64.

51. Binding arbitration is permitted by the following state laws: HAWAII REV. STAT. §§ 89-2, 89-11 (1978); ILL. ANN. STAT. ch. 48, ¶ 1712 (Smith-Hurd Supp. 1984) (unless both parties agree to binding arbitration, teachers may strike); IND. CODE § 20-7.5-1-13 (1976); MONT. CODE ANN. § 39-31310 (1979); NEV. REV. STAT. § 288.200 (1981); N.H. REV. STAT. ANN. § 273-A:12 (1983) (binding on non-economic items only); N.J. REV. STAT. § 34:13A-7 (1982); N.D. CENT. CODE § 15-38.1-13 (1983); OR. REV. STAT. § 243.712(2) (1983); 43 PENN. CONS. STAT. § 1101.1003 (1976); S.D. CODIFIED LAWS ANN. § 3-13-8.1 (1983); WASH. REV. CODE § 41.59.120(5) (1983).

The following state laws employ some form of *compulsory*, binding arbitration: CONN. GEN. STAT. § 10-153 (1979) (compulsory arbitration of all disputed issues); IOWA CODE § 20.22 (1977) (compulsory arbitration of all disputed issues); ME. REV. STAT. ANN. tit. 26, § 965(4) (1974) (compulsory arbitration of all disputed issues, but binding only for non-economic items); MINN. STAT. § 179.69 (1983) (compulsory arbitration of all disputed issues unless one party recognizes the right to strike); NEB. REV. STAT. § 48.818 (1980) (either party can compel binding arbitration of disputed issues before the Commission of Industrial Relations); R.I. GEN. LAWS § 28-9.3-11, 12 (1980) (either party can compel binding arbitration of disputed issues, but only non-economic arbitral decisions are binding); WIS. STAT. § 111.70(4)(cm)

The emergence of binding arbitration in teacher collective bargaining has precipitated a reexamination of procedural values in the labor relations context not unlike that precipitated by the introduction of collective bargaining itself.<sup>52</sup> For in theory binding arbitration is difficult to reconcile with traditions both of educational governance and labor relations.<sup>53</sup> First, arbitration vests ultimate authority in unelected arbitrators, thus undermining a history of local government control of personnel and budgetary matters. Second, arbitration interferes with the process of "free" collective bargaining, which is founded on the parties' power to accept or reject contract proposals. As a result, representatives of local government have begun to reexamine their opposition to a right to strike and many have concluded that, if change is needed, recognition of a teacher's right to strike is preferable to a state-imposed duty to arbitrate.<sup>54</sup> Public employee unions, on the other hand, have begun to rethink their historical insistence on the right to strike. Regardless of the process values supporting unrestricted "power" bargaining, unions are asking whether third-party arbitral resolutions are not preferable to the uncertain, and often disappointing, results of strikes.<sup>55</sup>

The policy choices confronting state legislatures in the coming years are not easy ones. As states grapple with the problem of dispute resolution in teacher collective bargaining, a growing number of critics are challenging the very legitimacy of the bargaining process.<sup>56</sup> This uncertainty about the common objectives of school labor relations, moreover, is exceeded by a greater uncertainty as to how existing legislative schemes have worked. Yet contemporary legislators need not operate in the experiential vacuum that made so much of early bargaining legislation a sheer experiment in transplanting private sector precedent to the public sector. The experiential base of educational collective bargaining is an increasingly rich one; and as Professor Clyde Summers has observed, labor theory

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(1982) (compulsory arbitration of all disputed issues unless both parties recognize a right to strike).

52. Compare, Horton, *Arbitration, Arbitrators, and the Public Interest*, 28 *INDUS. & LAB. REL. REV.* 497 (1975) with Krislov, *Arbitration, Arbitrators, and the Public Interest: Comment*, 31 *INDUS. & LAB. REL. REV.* 71 (1977).

53. See generally Bernstein, *Alternatives to the Strike in Public Labor Relations*, 85 *HARV. L. REV.* 459 (1971); Gallagher, *The Use of Interest Arbitration in the Public Sector*, 33 *LAB. L.J.* 501 (1982); McAvoy, *Binding Arbitration of Contract Terms: A New Approach to the Resolution of Disputes in the Public Sector*, 72 *COLUM. L. REV.* 1192 (1972); Morris, *supra* note 49.

54. See *infra* note 208.

55. See *infra* note 206.

56. See authorities cited *infra* note 314.

"cannot be tested by logic, but only by empirical evidence of the operation of collective bargaining in the political process."<sup>57</sup>

In the following discussion, then, we analyze contemporary evidence concerning the substantive results of collective bargaining and binding arbitration procedures. Those results can be subsumed under two categories: 1) the economic effects of collective bargaining, and 2) the effects of collective bargaining on school governance and educational policymaking. In analyzing these effects, we emphasize that social science research is by nature provisional, and subject to continual revision. We do conclude, however, that evidence currently available suggests important trends in bargaining in public education and, more importantly, calls into question some of the orthodoxies of educational bargaining theory.

## II. EXPERIENCE UNDER CONVENTIONAL COLLECTIVE BARGAINING STRUCTURES

### A. *The Economic Effects of Bargaining*

The most prominent feature of the public schools is their incessant search for funds.<sup>58</sup> Public schools have relied historically on the ability and willingness of local government to fund education, and this funding has usually been provided through highly visible and politically unpopular property taxes.<sup>59</sup> As a consequence, financial support for education has often been inadequate, thus prompting educators' appeal for state and federal support.<sup>60</sup> Ironically, the traditions of local control that contributed to the financial dilemma of the public schools have often generated the political resistance that frustrates reform. In both Congress and the state legislatures, advocates of local control have opposed measures that would decrease the schools' dependency on local funding decisions.<sup>61</sup>

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57. Summers, *Public Employee Bargaining: A Political Perspective*, 83 YALE L.J. 1156, 1158 (1974); accord M. YUDOF, D. KIRK, T. VAN GEEL & B. LEVIN, *EDUCATIONAL POLICY AND THE LAW* 333 (1982).

58. See Eliot, *supra* note 7, at 1037, 1042.

59. See, e.g., *SCHOOL FINANCE*, *supra* note 42, at 149 ("The property tax raises more money than any other tax for schools, and in addition it is the only tax on which citizens regularly have an opportunity to express their disapproval; they express such dissatisfaction through voting for school budgets and school board members. This fact, plus the inequities in assessing property that lead to inequities in taxation, has made the property tax appear to be our most unpopular tax."); BUREAU OF LABOR STATISTICS, U.S. DEPT' OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 1984, at 295, 297 (property tax is principal revenue source of local government).

60. See D. RAVITCH, *THE TROUBLED CRUSADE* 3-8 (1983).

61. Wirt and Kirst discuss this point as follows:

Federal and state funding have increased considerably since World War II, notwithstanding the opposition of local interests.<sup>62</sup> Yet, the impact of local funding decisions remains strongly evident in the public schools. One prominent example is the effort by state governments, in the 1970's, to reduce the large disparities in educational support among local school districts.<sup>63</sup> Many of these at-

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The evolution of state influence on and financial support for local schools has been replete with philosophical and practical political struggles between state and local jurisdictions. The constitutional power of state government has been in constant tension with a widely held value that the soundest educational policy is determined locally. "Local control" has become a powerful and pervasive political shibboleth, in many states restricting the financial and leadership support of state agencies.

F. WIRT & M. KIRST, *supra* note 20, at 112, 114. See also D. RAUCH, *supra* note 60, at 5, 6, 27, 39 (local resistance to federal aid).

62. In school year 1945-46, federal revenues constituted 1.4% of total school funds, state revenues 34.7%, and local revenues 63.9%. The corresponding figures for school year 1979-80 were: federal 9.8%, state 46.8%, local 43.4%. See DIGEST OF EDUCATION STATISTICS, *supra* note 17, at 75. A system of school financing that relies heavily on local property taxes leads to disparities between districts in the provision of educational opportunities. This uneven distribution of benefits is well documented. J. BERKE, FINANCING EQUAL EDUCATIONAL OPPORTUNITY: ALTERNATIVES FOR STATE FINANCE (1972); J. COONS, W. CLUNE & S. SUGARMAN, PRIVATE WEALTH AND PUBLIC EDUCATION (1970); J. GUTHRIE, SCHOOLS AND INEQUALITY (1971). The resulting financial reform movement was the source of much litigation in the 1970's alleging unconstitutional discrimination on the basis of wealth. While generally successful at the state level, the cases resulted in a Supreme Court decision declaring education not to be a fundamental right in the U.S. Constitution. Compare *San Antonio Indep. School District v. Rodriguez*, 411 U.S. 1 (1973) with *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977); *Serrano v. Priest*, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601, cert. denied, 412 U.S. 907 (1971); *Robinson v. Cahill* 62 N.J. 473, 303 A.2d 273 (1973). For some commentary on equal educational opportunity litigation, see Carrington, *Financing the American Dream: Equality and School Taxes*, 73 COLUM. L. REV. 1227 (1973); Levin, *Current Trends in School Finance Reform Litigation: A Commentary*, DUKE L. J. 1099 (1977); Simon, *supra* note 15; Yudof, *Equal Educational Opportunity and the Courts*, 51 TEX. L. REV. 411 (1973). See also Symposium, 38 LAW & CONTEMP. PROBS. 293 (1974), reprinted in FUTURE DIRECTIONS FOR SCHOOL FINANCE REFORM (B. Levin ed. 1974).

63. The effects of the equal educational opportunity movements are just beginning to be assessed. A study of the effects of finance reform in California, Florida, Kansas, Michigan and New Mexico concluded that, while tax equalization was achieved by state reform measures, there was little change in per-pupil instructional expenditures:

Reform has done little to equalize the distribution of per-pupil instructional expenditures. (This result is consistent with other studies which have found, for example, that as districts' per-pupil budgets increase, they allocate decreasing proportions of their budgets to expenditures for teachers.) If educational quality is closely linked to instructional expenditures, and if the object of reform is to equalize the quality of education afforded to students who live in different places, the states have dissipated much of the additional resources they have put into their reform efforts.

S. CARROLL, THE SEARCH FOR EQUITY IN SCHOOL FINANCE: SUMMARY AND CONCLUSIONS vi (1979). Some commentators have concluded that only fiscal reform programs based upon centralized financing of local services will result in tax and spending equity in the school system. Inman & Rubinfeld, *The Judicial Pursuit of Local Fiscal Equity*, 92 HARV. L. REV. 1662, 1748-50 (1979); Simon, *supra* note 16, at 414-32.

tempts faltered at the local level, when state monies were used to reduce tax burdens rather than to increase school expenditures.<sup>64</sup>

Probably the greatest impact of local fiscal control has been experienced by the teaching staff. The heart of the local school budget is the instructional salary account, which typically consumes more than half of total school revenues.<sup>65</sup> The salary account, moreover, offers the most manipulable item in a largely inelastic school budget.<sup>66</sup> In fact, a primary form of evidence both in legal challenges to the equity of school expenditures,<sup>67</sup> and in evaluations of the success of remedial programs,<sup>68</sup> is the extent to which local expenditures on instruction vary. As one commentator has observed, "in addressing the distribution of funds for public education, and particularly the existing district disparities in expenditures per pupil, the decisions are to a large extent about teachers."<sup>69</sup>

Collective bargaining laws have done little to alter the dominant role of local school districts in establishing teacher salary levels.<sup>70</sup> One might have expected, therefore, that the economic impact of bargaining would be diluted by its decentralized structure. Quite surprisingly, however, the most prominent early forecasts warned of potentially significant increases in teachers' salaries resulting from local bargaining. Most notably, Professors Wellington and Winter argued in their highly influential work, *The Unions and The Cities*, that local public employees are far less subject to market constraints than private employees, since they tend to monopolize services that lack close substitutes or private competition.<sup>71</sup> Com-

64. See, e.g., Simon, *supra* note 16, at 413: "Approximately fifty-five percent of current operating costs are for teacher salaries, that figure increasing to roughly sixty-five percent when fringe benefits are included." Moreover, the structure of school budgets has undergone little change in recent years. In 1979, 67.5% of current operating expenditures concerned instructional costs and another 27% was allocated to relatively fixed costs such as pupil transportation, operation and maintenance of the physical plant, and other fixed charges like rents, insurance premiums and a variety of contractual services. Thus, only 5.5% of school budgets was expended on variable items other than instruction. U.S. DEP'T OF EDUC., *THE CONDITION OF EDUCATION* 61 (1982) [hereinafter cited as *CONDITION OF EDUCATION*].

65. See *supra* note 64.

66. *Id.*

67. See, e.g., *Hobson v. Hansen*, 327 F. Supp. 384 (D.D.C. 1971).

68. See *supra* note 63.

69. Simon, *supra* note 16, at 412-13 (emphasis omitted).

70. See *supra* text accompanying notes 19-24. Although several states prescribe a minimum salary for teachers, school districts are free to supplement that salary. See L. FISCHER, D. SCHIMMEL & C. KELLY, *TEACHERS AND THE LAW* 353-56 (1981).

71. The thesis of Professors Wellington and Winter is summarized by the following excerpt:

To the extent union power is delimited by market or other forces in the public sector these constraints do not come into play nearly as quickly as in the private sector.

pounding this market failure is the power of unions to exert political pressures on local public employers, and the power of unions to strike in a monopolized field.<sup>72</sup>

The prediction of Wellington and Winter was based primarily on the early bargaining experience of large municipalities like New York City.<sup>73</sup> Since those first "heady" days of public employee unionism, however, bargaining has spread to a variety of municipalities with diverse profiles. It is appropriate, then, to consider whether the past decade's experience with teacher bargaining evidences a strong bargaining effect, or whether bargaining has been assimilated into the pre-existing habits of local school government.

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Market imposed unemployment is an important restraint on unions in the private sector. In the public sector, the trade-off between benefits and employment seems much less important. Government does not generally sell a product the demand for which is closely related to price. There usually are not close substitutes for the products and services provided by government and the demand for them is relatively inelastic. . . . Because much government activity is, and must be, a monopoly product competition, nonunion or otherwise, does not exert a downward pressure on prices and wages. Nor will the existence of a pool of labor ready to work for a wage below union scale attract and create a new, and competitively less expensive, governmental enterprise.

THE UNIONS AND THE CITIES, *supra* note 40, at 18-19. Professors Wellington and Winter specifically stressed that such problems would result from the unionization of teachers. *Id.* at 30: Consider education. . . . [B]ecause the demand for education is relatively inelastic, teachers rarely need fear unemployment as a result of union-induced wage increases, and the threat of an unimportant nonunion rival (competitive private schools) is not to be taken seriously so long as potential consumers of private education must pay taxes to support the public school system.

72. The Wellington and Winter thesis, we should note, gives particular emphasis to the role of the *strike* in providing public employee unions undue bargaining leverage. However, the variables that allegedly work in conjunction with the right to strike—the employees' service monopoly, the ability of local government to conceal budgetary costs, and the employees' propensity to supplement bargaining activity with political activity—can operate independently of strike activity. Thus, the Wellington and Winter thesis has usually not been restricted to a narrow, strike-dependent interpretation in subsequent literature. *See, e.g.,* R-FREEMAN, *supra* note 41; Gee, *supra* note 25, at 424-44; Kochan, *supra* note 41, at 165-66. In any event, the purpose of our discussion is to illustrate that, in public education, the variables identified by Wellington and Winter either do not operate or do not operate with great effect on collective bargaining. Consequently, the imbalance in bargaining power that Wellington and Winter argued would result from granting teachers collective bargaining rights including the right to strike has not developed. *See infra* text accompanying notes 86-90. For other commentary positing adverse results from public sector bargaining, see Anderson, *supra* note 42, at 957-58; Summers, *Public Sector Collective Bargaining Substantially Diminishes Democracy*, 1 GOV'T UNION REV. 1, 5-6 (Winter 1980).

73. The thesis of Professors Wellington and Winter is based upon observations from the 1960's. At that time, only a handful of public employers like New York City and a few other large governmental units had had sufficient experience with public sector collective bargaining to generate data satisfactory for theory building. *See* Kochan, *supra* note 41, at 165. Kochan proceeds to note that: "[i]n retrospect, [Wellington and Winter's] predictions failed to recognize the wide variation in the amount of power unions would gain from collective bargaining and the strike threat in different times and environments." *Id.*

## 1. THE EVIDENCE REGARDING TEACHERS' SALARIES

The relative weakness of teachers' salaries in the national labor market is now well documented. Between 1967 and 1984 the average annual salary of classroom teachers declined in actual purchasing power (see Table 1). In terms of 1967 dollars, the process has been cyclic: the average public school teacher's salary rose from \$7235 in 1967-68 to a high of \$7852 in 1972-73; declined during a period of runaway inflation to a low of \$6685 in 1980-81; and slowly climbed back to the level of \$7121 in 1983-84—just marginally below the 1967-68 figure. During the past decade, when unionism firmly established itself in the public schools, teachers' salaries lagged far behind those of other professionals with a comparable education. Table 2 indicates that, from 1973 through 1982, the average starting salary for teachers has been consistently lower than that of other professionals with bachelor degrees, and the percentage increase in starting salaries for teachers (65.4%) has been strikingly lower than that of all other professional groups except accountants (59.7%). Even when compared with other state and local government employees, teachers have suffered a relative decline in their compensation.<sup>74</sup>

These findings do not discriminate between salaries in jurisdictions with and without collective bargaining laws, and thus say nothing specific about the effect of unionization. But since collective bargaining prevails in two-thirds of the states, one might infer that it has had little systematic effect. There are a number of empirical studies, however, that provide more precise measurement of the impact of collective bargaining. These studies indicate that, while collective bargaining may have increased teachers' salaries, these gains have been modest at best and not nearly sufficient to restore the competitive employment position of public school employers. This result is confirmed both by studies that measure salaries at a state-wide level, and by intra- and inter-state studies that compare salaries in individual school districts.

Several studies have examined the effects of collective bargaining by testing the relationship of average state salaries and the incidence of collective bargaining. They are graphically represented in the first segment of Table 3, which indicates both the duration of the

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74. In 1971, teachers earned 25% more than other full-time state and local government employees, but by 1978 the differential had declined to 19.5%. See Lipsky, *The Effect of Collective Bargaining on Teacher Pay: A Review of the Evidence*, 18 *EDUC. AD. Q.* 14, 14-15 (1982). Moreover, for the decade 1971-82, the percent increase in salary for government workers (100.5%) was slightly higher than that for teachers (97.2%). See *CARNEGIE REPORT*, *supra* note 2, at 168.

TABLE 1  
 Average Annual Salary of Public School Teachers  
 1967-68 to 1983-84 Deflated in Terms of 1967 Dollars

<u>Year</u>	<u>Average Salary in Dollars*</u>	<u>Percent Increase in Average Salary</u>	<u>CPI** (1967 = 100)</u>	<u>Percent Increase in CPI</u>	<u>Average Salary in 1967 Dollars</u>	<u>Percent Change in Average Salary in 1967 Dollars</u>
1967-68	7,423	-	102.6	-	7,235	-
1968-69	7,952	7.1	107.8	5.1	7,377	2.0
1969-70	8,635	8.6	114.2	5.9	7,561	2.5
1970-71	9,269	7.3	119.8	4.9	7,737	2.3
1971-72	9,705	4.7	123.9	3.4	7,833	1.2
1972-73	10,176	4.9	129.6	4.6	7,852	2.4
1973-74	10,778	5.9	142.2	9.7	7,579	-3.4
1974-75	11,690	8.5	157.4	10.7	7,427	-2.0
1975-76	12,591	7.7	167.7	6.5	7,508	1.1
1976-77	13,353	6.1	177.7	6.0	7,514	0.1
1977-78	14,198	6.3	190.0	6.9	7,473	-0.5
1978-79	15,032	5.9	209.0	10.0	7,192	-3.8
1979-80	15,971	6.2	237.3	13.5	6,730	-6.4
1980-81	17,642	10.5	263.9	11.2	6,685	-0.7
1981-82	19,270	9.2	284.8	7.9	6,766	1.2
1982-83	20,715	7.5	295.3	3.7	7,015	3.7
1983-84	22,019	6.3	309.2	4.7	7,121	1.5

Source: \*Calculated from data in National Education Association Research, Estimates of School Statistics (rev. 1984). The 1983-84 statistic is an unrevised estimate.

\*\*The Consumer Price Index is the U.S. City Average for Urban Wage Earners and Clerical Workers as found in *Monthly Labor Review*. The index value is the average of the monthly values for the school year, September of one year through August of the following year.

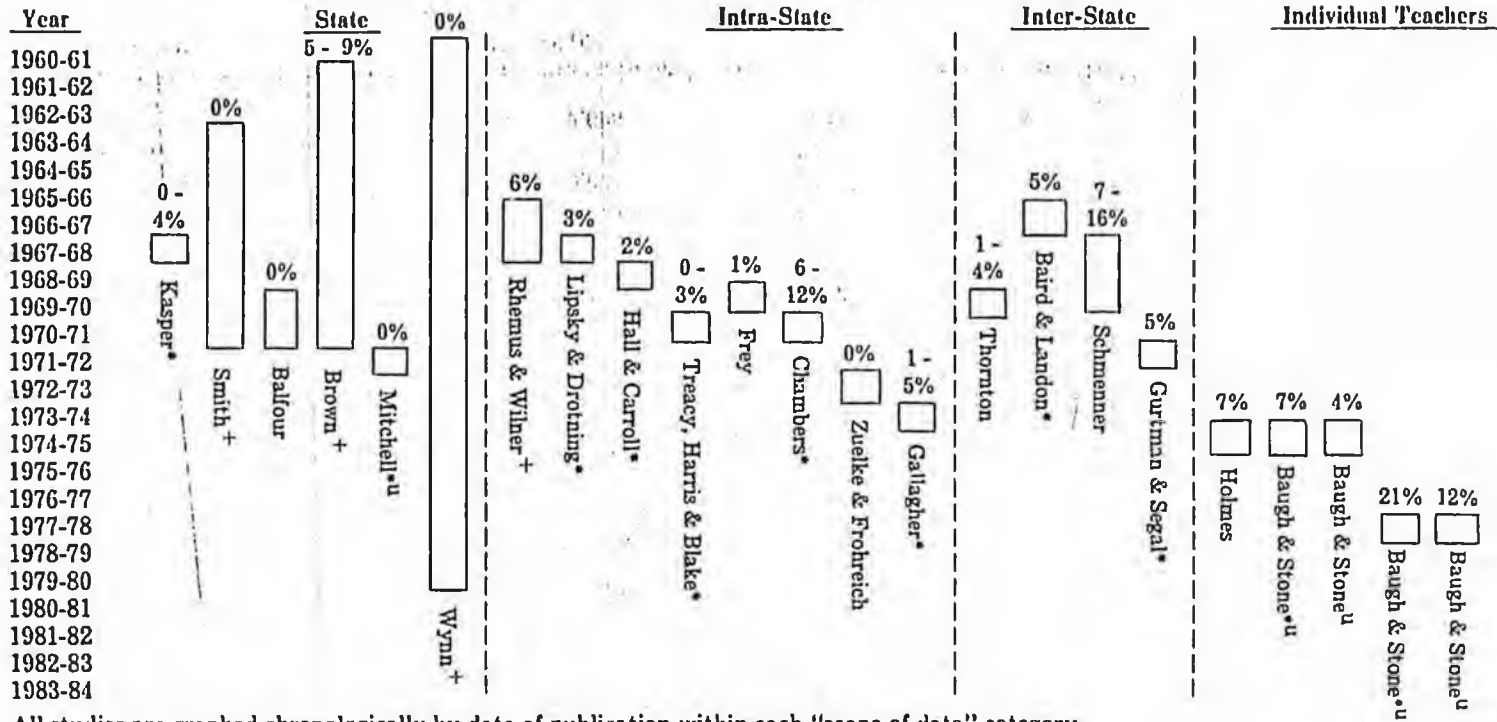
TABLE 2  
Average Starting Salaries of Public School Teachers Compared  
with Salaries in Private Industry

<u>Position/Field</u>	<u>1973-74</u>	<u>1980-81</u>	<u>1981-82</u>	<u>Percent change 1981-82 over 1980-81</u>	<u>Percent change 1981-82 over 1973-74</u>
Average minimum salary for teachers with bachelor's degree	\$7,720	\$11,758	\$12,769	8.6	65.4
College graduates with bachelor's degree					
Engineering	\$11,220	\$20,136	\$22,368	11.1	99.3
Accounting	10,632	15,720	16,980	8.0	59.7
Sales-marketing	9,660	15,936	17,220	8.1	78.3
Business admin.	8,796	14,100	16,200	14.9	84.2
Liberal arts	8,808	13,293	15,444	16.2	75.3
Chemistry	10,308	17,124	19,536	14.1	89.5
Math-statistics	10,020	17,604	18,600	5.7	85.6
Economics-finance	9,624	14,472	16,884	16.7	75.4
Computer sciences	N/A	17,712	20,364	15.0	N/A
Other fields	9,696	17,544	20,028	14.2	106.6

Source: 1973-74: National Education Association, Prices, Budgets, Salary and Income 20 (1981); all other data: National Education Association, Prices, Budgets, Salary and Income 22 (1983).

N/A = not applicable.

TABLE 3: Research Findings on the Salary Effect of Teacher Bargaining by Scope of Data



All studies are graphed chronologically by date of publication within each "scope of data" category.

\* Cross-sectional research methodology (all other studies involved before and after designs).

+ No multiple regression analysis (all other studies involved regression analyses).

u Measure of unionization only and no direct measure of collective bargaining.

study and the estimated salary effect of collective bargaining (the percentage figure). In all such studies but one the findings are statistically insignificant—neither positive nor negative effect is found.<sup>75</sup> These findings, while subject to the criticism that they do not capture the particular effects of bargaining in local districts,<sup>76</sup> are quite suggestive. These studies attempt to control for the degree of collective bargaining that occurs in particular states, either by statistically adjusting for the level of bargaining or by establishing a sample of states with “intensive” bargaining experience. If collective bargaining produces a significant salary effect one would expect to discover it in those states where bargaining is widespread. There is simply no evidence of such an effect.

The results from state-level studies are largely confirmed by studies of school district compensation (the intra- and inter-state segments of Table 3), although these more particularized measurements often reveal a modest salary effect. Examining a diverse sample of school districts, these studies report either no significant bargaining effect or an effect averaging approximately four percent in overall salary levels. The similarity in state and district level findings is noteworthy given the potential of the latter group to control better the “spillover” effects that may occur in state samples.<sup>77</sup>

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75. See Balfour, *More Evidence that Unions do not Achieve Higher Salaries for Teachers*, 3 J. COLLECTIVE NEGOTIATIONS IN THE PUB. SECTOR 289 (1974); Brown, *Have Collective Negotiations Increased Teachers' Salaries? A Comparison of Teachers' Salaries in States With and Without Collective Bargaining Laws for Public School Personnel, 1961-1971*, 4 J. COLLECTIVE NEGOTIATIONS IN THE PUB. SECTOR 53 (1975); Kasper, *The Effects of Collective Bargaining on Public School Teachers' Salaries*, 24 INDUS. & LAB. REL. REV. 57 (1970); Mitchell, *The Impact of Collective Bargaining on Compensation in the Public Sector*, in PUBLIC-SECTOR BARGAINING 118 (B. Aaron, J. Grodin & J. Sterns eds. 1979); Smith, *Have Collective Negotiations Increased Teachers' Salaries?*, PHI DELTA KAPPAN, Dec. 1972, at 268; Wynn, *The Relationship of Collective Bargaining and Teacher Salaries 1960 to 1980*, PHI DELTA KAPPAN, Apr. 1981, at 237. Both Brown and Wynn fail to use regression analysis, which is the only research design that can systematically control for the numerous variables that might produce a spurious result. They are included for purposes of illustration. See generally Bloch & Kuskin, *Wage Determination in the Union and Nonunion Sectors*, 31 INDUS. & LAB. REL. REV. 183 (1978); Fogel & Lewin, *Wage Determination in the Public Sector*, 27 INDUS. & LAB. REL. REV. 410 (1974); see also Fisher, *Multiple Regression in Legal Proceedings*, 80 COLUM. L. REV. 702 (1980).

76. Research on the impact of collective negotiations upon teacher salaries adopting state-level observations is subject to the criticism that teacher wages are determined, with the exception of Hawaii, at the school district level rather than at the state level. Thus, state-level observations can obscure much of the intrastate diversity in teacher salaries. The use of state-level averages fails to take account of a large number of factors such as teacher experience, school district tax base and the local labor market structure that may effect teacher salaries in a particular school district. For a listing of variables that could influence teacher pay, see Lipsky, *supra* note 74, at 33.

77. Studies of the effects of bargaining on teacher salaries at the school district level can incorporate either an interstate or intrastate sample of districts. The advantage of an

The only study to show a substantial salary effect resulting from teacher unionism is based on survey data involving individual

interstate sample is reduction in the problem of "spillover." "Spillover" refers to the benefits conferred on non-bargaining employees by the indirect influence of bargaining agreements in proximate school districts. Where "spillover" occurs, there will be an underestimate of the bargaining effect if organized and unorganized teachers' salaries in the same geographic locale are compared. "Spillover" is more likely to occur, obviously, when districts within the same state are compared. Intrastate comparisons have beneficial features, however, since they reduce the likelihood that legal and other environmental variables will differ. Interstate comparisons are subject to this latter problem and thus tend to confound effects.

To some extent, the findings of the school district studies of bargaining reflect these sampling concerns. All four studies using interstate samples found some significant bargaining effect associated with teacher salary awards. A. GUSTMAN & M. SECAL, *THE IMPACT OF TEACHERS' UNIONS* (1976) (although most bargaining variables were insignificant, MA maximum salary increased by 4.7% in 1971-72 under "comprehensive" agreements); Baird & Landon, *The Effects of Collective Bargaining on Public School Teachers' Salaries: Comment*, 25 *INDUS. & LAB. REL. REV.* 410 (1972) (negotiations added 4.9% to minimum teacher salary in 1966-67); Schmenner, *The Determination of Municipal Employee Wages*, 55 *REV. ECON. & STATISTICS* 83 (1973) (presence of a bargaining agreement added 6.8-9.3% to the minimum teacher salary during the period 1967-70); Thornton, *The Effects of Collective Negotiations on Teachers' Salaries*, 11 *Q. REV. ECON. & BUS.* 37 (1971) (presence of a collective bargaining agreement added from 1-4% to teacher salaries during 1969-70, except at MA maximum where the effect was 28.8%). Although these studies adopted different measures of salary, and their estimates varied considerably, the bargaining effect was generally larger than 4%. However, the problem of matching school districts in different states requires cautious interpretation of this conclusion. Moreover, these findings may be somewhat unrepresentative as all these studies compared large city school districts. Such districts constitute a minority of all school districts in the nation. See *DIGEST OF EDUCATIONAL STATISTICS*, *supra* note 17, at 61.

In comparison, the seven studies that adopted intrastate samples of school districts produced mixed results. Often they failed to find a significant bargaining effect, and where the effect was significant, its magnitude was, with few exceptions, in the 1-3% range. C. RHEMUS & E. WILNER, *THE ECONOMIC RESULTS OF TEACHER BARGAINING: MICHIGAN'S FIRST TWO YEARS* (1968) (the bargaining effect estimated at 6% on average for the two years 1966-68); J. TREACY, R. HARRIS, & C. BLAKE, *SALARIES, STRIKES, SHUTDOWNS, SPLIT SHIFTS AND COLLECTIVE BARGAINING IN OHIO PUBLIC SCHOOLS* (1974) (most bargaining effect estimates were insignificant, but a bargaining contract may have added up to 2.6% to average school district salary in 1970-71); Chambers, *The Impact of Collective Bargaining for Teachers on Resource Allocation in Public School Districts*, 4 *J. URBAN ECON.* 324 (1977) (negotiations added up to 6% to minimum teacher salary in California school districts in 1970-71); Frey, *Wage Determination in Public Schools and the Effects of Unionization*, in *LABOR AND THE PUBLIC AND NON-PROFIT SECTORS* 183 (D. Hamermesh ed. 1975) (most bargaining effect estimates were insignificant, but negotiations may have added up to 1.4% to salary in New Jersey school districts during the period 1969-70); Gallagher, *supra* note 33 (a bargaining contract added 1.3-4.5% to salary levels in 1973-74); Hall & Carroll, *The Effects of Teacher Organizations on Salaries and Class Size*, 26 *INDUS. & LAB. REL. REV.* 834 (1973) (a bargaining contract added 1.8% to average district salary in Cook County school districts in 1968-69); Lipsky & Drotning, *The Influence of Collective Bargaining on Teachers' Salaries in New York State*, 27 *INDUS. & LAB. REL. REV.* 18 (1973) (a bargaining contract may have added up to 3% to salary levels in 1967-68); Zuelke & Frohreich, *The Impact of Comprehensive Collective Negotiations on Teachers' Salaries: Some Evidence from Wisconsin*, 7 *J. COLLECTIVE NEGOTIATIONS IN THE PUB. SECTOR* (1978) (most estimates insignificant, but some small negative bargaining effects in 1972-73). As it is probable that intrastate samples of school districts are contaminated by "spillover" effect, these studies may underestimate the impact of collective bargaining upon teacher sala-

teachers scattered throughout the country.<sup>78</sup> There are a number of methodological problems with this research, not least of which is its failure to control for several structural, political and environmental variables. Failure to control for these variables likely produces an appreciable overestimation of the salary effect.<sup>79</sup> Nevertheless, this research, as well as other current research in the non-educational public sector, suggests that unions may have slowed the process of salary erosion during recent periods of high inflation,<sup>80</sup> even if they have not secured much measurable improvement in teachers' real salaries.

Further perspective on these findings is provided by examining the wage effect of private sector collective bargaining. A fairly extensive body of research in this sector suggests an overall wage effect in the range of fifteen to twenty-five percent.<sup>81</sup> Measured against

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ries. But when coupled with the findings concerning interstate studies, these are the strongest and most consistent evidence for a bargaining effect, albeit of a modest nature.

78. Baugh & Stone, *Teachers, Unions, and Wages in the Late 1970s: Unionism Now Pays*, 35 *INDUS. & LAB. REL. REV.* 368 (1982) reprinted in R. EBERTS & J. STONE, *UNIONS AND PUBLIC SCHOOLS* 73-81 (1984) (salaries demonstrated a union effect of 7% in 1974-75, and 21% in 1977-78 in a cross section analysis of a national sample of teachers, and 4% (but insignificant) and 12% for the corresponding longitudinal analysis); Holmes, *Effects of Union Activity on Teachers' Earnings*, 15 *INDUS. REL.* 328 (1976) ("any form of union activity" added 7% to Oklahoma teachers in 1974-75 in a cross-section analysis.).

In all studies, longitudinal (or "before-and-after") data are probably more reliable than cross-sectional data. Longitudinal analyses enable the researcher to control for prior salary levels, and thus measure the actual effect on salaries resulting from union membership or collective bargaining. In other words, cross-sectional analyses that only examine salary levels at one point in time must be treated with special care as they may overestimate the bargaining effect by attributing existing differences in wages, explainable by other factors, to collective bargaining. In accord with this argument, Baugh and Stone's estimations are significantly lower for their longitudinal than their cross-sectional analysis. Baugh & Stone, *supra*, at 371. Only two other regression studies of the bargaining effect employed longitudinal data: Frey, *supra* note 77; Schmenner, *supra* note 77.

79. Baugh and Stone's data are taken from the Current Population Survey (CPS), a stratified and random sample of about 56,000 households conducted monthly by the U.S. Bureau of Census. Baugh & Stone, *supra* note 78, at 370. CPS data, however, fail to control for a range of variables including district size, ability to pay, and willingness to pay. Omission of these variables from its analysis will likely result in an overestimation of the bargaining effect. See Delaney, *Strikes, Arbitration, and Teacher Salaries: A Behavioral Analysis*, 36 *INDUS. & LAB. REL. REV.* 431, 444 n.49 (1983). Particularly problematic is the absence of control over the school district's ability to pay. Both our research, and others', reveals that the most significant determinant of salary levels is a district's financial strength. See *infra* note 308.

80. See R. FREEMAN, *supra* note 41, at 27 (organized teachers employ their collective power in a weak labor market "to offset some downward pressure on wages").

81. The average private sector union wage effect is generally considered to have boosted its members' wages by 20%. See D. MITCHELL, *UNIONS, WAGES AND INFLATION* 112 (1980). Some commentators, however, consider that the wage differential may now be on the order of 25-30% for some parts of the private sector. See R. FREEMAN & J. MEDOFF, *WHAT DO UNIONS DO?* 53 (1984); D. MITCHELL, *supra*, at 214. For reviews of the extensive literature on the private sector union effect on wages, see R. FREEMAN & J. MEDOFF, *supra*, at 43-61;

such success in the private sector, teacher collective bargaining has produced minimal economic results, which may belie the suggestion that public school employers are unable to counter the bargaining power of unions.<sup>82</sup> In any event, there is good reason to doubt that collective reasoning alone can provide public school teachers with sufficient leverage to restore salaries to a competitive level in the labor market.<sup>83</sup>

## 2. INTERPRETING THE EVIDENCE

Why has collective bargaining failed to produce the salary inflation that commentators like Wellington and Winter foresaw? One plausible explanation is that most states have denied teachers the right to strike, which Wellington and Winter viewed as a substantial component of public employees' bargaining leverage.<sup>84</sup> Without this leverage, teachers lack full power to exploit their allegedly favorable market position. Under this view, teacher collective bargaining has been but a stunted version of private sector bargaining and predictably, could not match private sector achievements.

Research on the effects of public employee strikes is surprisingly limited, and thus one can offer only informed speculation as to the importance of the right to strike. Nonetheless, both the available evidence, and the consensus of labor commentators, indicate that the strike leverage of public employees has been considerably overstated. For example, a review of average salary rates in those states where teacher strikes are permitted reveals no appreciable salary inflation.<sup>85</sup> A recent quantitative analysis of teacher salaries in states

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Mellow, *Unionism and Wages: A Longitudinal Analysis*, 63 REV. ECON. & STATISTICS 43 (1981); Parsley, *Labor Union Effects on Wage Gains: A Survey of Recent Literature*, 18 J. ECON. LIT. 1 (1980). For commentaries on the relative salary effects of unions in the public and private sectors, see R. FREEMAN, *supra* note 41, at 30-35; Shapiro, *Relative Wage Effects of Unions in the Public and Private Sectors*, 31 INDUS. & LAB. REL. REV. 193 (1978).

82. For other reviews of teacher salary studies finding no substantial union effect, see A. CRESSWELL & M. MURPHY, *supra* note 25, at 448-52; Lipsky, *supra* note 74.

83. The *Carnegie Report*, for example, recommended that "as a national goal, salary averages for teachers be increased by at least 25% beyond the rate of inflation over the next three years, with immediate entry-level increases." *CARNEGIE REPORT*, *supra* note 2, at 163 (emphasis added). A comparison of entry salary levels for teachers and professions requiring similar education reveals the magnitude of the salary increases necessary to achieve parity. See Table 2, *supra* following note 74. See also Odden, *Financing Educational Excellence*, PHI DELTA KAPPAN, Jan. 1984, at 311, 314 (estimating a cost of \$20 billion to restore teachers salaries to a competitive position).

84. See *supra* note 72.

85. See, e.g., Table 6, *infra* following note 262. Based on salary data contained in National Educ. Ass'n Research, *Estimates of School Statistics* (rev., as of June, 1984) (unpublished) we calculated the average annual rate of salary increase in states where there is a

affording the right to strike, furthermore, yielded inconsistent results on the question whether teacher strike activity produces a statistically significant salary effect.<sup>86</sup>

Perhaps more indicative, if less rigorous in methodology, are the estimates of those who have observed the evolution of public sector bargaining during the past decade. The consensus of opinion is that: 1) the effects of strike activity are highly inconsistent;<sup>87</sup> 2) public and political resistance to strike pressure has increased dra-

legal or *de facto* right to strike, for the period 1976-83. See Delaney, *supra* note 79, at 444. The following summarizes the results:

Jurisdiction	1976-83 Average Annual Salary Increase (in percent)
Nation	6.23
All Strike States	6.35
Alaska	7.00
Hawaii	5.85
Montana	7.83
Oregon	6.96
Pennsylvania	6.55
Vermont	4.50
Ohio ( <i>de facto</i> )	6.23
Illinois ( <i>de facto</i> )	5.96
Michigan ( <i>de facto</i> )	6.24

Because these figures do not control for significant causal variables within each particular state, they are merely estimates of the effect of the right to strike. See *supra* note 76. But the proximity in salary rates between strike states and the national average suggests there is no strong or consistent effect on salaries.

86. See Delaney, *supra* note 79. Delaney employed two different regression models to measure the effects of strike activity. One revealed that strikes are employed *defensively* to prevent salary erosion relative to districts within the same jurisdiction, but that this does *not* result in higher salaries in districts where strikes took place. *Id.* at 442. Delaney's second model found that strikes produce "a generally positive effect on teacher salaries"; but due to methodological problems in the second model, Delaney could not conclude that strikes inflate salaries. *Id.* at 443.

By comparison, Delaney found, based on a national sampling of teachers' salaries, that the *availability* of either the right to strike or binding arbitration has a positive effect on teachers' salaries. *Id.* at 444-45. This result is unreliable, however, because it fails to control for crucial variables like a school district's financial ability, and historical salary levels (which might indicate that high salaries in a state *preceded* implementation of strike or arbitration laws). See *infra* note 257. Delaney's classification scheme is also flawed, since, for example, he includes Connecticut in his sample of arbitration states for a period *prior* to adoption of arbitration in Connecticut; and he includes Minnesota in his sample of strike states even though binding arbitration is an alternative to strikes there. Compare Delaney, *supra* note 79, at 444-45 with *supra* note 51.

Delaney's inability to find a strike effect on salaries is not surprising. As Delaney observes regarding past empirical research, "[s]ome public sector studies have found a positive effect of strike use on outcomes but others have not, whereas studies of the private sector have consistently found a positive effect." Delaney, *supra* note 79, at 435 (other research cited).

87. See, e.g., L. McDONNELL & A. PASCAL, *supra* note 47, at 64-65; Kochan, *Dynamics of Dispute Resolution in the Public Sector*, in PUBLIC-SECTOR BARGAINING 150 (1979) [hereinafter cited as Kochan, *Dispute Resolution*]; Kochan, *supra* note 41, at 166.

matically since the early days of collective bargaining;<sup>88</sup> and 3) with increasing frequency, strike action is resorted to as a defensive measure by public employee unions.<sup>89</sup> Furthermore, the political activity of public employee unions in recent years indicates that union leaders no longer regard strikes as a source of substantial bargaining leverage; during the 1970's there was a decided decline in union support for the right to strike and a sharp increase in support for alternatives like binding arbitration.<sup>90</sup>

Thus, contemporary experience with public employee strikes provides little support for the claim that the strike is a powerful weapon in local government bargaining. Our contention, moreover, is that the political and economic forces at work in educational collective bargaining limit the power of teachers' unions, regardless of whether the right to strike is recognized. A consideration of these forces suggests that the basic market paradigm of commentators like Wellington and Winter was an inapposite description of labor relations in public education, whatever its strengths in describing such relations in other segments of the public sector. In particular, this paradigm failed to account for the evolving characteristics of the teacher labor market, the limited political base of public education, and the virulence of local fiscal conservatism.

A significant component of the theory that teachers' unions have undue bargaining leverage is the presumed monopoly power of public school teachers. As stated by Professors Wellington and Winter:

[B]ecause the demand for education is relatively inelastic, teachers rarely need fear unemployment as a result of union-induced wage increases, and the threat of an important nonunion rival (competitive private schools) is not to be taken seriously so long as potential consumers of private education must pay taxes to support the public school system.<sup>91</sup>

The monopoly aspect of public school education, however, states but one side of the employment equation. In times of decreasing employment alternatives, public school employers can exercise "monopsony"<sup>92</sup> power over teachers, thus off-setting (if not

88. See, e.g., A. CRESSWELL & M. MURPHY, *supra* note 25, at 364; Feuille, *supra* note 48, at 67-68; Kochan, *Dispute Resolution*, *supra* note 87, at 169; Olson, *The Use of the Legal Right to Strike in the Public Sector*, 33 L.A.B. L.J. 494, 495-96 (1982).

89. See, e.g., Kochan, *Dispute Resolution*, *supra* note 87, at 168. See also *supra* note 86.

90. See *infra* text accompanying notes 203-09.

91. THE UNIONS AND THE CITIES, *supra* note 40, at 30.

92. Monopsony power is based on the degree to which a public school employer (or employers) provides the only practical employment opportunity for teachers, thus enabling

overwhelming) the claimed monopoly power of teachers. While Wellington and Winter recognized the possibility of such monopsony power, they discounted it because they presumed that "to the extent . . . most public employees work in urban areas . . . there may often be a number of substitutable and competing private and public employers in the labor market."<sup>93</sup>

Conditions throughout the past decade indicate that employment opportunities for teachers have diminished dramatically since the above-quoted statement was made. During the 1970's, public school enrollments declined by more than ten percent and the demand for teachers dropped by more than twenty percent.<sup>94</sup> At the same time, the supply of newly-qualified teachers remained relatively large—so large, in fact, that in 1979 less than fifty percent of these teachers acquired full-time teaching positions.<sup>95</sup> Not only were positions for recent graduates declining, but many school districts found it necessary to reduce the size of the existing teaching staff.<sup>96</sup>

Therefore, the contemporary labor market for teachers has been characterized by an oversupply of applicants for low-salaried entry positions.<sup>97</sup> In such a market, the employment options of those teachers who wished to remain in the profession were few. Consequently, it is more likely that an employer's monopsony rather than an employee's monopoly prevailed in public education. Research on compensation levels in school districts with monopsony power largely confirms the thesis that school employers will exercise that power to constrain salary increases.<sup>98</sup>

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the employer to exercise greater choice in setting the salaries of the teaching staff. Most research on the monopsony effect supports the theory that school employers with monopsony power suppress compensation levels. See, e.g., Baird & Landon, *supra* note 77; Delaney, *supra* note 79, at 442; Landon & Baird, *Monopsony in the Market for Public School Teachers*, 51 AM. ECON. REV. 966 (1971). But see Thornton, *The Effects of Collective Bargaining on Public School Teachers' Salaries: Reply*, 25 INDUS. & LAB. REL. REV. 417 (1972).

93. THE UNIONS AND THE CITIES, *supra* note 40, at 18; accord *Structuring Collective Bargaining*, *supra* note 40, at 823.

94. See *CONDITION OF EDUCATION*, *supra* note 64, at 85-86.

95. See *id.* at 76, 98.

96. See *id.* at 86, 100.

97. Because of the prevalence of a salary schedule in which salaries increase with seniority, see *infra* text accompanying notes 156-59, new teachers enter teaching at low salary levels while senior teachers usually must be compensated according to their level of experience. The absence of "floating" compensation levels, accordingly, will place greatest limitation on the mobility of experienced teachers. This phenomenon is illustrated by the fact that the average teacher's tenure in a school system increased during the period from 1971 to 1981 from five to nine years. See *STATUS*, *supra* note 27, at 15.

98. See *supra* note 92. There is a disquieting aspect to this cost constraint, however, as there has been a continual decline in the qualifications (as measured by aptitude tests) of

An even stronger objection to the monopoly power theory of unionized teachers is suggested by an analysis of the political base of public education. The principal consumers of educational services, exclusive of non-voting pupils, are the parents of those pupils.<sup>99</sup> Current estimates indicate that such consumers comprise less than twenty-five percent of the voting public.<sup>100</sup> Moreover, a growing percentage of this consumer group consists of parents from low income levels, who historically refrain from active participation in voting.<sup>101</sup>

At the same time, non-consumers of public education are required to share its costs, and are permitted to participate in local school funding decisions.<sup>102</sup> Obviously, this segment of the electorate has less to gain from a better-paid teaching staff and less to lose if educational services decline—or are cut off through strike activity. The alleged monopoly power of teachers, accordingly, has little relevance to this large segment of the electorate; stated simply, unionized teachers lack practical leverage over most voters and taxpayers.

Professor Summers, in an article that challenges the monolithic view of public employee unions, has observed the importance of the non-consumer's vote when a "special purpose" government like school district is involved. To the extent that non-consumers "vote their pocketbooks," special purpose governments may be at consid-

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both those who enter and remain in teaching. For evidence of the declining qualifications of those entering teaching, see Vance & Schlechty, *The Distribution of Academic Ability in the Teaching Force: Policy Implications*, PHI DELTA KAPPAN, Sept. 1982, at 22; CARNEGIE REPORT, *supra* note 2, at 171-72. For evidence of the declining qualifications of those remaining in teaching, see Kerr, *Teaching Competence and Teacher Education in the United States*, 84 TEACHERS C. REC. 525, 528-29 (Spring 1983); Schlechty & Vance, *Do Academically Able Teachers Leave Education? The North Carolina Case*, PHI DELTA KAPPAN, Oct. 1981, at 106. For evidence on the correlation between attrition in the teaching force and low salaries, see Chapman & Hurtheson, *Attrition from Teaching Careers: A Discriminant Analysis*, 19 AM. EDUC. RES. J. 93, 102-04 (1982).

99. See Guthrie, *Emerging Politics of Educational Policy*, 3 EDUC. EVALUATION AND POLICY ANALYSIS 75 (1981); Summers, *supra* note 57, at 1169.

100. See Guthrie, *supra* note 99, at 76; accord Yudof, *Legalization of Dispute Resolution, Distrust of Authority, and Organizational Theory: Implementing Due Process for Students in the Public Schools*, 1981 WIS. L. REV. 891.

101. See Yudof, *supra* note 100; accord SCHOOLS IN CONFLICT, *supra* note 18, at 250; Kirst & Garms, *The Political Environment of School Finance Policy in the 1980s*, in SCHOOL FINANCE POLICIES AND PRACTICES: THE 1980S: A DECADE OF CONFLICT 47, 48-49 (J. Guthrie ed. 1980).

102. The population of non-consumers consists of those without school age children—senior citizens, for example—and those with children in private schools. It is generally agreed that the population of non-consumers will continue to increase during the coming years, and that the population of consumers will increasingly consist of those low-income parents with a history of non-involvement (or ineffective involvement) in the political process. See authorities cited *supra* note 101.

erable disadvantage in the political process.<sup>103</sup> Studies of school bond referenda confirm that the non-consumers' vote is different from that of the parents of school-aged children. Thus, those who are elderly, those who have no school-aged children, and those who have children in parochial schools are consistently less supportive of public school spending increases.<sup>104</sup>

Therefore, the narrow base of political support for public education suggests that teachers' unions have monopoly power over only a fraction of the public, and that non-consuming taxpayers hold at least a numerical edge in the political process. Another aspect of public school funding which exacerbates the problem is the sheer impact and visibility of the school budget. In their analysis of union political leverage, Professors Wellington and Winter minimized the likelihood of a negative public reaction to a costly wage settlement because "the delayed effect of a particular settlement on an already incomprehensible municipal budget or tax structure is rarely a matter of high visibility. . . ."<sup>105</sup> While this might aptly describe the effect of wage settlements for certain public employee groups, it does not seem characteristic of those for public school teachers.

As previously mentioned, the public school budget is the largest expense of local government, and the principal component of that budget is the instructional salary account.<sup>106</sup> The school budget, furthermore, draws heavily on the local property tax, which is always a "sensitive political issue for every homeowner."<sup>107</sup> Perhaps more important, fiscally conservative forces in most states have legislated a variety of public referenda requirements for school bonds

103. Professor Summers explains this point as follows:

The advantage enjoyed by employees in a single purpose district may be more than offset by the untempered opposition of those taxpayers who find little actual or psychic value for themselves in school expenditures and who therefore count the entire district tax as a loss. If this group is politically dominant, then budget constraints will press parents to oppose higher salaries as an alternative to reducing the number of teachers or failing to replace old equipment.

Summers, *supra* note 57, at 1169-70; accord Bernstein, *supra* note 53, at 464-65. Notwithstanding Professor Summer's insight on the unique problems of the school district, his impression was that consumers and non-consumers (or users and non-users as he termed them) had relatively equal political strength. See Summers, *supra* note 57, at 1170. On this point, obviously, we disagree with Professor Summers.

104. See H. HAMILTON & S. COHEN, POLICY MAKING BY PLEBISCITE: SCHOOL REFERENDA 181-83 (1974): "The age, parental status, and religious preference of voters are of extraordinary significance for school referenda." *Id.* at 183.

105. *Structuring Collective Bargaining*, *supra* note 40, at 808.

106. See *supra* notes 64-65 and accompanying text.

107. Summers, *supra* note 57, at 1171. See *supra* note 65; see also *infra* note 108.

and school taxing.<sup>108</sup> These requirements insure that school budgetary decisions are scrutinized with some regularity by the public. The effect of these referenda can be dramatic, as is evidenced by a drop in school bond approval rates from eighty percent to under fifty percent between the years 1962 and 1974.<sup>109</sup>

The political vulnerability of public education underscores the schools' continual need to retain the support of public opinion. Commitment to this most costly local service depends on the community's perception that the intangible and indirect benefits of public education are in the greater public good.<sup>110</sup> At the turn of the century, school administrators achieved a significant victory when they "depoliticized" public education by removing it from the control of general municipal government.<sup>111</sup> Until recent decades, the schools were more or less successful in eliminating partisanship, and controversiality, from the processes of educational policymaking. Insularity from the political world assured a steady, if not spectacular, level of public support.<sup>112</sup>

This insularity has been a principal casualty of contemporary social struggles. In recent decades, the schools have been ordered,

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108. See H. HAMILTON & S. COHEN, *supra* note 10, at 2-8. Professors Hamilton and Cohen surveyed the variety and frequency of bond, tax levy, and school budget elections in the states. School bond elections are required in all but three states, and tax levy or school budget elections occur in 27 states. *Id.* at 3. The authors attribute these school referenda mechanisms to "conservative political forces" whose "purpose was to inhibit bond issues by requiring referenda and to clamp a tight lid on tax rates by state law." *Id.* at 3, 5.

Most of the referenda measures discussed above have been in existence throughout this century. *Id.* at 3. In the 1970's, however, new spending limitation movements spread throughout the states and succeeded in an estimated 25 states. See Guthrie, *United States School Finance Policy 1955-1980*, in *SCHOOL FINANCE POLICIES AND PRACTICES* 3, 26-27 (J. Guthrie ed. 1980). The property tax was a principal object of the spending-limitation movement, and resulted in such dramatic taxation coups as California's "Proposition 13" and Massachusetts "Proposition 2 1/2" at 27. See also *SCHOOLS IN CONFLICT*, *supra* note 18, at 245-47.

See *SCHOOLS IN CONFLICT*, *supra* note 18, at 166-68. The referenda approval rate has declined since the mid-1970's. See *N.Y. Times*, Feb. 26, 1984, at C6, col. 1. Wirtz and others have argued that the approval rate for bond referenda may overstate the success rate of school finance, since it does not account for approval rates of local tax levies and school budgets; moreover, the success rate for referenda does not indicate whether school authorities have responded to fiscal conditions by seeking fewer, and smaller, funding increases. *SCHOOLS IN CONFLICT*, *supra* note 18, at 166.

110. Eliot, *supra* note 7, at 1042:

[I]f we were required to give one general explanation of the behavior of professional educators, we might frame it in terms of a ceaseless search for funds. Here may well be the basic reason why educators react so emotionally to criticism: any adverse criticism may make it harder to raise money.

111. See H. TUCKER & L. ZEIGLER, *PROFESSIONALS VERSUS THE PUBLIC: ATTITUDES, COMMUNICATION AND RESPONSE IN SCHOOL DISTRICTS* 9 (1980); Boyd, *The Public, The Professionals, and Education Policy Making: Who Governs?*, 77 *TEACHERS C. REC.*, 539, 543 (1976).

112. *SCHOOLS IN CONFLICT*, *supra* note 18, at 182.

literally, into the forefront of significant political causes, not least of which were attempts to end racial discrimination, to rectify economic inequalities, and to impose legal restraints on the exercise of governmental authority.<sup>113</sup> Much—probably too much—has been asked of the schools, and this expanded social mission has not only increased the competition for school monies, it has diminished community consensus about and commitment to public education.

The erosion of support for public education is also a by-product of increased demands for "accountability." By several measures, the steady increase in general school expenditures has not produced returns: the test performances both of students and teachers have declined.<sup>114</sup> The response of the public and politicians has often been to demand accountability legislation while opposing further increases in school taxes.<sup>115</sup>

Finally, the limited achievements of teacher bargaining must be interpreted in the context of a weak economy and a flourishing grass-roots fiscal conservatism. Statewide referenda like Propositions "13" and "2 1/2" illustrated an almost singleminded commitment to fiscal containment policy.<sup>116</sup> Confronted with more palpable demands in the "essential" services—fire protection, sanitation and road maintenance—local government could better resist teachers' demands for higher salaries (where incremental increases had substantial budgetary impact but small promise of better services).

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113. See, e.g., *Milliken v. Bradley*, 433 U.S. 267 (1977); *Goss v. Lopez*, 419 U.S. 565 (1975) (due process); *Brown v. Board of Education*, 347 U.S. 483 (1954) (school integration); *Serrano v. Priest*, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601, cert. denied, 41 U.S. 907 (1971) (equal funding of education); *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977). See generally D. RAVITCH, *supra* note 60, at 323-24:

So customary was it to criticize the public schools . . . that it was easy to forget the ways in which the schools had been amazingly successful. Americans had long ago decided, without too much discussion of the matter, that education would be the best vehicle through which to change society. The attack against racial segregation, characteristically, was fought out in the schools, and the dismantling of the racial caste system began in the schools and spread to other areas of American life. More than any other institution in American society, the schools became the means through which the goal of equity was pursued.

114. See REPORT OF THE ADVISORY PANEL ON THE SCHOLASTIC APTITUDE TEST SCORE DECLINE, ON FURTHER EXAMINATION 6 (1977) [hereinafter cited as ON FURTHER EXAMINATION]; CONDITION OF EDUCATION, *supra* note 94, at 110; see also *supra* note 98.

115. Public opinion surveys show that opposition to school tax increases has grown from 49% of those responding in 1969, to 60% of those responding in 1981. (This percentage declined to 52% after release of the reform reports in 1983). See Gallup, *The 15th Annual Gallup Poll of the Public's Attitudes Toward Public Schools*, PHI DELTA KAPPAN, Sept. 1983, at 33, 37. On the state legislatures' attempts to improve school efficiency through accountability laws, see D. RAVITCH, *supra* note 60, at 315-16 (1981). See also Haney & Madaus, *Making Sense of the Competency Testing Movement*, 48 HARV. EDUC. REV. 462 (1978).

116. See *supra* note 108.

Moreover, the organizational power of teachers remained highly diffused on the issue of salaries; unlike the more successful industrial unions, teachers' unions fought continual small battles at the local government level.<sup>117</sup> Thus, in salary negotiations teachers could seldom summon their quite considerable collective political strength, which had proved to be formidable in state and federal legislative battles.<sup>118</sup>

In summary, a detailed examination of the employment, fiscal and political aspects of public education reveals effective checks on the economic bargaining power of organized teachers.<sup>119</sup> Of course, some of these aspects may change in years to come. A mild teacher shortage should appear by the end of this decade,<sup>120</sup> and public misgivings about the wisdom of salary increases may dissipate in the light of national reform efforts.<sup>121</sup> But certain constraints on bargaining—perhaps the more important ones—could endure. Thus, state and local governments will continue to operate within limited budgets, with little prospect of significant federal aid for educa-

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117. One comentator discusses this point as follows:

Teacher unions, for the most part, prefer to assert their influence at one central location rather than to negotiate with a large number of small districts. Unions gain strength from centralization and naturally oppose plans that allow districts to establish separate policies affecting teacher responsibilities, class size, and other working conditions. Finally, because major interest groups typically are organized on a city-wide basis, their ability to influence policy would diminish if decision-making power were less concentrated.

Project, *supra* note 16, at 1489. As a general matter, most unions prefer a centralized bargaining structure incorporating bargaining units that are coextensive with the product or labor market. See T. KOCHAN, *COLLECTIVE BARGAINING AND INDUSTRIAL RELATIONS* 84-123 (1980); Weber, *Stability and Change in the Structure of Collective Bargaining*, in *CHALLENGES TO COLLECTIVE BARGAINING* 13 (L. Ulman ed. 1967).

118. See McDonnell & Pascal, *Organized Teachers and Local Schools*, in *GOVERNMENT IN THE CLASSROOM* 33 (M. Williams ed. 1978) (teacher unions are among the most powerful lobbies at the state level); D. RAVITCH, *supra* note 60, at 315 (political influence of National Education Association in securing establishment of the U.S. Department of Education).

119. This conclusion is also supported by research into community school districts:

[O]ur data suggest that the union-domination assertion is essentially wrong. Rather than creating unstoppable political power, we found labor relations problems to be associated with a growth in overall dissatisfaction with the public schools and consequent public toughness toward both unions and schools. The need for public support, the inability to substitute capital investment for labor, and the difficulty in linking investment costs to ultimate educational dividends has meant that public sector unions are quite vulnerable politically as a symbolic focus for dissatisfaction.

Mitchell, Kerchner, Erck & Pryor, *The Impact of Collective Bargaining on School Management and Policy*, *AM. J. OF EDUC.* 147, 153 (1980-81).

120. See *CONDITION OF EDUCATION*, *supra* at 64, at 4; *N.Y. Times*, June 24, 1984, at 24E, col. 1.

121. See *supra* note 115.

tion.<sup>122</sup> In addition, the population of public education's consumers may suffer further decline, particularly if efforts to privatize education prosper.<sup>123</sup> It is even possible that the current interest in educational quality could worsen the political climate for school support: diagnosis of the malady may lead to despair and abandonment if current reform efforts are no more productive than past ones.

In this uncertain political and economic environment, educators might wish to reappraise the current legal regime of collective bargaining with its emphasis on fractionated decisionmaking. Past experience suggests that greater centralization of educational policy may better insulate the schools from the dilemmas of local control. Accordingly, educators' best labor strategy may lie in centralized collective bargaining, or in the intermediate step to centralization—binding arbitration. We shall examine such a strategy in Part IV of this Article.

#### *B. The Effect of Collective Bargaining On School Governance and Educational Policymaking*

In devising public employee bargaining statutes, the states have relied extensively on private sector precedent. One prominent example of this is the frequent adoption of private sector definitions of the scope of the duty to bargain. These definitions typically extend the bargaining duty to all "conditions of employment," subject to the limitation that management need not negotiate matters of "policy" that are central to the direction of the business enterprise.<sup>124</sup> In the field of public employment, these policymaking prerogatives are preserved less for the sake of entrepreneurial freedom than for the maintenance of political control over the provision of governmental services.

Labor critics have continually challenged the equation of the bargaining duty in the public and private sectors.<sup>125</sup> Because of

122. See generally Clark & Amiot, *The Disassembling of the Federal Education Role*, 15 *EDUC. & URBAN SOC'Y* 367 (1983); Clark, Astuto & Rooney, *The Changing Structure of Federal Education Policy in the 1980's*, *PHI DELTA KAPPAN*, Nov. 1983, at 188; Dahl, *Public Sector Bargaining Issues in the 1980's: A Management View*, 33 *N.Y.U. CONF. ON LABOR* 287, 290-92 (1980); Schuster, *Out of the Frying Pan: The Politics of Education in a New Era*, *PHI DELTA KAPPAN*, May 1982, at 583.

123. See *supra* text accompanying notes 102-04.

124. See, e.g., Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 *MICH. L. REV.* 885, 909 (1973); Sackman, *Defining the Scope of Bargaining in Public Employment*, 19 *B.C.L. REV.* 155, 173-78 (1977); see generally *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964); *NLRB v. Wooster Div. of Borg-Warner*, 356 U.S. 342 (1958).

125. See, e.g., Summers, *supra* note 57, at 1192-97; *Structuring Collective Bargaining*, *supra* note 40, at 865-66.

structural differences in the operation of the two sectors, it is alleged, public sector bargaining may result in union domination of the employment enterprise to a degree unknown in private industry. Private sector employers, critics contend, rarely bargain over the nature of the business enterprise or the product produced.<sup>126</sup> And in those areas where bargaining does occur, management closely scrutinizes the potential effect of contract proposals by the essential criterion of entrepreneurs—business costs.<sup>127</sup>

By contrast, public sector bargaining is said to generate a more expansive bargaining scope while simultaneously reducing the incentives of public employers to resist union demands. Public employers, it is noted, frequently provide labor-intensive services (like education) which are fundamentally affected by labor policy.<sup>128</sup> Moreover, public employee bargaining often extends to a range of issues that have no direct and ascertainable economic cost. In such situations, the most powerful interest group aligned against employee unions—local taxpayers—will provide little coordinated resistance to union demands.<sup>129</sup>

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126. *Structuring Collective Bargaining*, *supra* note 40, at 858.

127. Describing the private sector, Wellington and Winter observe:

From the employer's point of view, most encroachments on what has been its unilateral power to manage are measured on a single scale: their effect on costs. . . [T]he pressure on the employer, as an enterprise, is to resist any increase in cost and, ultimately, it is hurt no more or less because that cost is extracted through inefficient work rules or high wages. Management resistance to union demands, therefore, will tend to force the union to make trade-offs based on those costs.

*Id.* at 857.

128. *Id.* at 859.

129. As noted by Wellington and Winter:

But, where a demand is viewed as involving essentially political costs, trade-offs are more difficult. . . Interest groups will exert pressure against union demands only when they are directly affected. Otherwise, they will join that large constituency which wants to avoid labor trouble. Trade-offs can occur only when several demands are resisted by roughly the same groups. Thus, budgetary demands can be traded off when they are opposed by taxpayers. But when the identity of the resisting group changes with each demand, political leaders may find it expedient to strike a balance on each issue individually, rather than as a part of a total package, by measuring the political power of each interest group involved against the political power of the constituency pressing for labor peace. Expansion of the subjects of bargaining in the public sector, therefore, may increase the total quantum of union power in the political process.

*Id.* at 858-59; accord Summers, *supra* note 57, at 1182. *But see* Edwards, *supra* note 124, at 932-33 (rejecting any distinction in the bargaining scope for private and public sector employees).

Note also that Professors Wellington and Winter did *not* premise their objection to a broad scope of bargaining on the availability of the strike right. *See, e.g., Structuring Collective Bargaining*, *supra* note 40, at 860.

Thus, under the prevailing theory of public sector bargaining, employee unions are believed to be in a unique position to influence the management and direction of local public services. This concern over undue union influence in local government has special vigor in public education, which is characterized by a continuing struggle between local school government and organized professionals. On one hand, the board of education symbolizes communitarian democracy in its purest form. Board members are neither professional politicians nor professional educators, and they bring to school government a distinctly lay perspective.<sup>130</sup> On the other hand, public school teachers (most of whom are women)<sup>131</sup> suffer from a long history of unilateral school government (run largely by men)<sup>132</sup> that has excluded them from a participatory role in educational policy-making.<sup>133</sup> Thus, since the advent of collective bargaining, union officials have declared their intention to improve teachers' professional status through greater autonomy from school management and greater participation in school policymaking.<sup>134</sup>

Today, there is growing suspicion that organized teachers have prevailed in their struggle with local government and that the schools have suffered as a consequence. President Reagan echoed considerable popular sentiment when, in response to the 1983 reports on educational reform, he identified teacher unionism as a major impediment to reform.<sup>135</sup> Union critics suspect that the simulta-

130. See *infra* text accompanying notes 328-35.

131. The percentage of female teachers was 67% in 1981, a minor change from 1961 when the percentage was 69%. STATUS, *supra* note 27, at 19.

132. The percentage of teachers with male principals was 88% in 1981, and 89% in 1971. See *id.* at 16. The percentage of women on boards of education, moreover, is reported as "a fraction." SCHOOLS IN CONFLICT, *supra* note 18, at 129.

133. See Wollett, *supra* note 9, at 1019-20:

[T]eachers do not have authority within local school systems commensurate with their responsibilities. They frequently lack a meaningful voice in determining the content of the courses they are teaching or in selecting appropriate textbooks. Often they are not free to formulate their own lesson plans or to modify them if they do not produce desirable classroom responses. Seldom, if ever, do they share a role in overall curricular planning. . . . [T]eachers typically have no voice in recruiting new colleagues or in promotion and tenure decisions.

Accord McDonnell & Pascal, *supra* note 118, at 44.

134. See Daly, *Professional Negotiations*, 54 NAT. EDUC. ASS'N J. 31 (May 1965) (NEA position); Wildman, *Collective Action by Public School Teachers*, 18 IND. & LAB. REL. REV. 3, 10 (Oct. 1964) (AFT position). A statement by the president of the AFT in 1962 illustrates the position of both unions: "nothing concerning the operation of the schools, including curriculum, content, and methodology, is immune to the joint decision-making and 'codeterminism' of collective bargaining." *Id.* See also *Structuring Collective Bargaining*, *supra* note 40, at 859 (concerning the professional ambitions of teachers in bargaining).

135. President Reagan's particular political quarrel has been with the National Education Association, which among other things, has opposed the administration's proposals for

neous proliferation of teacher collective bargaining and the decline in achievement scores of students and teachers is more than a coincidence.<sup>136</sup> While the precise link between collective bargaining and school performance remains uncertain, critics suggest that bargaining has significantly reduced both administrative control over the teaching staff—the “accountability” problem—and the productivity of teachers.<sup>137</sup>

If allegations of an unhealthy union influence in public education have substance, then meaningful labor reform may be a prerequisite to school reform. As we shall contend in the following discussion, however, there is mounting evidence to suggest that the union impact on the schools both has been overstated and misinterpreted. Systematic investigation of unionized school districts reveals that teachers' unions may be relatively less successful in negotiating non-economic items than private sector unions, thus undermining the view that organized teachers have excessive bargaining leverage over local school government in this area. Furthermore, there is increasing reason to think that the formal bargaining achievements of the unions have not initiated significant, systemwide change in the operation of the schools. The paradox of this finding is that the yet-unfulfilled bargaining agenda of the unions may sometimes be in the best interests of public education.

### 1. A PROFILE OF COLLECTIVE BARGAINING AGREEMENTS

Any discussion of teacher bargaining agreements must take account of the transformation in bargaining practices that has occurred in recent years. At the outset of teacher collective bargaining, the unions held a decisive organizational advantage through their network of federal, state and local associations.<sup>138</sup> This network could provide both information and negotiating expertise, and could coordinate bargaining strategies among the local unions. Boards of education, by contrast, were independent units of local government

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merit pay. See, e.g., N.Y. Times, July 6, 1983, at A12, col. 1. See also R. EBERTS & J. STONE, UNIONS AND PUBLIC SCHOOLS 1 (1984) (public fear of teachers' unions).

136. See *supra* notes 98, 114. For example, in 1962, when teacher bargaining was relatively rare, the mean score for students taking the Scholastic Aptitude Test (SAT) was 478 on the verbal segment and 502 on the mathematics segment. In 1981, the corresponding figures were 424 and 466. See ON FURTHER EXAMINATION, *supra* note 114, at 6.

137. See, e.g., M. LIEBERMAN, PUBLIC-SECTOR BARGAINING 160-62 (1980); Clark, *Commentary*, in FACULTY AND TEACHER BARGAINING 96-101 (G. Angell ed. 1981); Doherty, *Does Teacher Bargaining Affect Student Achievement*, in FACULTY AND TEACHER BARGAINING 68-72 (G. Angell ed. 1981).

138. See Doherty, *supra* note 21, at 508-13.

whose affiliations were weak and whose labor expertise was minimal.<sup>139</sup> Thus, the early advantage was held by organized teachers, and their initial bargaining success was considerable.<sup>140</sup>

Contemporary bargaining efforts by school boards are characterized by far more expertise, and far less willingness to concede, than in the past. School boards increasingly retain professional labor consultants—usually attorneys—to conduct negotiations.<sup>141</sup> With the assistance of such professionals, management has been more inclined to bargain hard, and to assert claims of management rights.<sup>142</sup> Indeed, school boards now frequently refuse to bargain over issues whose negotiability in the private sector would provoke little challenge.<sup>143</sup>

A profile of teacher bargaining agreements in unionized school districts provides evidence that school government has been far more successful in resisting union demands than earlier predictions would suggest. There is relatively little contract language governing the more formative issues of educational policymaking—issues which one might expect to be prominent in the bargaining agenda of

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139. *Id.*

140. A review of teacher collective bargaining agreements in 1971 reveals *substantial* gains by the unions, notwithstanding the relative infancy of collective bargaining and the small minority of school districts with collective bargaining agreements. This evidence is summarized in Hazard, *Collective Bargaining and School Governance*, 5 Sw. U. L. REV. 83, 92-94 (1973).

141. See, e.g., L. McDONNELL & A. PASCAL, *supra* note 47, at 41, 48, 51 (1979). Our surveys of Connecticut school districts indicate that approximately 80% use attorneys both in the negotiation and implementation of contracts, and that more than 90% of the unions use professional representatives (provided by the state union organization) for such purposes.

142. See, e.g., *id.* at 41.

143. For example, it is now well-established in the private sector that the scope of bargaining extends to union organizational rights, matters relating to salaries and fringe benefits, employee discipline, employee discharge, work loads and work duties, work hours and scheduling, and time off. See J. WEITZMAN, *THE SCOPE OF BARGAINING IN PUBLIC EMPLOYMENT* 7-39 (1975). Dispute over the negotiability of such matters in public education, by contrast, arises with surprising frequency. See Disapia, *What's Negotiable in Public Education?*, 1 Gov't UNION REV. 23, 32-51 (1980) (surveying judicial and administrative decisions). See, e.g., *San Mateo City School District v. Public Employment Rel. Bd.*, 179 Cal. Rptr. 647 (Cal. Ct. App. 1981) (union rights, fringe benefits, preparation time); *Fort Dodge Community School District v. Public Employee Rel. Bd.*, 319 N.W.2d 181 (Iowa 1982); *Woodbine Community School District v. Public Employment Rel. Bd.*, 316 N.W.2d 862 (Iowa 1981) (compensation criteria); *Chee-Craw Teachers Ass'n v. Unified School District*, 225 Kan. 561, 593 P.2d 406 (1979) (discipline, sick-leave pay, work load and work duties, work day); *NEA-Topeka v. United School District*, 225 Kan. 445, 592 P.2d 93 (1979) (union rights, staff reduction); *Board of Educ. v. Township of Ocean Teachers' Ass'n*, 165 N.J. Super. 427, 398 A.2d 579 (1979) (work load, work day); *Fargo Educ. Ass'n v. Fargo Public School District No. 1*, 291 N.W.2d 267 (N.D. 1980) (layoffs, work schedule); *Stroudsburg Area Bd. of Educ. v. Pennsylvania Lab. Rel. Bd.*, 395 A.2d 622 (Pa. Commonwealth Ct. 1978) (discipline); *Blackhawk Teachers' Federation v. Wisconsin Employee Rel. Comm'n*, 109 Wis. 2d 415, 326 N.W.2d 247 (Ct. App. 1982) (work load).

a professional union.<sup>144</sup> It is uncommon to find, for example, contract provisions that determine such matters as the content of the school curriculum, the methods of classroom instruction, the choice of textbooks and teaching materials, the policies for student grading and student discipline, the standards for the hiring of teachers and administrators, and the allocation of the non-salary portions of the school budget.<sup>145</sup> It is doubtlessly true that unions in some school districts have frequently proposed, and occasionally won, contract language governing these items. It is also likely that an appreciable degree of informal consultation occurs between school management and teachers on some of these issues. But the point is that most of

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144. The following prediction is illustrative of early expectations concerning the emergence of professional issues in collective bargaining: "We can expect . . . that increasingly teachers will be involved in deciding the content of courses they teach, the textbooks they use, all of the learning activities within the classroom, overall curricular planning, recruiting of new colleagues, and promotion and tenure decisions." Kleingartner, *Collective Bargaining between Salaried Professionals and Public Sector Management*, PUB. ADMIN. REV. 165, 171 (Mar./Apr. 1973); see also McDonnell & Pascal, *supra* note 118.

145. It is difficult to obtain exact data on the prevalence of policy items since most of them seldom appear in systematic contract studies. Our study of teacher collective bargaining agreements in Connecticut reveals the following percentages of policy items:

- a) Teacher participation in curriculum or instructional policy committee—35%;
- b) Teacher participation in textbook selection—20%;
- c) Provision for use of teacher aides—16%;
- d) Student discipline procedure—6%;
- e) Teacher participation in school budgeting decisions—1%;
- f) Teacher participation in hiring decisions—2%;
- g) Provision for student grading or promotion—4%.

Similar results are reported in the national contract study, L. McDONNELL & A. PASCAL, *supra* note 47, at 12 (31% of contracts authorize teacher participation in curriculum or instructional policy making, 29% of contracts contain provision for teacher aides, no contracts contain provision for student grading or promotion).

Such matters as student discipline procedures, budgetary control, and curriculum policy are among the examples cited by Professors Wellington and Winter and Professor Summers as unsuitable subjects for collective bargaining. See *Structuring Collective Bargaining*, *supra* note 40, at 852-55; Summers, *supra* note 57, at 1181-82. Wellington and Winter also referred to class size as an unsuitable subject for bargaining, though Summers believed that the costs trade-off in class size reduction would provide school employers sufficient incentive to bargain vigorously. Compare *Structuring Collective Bargaining*, *supra* note 40, at 853-54 with Summers, *supra* note 57, at 1182. For a discussion of the uncertain consequences of class size provisions, see *infra* text accompanying notes 190-94.

Professors Wellington, Winter and Summers agreed that teacher participation in educational policy making was desirable, but they objected to the determination of certain policies through collective bargaining. See *Structuring Collective Bargaining*, *supra* note 40, at 859; Summers, *supra* note 55, at 1195. As the evidence summarized above indicates, teacher participation in educational policy making appears, in fact, to occur outside the bargaining process. Moreover, the school boards' commitment to a participatory role for teachers is a minor concession; in none of the contracts in our Connecticut sample, and in but eight percent of contracts from a Michigan sample, is the school board required to act on recommendations of a curriculum committee. See MICHIGAN EDUC. ASS'N, SUMMARY OF SELECTED CONTRACT PROVISIONS 1979-80 (1982).

the larger issues of school governance continue to be resolved outside the collective bargaining process.<sup>146</sup>

With minor exceptions, the composition of teacher contracts is surprisingly similar to that of private sector contracts. To illustrate, Table 4 identifies several of the prominent features<sup>147</sup> found in: 1) a national sample of private sector agreements; 2) a national sample

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146. There is evidence to suggest that the mere existence of a collective bargaining relationship often has little, if any, effect on teacher participation in school governance. Eberts, for example, found that collective bargaining produced no statistically significant increase in teacher participation in such matters as student assignment, teacher assignment or curriculum planning. See Eberts, *Union Effects on Teacher Productivity*, 37 *INDUS. & LAB. REL. REV.* 346, 355 (1984). Similarly, in related research Eberts and Stone found that teacher unionization had no significant effect on a teacher's opportunity to choose his or her teaching assignment. See R. EBERTS & J. STONE, *supra* note 135, at 112.

One field researcher, who observed a sample of school districts over a 10 year period, reports that there has been increased teacher participation in policy-making but that such participation has not occurred through collective bargaining:

There has been considerable speculation that collective bargaining can and will lead to the extension of teacher rights to the control of some or all matters of educational policy. The original study [see C. PERRY & W. WILDMAN, *THE EVIDENCE FROM THE SCHOOLS* (1970)] found little evidence of such an impact, despite the existence of contract clauses covering such policy issues as class size, teacher transfers, school integration, student discipline, and pupil grading and promotion. The more recent experience in the nine systems does not provide evidence to contradict this conclusion, despite the addition in some contracts of clauses dealing with academic freedom, 'quality integrated education,' and teacher accountability to the historic list of what was and remains a sparse population of substantive 'policy' provisions.

Perry, *supra* note 41, at 15.

147. The contract profiles set forth do not exhaust the composition of bargaining agreements. Industrial agreements will contain, for example, a variety of procedural provisions regulating the parties' contractual relationship, provisions governing grounds for employee discharge, provisions setting forth holidays, vacations and other prerequisites of employment, restrictions on the right to strike or lockout, and regulations of safety and working conditions. See generally BNA, *BASIC PATTERNS IN UNION CONTRACTS* (9th ed. 1979) [hereinafter cited as *BASIC PATTERNS*]. Teacher contracts may contain similar provisions, although several matters—like strike prohibitions, discharge criteria and pension rights—may be covered by state law as well as contract. For a general discussion of the typical contract profile in school districts, see A. CRESSWELL & M. MURPHY, *supra* note 25, at 293-340.

The entries on Table 4 are taken from the following sources: *BASIC PATTERNS*, *supra* (Private industry-1979); BNA, *BASIC PATTERNS IN UNION CONTRACTS* (1975) (Private industry-1975); L. McDONNELL & A. PASCAL, *supra* note 47, at 10, 12 (Teachers-national 1975); Forbes, *Contract Language and Management Rights*, in *COLLECTIVE BARGAINING: PROBLEMS AND SOLUTIONS* 18-25 (P. Gonder ed. 1981) (Teachers-national 1980); MICHIGAN EDUC. ASS'N, *Summary of Selected Contract Provisions 1974-75*; MICHIGAN EDUC. ASS'N, *supra* note 145; New York State United Teachers, *1978-79 Teacher Contract Analysis*; New York State United Teachers, *1975-76 Teacher Contract Analysis*; M. Samper, *School Board and Teacher Organization Collective Bargaining Agreements* (1975) (unpublished manuscript) (Teachers-Connecticut 1975). Data for certain entries was obtained through interviews with the report sources. Data for the Connecticut teacher contracts in 1979 was collected by the authors through review of files in the Connecticut State Department of Education.

of teacher agreements; and 3) a cross-section of teacher agreements from states with intensive collective bargaining.<sup>148</sup>

As the comparison in Table 4 indicates, the conventions of industrial bargaining and teacher bargaining are substantially similar. Like private sector unions, teachers' unions seek to negotiate the levels of their compensation and fringe benefits, the amount of employment leave, a grievance procedure that employs disinterested third-parties, the length of the work schedule, a system of seniority rights governing decisions to transfer or discharge employees, and some form of union security.<sup>149</sup> The principal distinctions between teacher contracts and industrial contracts concern matters peculiar to education—classroom evaluation procedures,<sup>150</sup> class size limitations and restrictions of the scheduling of classes. More will be said about these provisions in subsequent discussion.<sup>151</sup> But it is noteworthy that several of the more controversial aspects of teacher bargaining—restrictions on the length of the work day, and seniority privileges in personnel decisions—occur with far less frequency in teacher contracts than in private sector agreements.

There is little evidence, then, that teachers' unions generally have greater bargaining leverage than unionized employees in the private sector; nor is there any indication that teachers' unions have dominated the management of the public schools. Indeed, measured either by the success of unionized workers in the private sector, or by teachers' own bargaining agenda, collective bargaining has been a minor disappointment. Such a finding does not, however, meet the criticism that the conventions of private sector collective bargaining may have special impact when adopted in public education. It does not, in particular, answer the charges that: 1) seniority provisions have eliminated "accountability" measures from public school administration; or 2) that contractual work restrictions have reduced the productivity of public school teachers.<sup>152</sup> It is to an analysis of these contentions that we now turn.

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148. See generally Wynn, *supra* note 75; see also Table 6, *infra* following note 262.

149. "Union security" refers to agency fee provisions which require all teachers to pay union dues regardless of whether they belong to a union. See BLACK'S LAW DICTIONARY 1374 (5th ed. 1979).

150. "Classroom evaluation procedures" deal with the scope and conditions under which administrators conduct classroom visitation and evaluation: for example, contracts may limit the number of visitations or may give teachers the right to review and contest evaluation reports.

151. See *infra* notes 179-201, 268-90 and accompanying text.

152. See authorities cited *supra* note 137.

TABLE 4  
Major Substantive Provisions of Collective Bargaining Agreements

Provision	Private Industry		Teachers National		Teachers Conn.		Teachers N.Y.		Teachers Mich.	
	1976	1979	1975	1980	1975	1979	1975	1979	1975	1979
Salaries & Insurance Benefits	100%	100%	—	—	96%	100%	99%	100%	—	100%
Paid Leave	93	91	—	—	88	100	100	100	—	100
Grievance Arbitration	96	96	83%	70%	61	69	83	83	—	85
Work Day Specified	82	82	58	—	47	50	—	63	—	—
Work Year Specified	96	92	—	40**	71	66	41	46	—	—
Transfers by Seniority (Voluntary)	48	44	3	—	—	13	—	—	—	22
Promotions by Seniority	69	67	32	—	44	23	—	—	—	—
Layoffs by Seniority	85	83	3	56**	—	54	19	15	78%	80**
Layoff Procedures	90	88	37	56	—	54	35	39	81	—
Union Security	79	74	—	—	—	N/A*	3	14	68	85
Management Rights	99	99	—	62	66	69	—	—	—	—
Classroom Evaluation	N/A	N/A	65	60	—	59	81	86	—	86
Class Size Limits	N/A	N/A	34	15	56	47	55	54	72	50
Class Load Limits	N/A	N/A	—	—	36	38	18	19	—	—
Minimum Preparation Time	N/A	N/A	—	—	—	71	66	69	62	87

\* Union security provisions were illegal at the time of this contract sample (N/A = not applicable).

\*\* Approximate

## 2. THE PRINCIPLE OF SENIORITY IN SCHOOL ADMINISTRATION

The principle of seniority typically appears in teacher contracts in one of three forms. First, seniority is usually one of the two primary criteria for determining a teacher's compensation, the other is academic attainment.<sup>153</sup> Second, seniority is often an influential, and sometimes a determinative factor, in establishing the order of reductions when the teaching staff must be decreased.<sup>154</sup> Finally, seniority is sometimes a criterion for determining the order in which teachers are to be transferred within a school district.<sup>155</sup> In all three forms, the seniority principle provides a fixed, objective standard by which personnel decisions can be made, but at the same time it reduces the prerogative of school administrators to act in accordance with their best estimate of a teacher's worth and the school system's needs.

The use of a teacher's seniority in determining her compensation is now accepted in the great majority of school districts.<sup>156</sup> This criterion is basic to the "single salary schedule" under which a teacher receives a yearly salary increase corresponding to her years of service and degree status. The only means of progressing in such a system, other than through accumulated service, is to attain a higher academic degree or, better yet, to advance to an administrative position. Such a system stands squarely opposed to now-popular proposals for "merit" pay, which would enable school administrators to reward financially those who are evaluated as superior teachers.<sup>157</sup> By adopting merit-based compensation, it is argued,

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153. Compensation in most school systems is determined by the "single salary schedule", as discussed in the text. In essence, a teacher is placed in a salary category that is determined by her educational attainment, e.g., masters degree or doctorate. Within this degree category, the teacher progresses through a series of steps, usually one for each year of satisfactory service. If the teacher attains a higher degree status, she enters a new salary category which results in larger yearly increases at each step. For a discussion of the single salary schedule, and an illustration, see Doherty, *supra* note 21, at 502-04.

154. See Table 4, *supra* following note 152.

155. See *id.* Seniority may be used to govern both voluntary transfers (when a teacher requests assignment to a vacant position in the school system) and involuntary transfers, e.g., when shifting needs in a school necessitate that some teachers be reassigned to another position.

156. See, e.g., EDUCATIONAL RESEARCH SERVICE, INC., MERIT PAY FOR TEACHERS 35 (1979) [hereinafter cited as MERIT PAY FOR TEACHERS] (survey showing merit pay schemes used in fewer than four percent of national school districts); S. Bacharach, D. Lipsky & J. Shedd, Teacher Compensation Systems and the Quality of Education 3 (1984) (unpublished manuscript).

157. See generally MERIT PAY FOR TEACHERS, *supra* note 156. Some form of merit pay has been advocated by a number of prestigious groups, including The National Commission on Excellence in Education and The Education Commission of the States, as well as educational leaders and politicians. See S. Bacharach, D. Lipsky & J. Shedd, *supra* note 156, at 1-3.

schools would introduce economic incentives like those present in the private sector, and which are effectively eliminated by the single salary schedule.<sup>158</sup>

Implementation of merit pay schemes promises to be the most contested aspect of contemporary educational reform.<sup>159</sup> Merit pay proposals have already galvanized the support of governmental officials and the resistance of teachers' unions. But the controversy should not obscure the essentially secondary role that collective bargaining has played in determining the structure of teacher compensation. The single salary schedule was introduced into American school systems long before the advent of collective bargaining. Prior to World War II, only twenty percent of the nation's school systems provided compensation bonuses to "superior" teachers.<sup>160</sup> And in 1959, when the first teacher bargaining law was enacted, merit pay plans existed in but six percent of the school districts surveyed in a national sample.<sup>161</sup> Thus, for the most part, collective bargaining agreements formalized a system of compensation that preceded teacher unionism.<sup>162</sup>

The single salary schedule appears to be sustained largely by institutional factors apart from the phenomenon of collective bargaining. Whatever its shortcomings, seniority-based compensation is a pay scheme that is highly acceptable to classroom teachers and is cheaply and easily administered.<sup>163</sup> Past attempts to introduce

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Among the alleged problems with the current "meritless" system are: 1) lack of economic incentive for prospective teachers; 2) lack of economic incentive for existing teachers of merit; and 3) lack of economic incentive for specialty teachers, e.g., math and science instructors, who have more lucrative career alternatives. *See id.* at 4-7.

158. Contrary to common belief, however, merit pay schemes are *not* widely used in private industry and appear to have greatest applicability in occupations involving sales or piecework production. *See E. LAWLER, PAY AND ORGANIZATION DEVELOPMENT* 97-98 (1981).

159. The Department of Education and its political progenitor, the NEA, have divided sharply over the issue of merit pay. For an article setting forth the Department of Education's position, see *N.Y. Times*, Dec. 7, 1983, at A9, col. 1. For an article setting forth the NEA's position, see *N.Y. Times*, July 3, 1984, at A11, col. 1. *See also N.Y. Times*, June 17, 1983, at A17, col's. 2-3 (general discussion of the merit pay debate).

160. In school year 1938-39, 20% of the nation's larger school districts reported that they provided a "superior service maximum"; experimentation in merit-related schemes declined sharply in the years that followed and, subject to minor fluctuations, declined to the present level of approximately four percent. *See MERIT PAY FOR TEACHERS, supra* note 156, at 26, 36. One should note that the four percent figure represents pay schemes that provide any form of merit reward—they do not necessarily use merit to determine staff-wide compensation.

161. *See id.* at 27.

162. *See, e.g., Doherty, supra* note 137, at 70-71.

163. *See S. Bacharach, D. Lipsky & J. Shedd, supra* note 156, at 9, 24-26. It is also worth noting that the compensation criteria of the single salary schedule—experience and education—may have some relationship to teacher performance. Past research has usually

merit-based schemes, by contrast, have faltered.<sup>164</sup> Interestingly, the most frequently cited explanation for the discontinuance of past merit plans has been the incidence of administrative problems,<sup>165</sup> especially the difficulties encountered in developing fair and accurate evaluation processes. Another major reason for the abandonment of merit plans has been the antipathy of teachers and the breakdown in morale caused by introduction of the plans.<sup>166</sup> It is noteworthy that the phenomenon of collective bargaining has prompted the discontinuance of only eighteen percent of such plans, and that unions have expressly negotiated these plans away in but eight percent of the cases.<sup>167</sup> Furthermore, there appears to have been no less experimentation with merit plans in unionized states than in non-unionized ones.<sup>168</sup>

Therefore, it is important to identify what is, and is not, a product of collective bargaining in the schools, and to understand that the conventions of school administration may have a life independent of collective bargaining. An example of such a convention is the use of seniority to determine the order of staff reductions in the schools. While collective bargaining has no doubt played some role in consolidating the seniority principle in this context, a variety of objective factors independent of bargaining have played no less important roles.

One of the more unsettling dilemmas facing the schools in recent years has been the need to reduce the size of teaching staffs to

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found that a teacher's experience may improve performance, but evidence on the relationship of academic attainment to performance is mixed. *See id.* at 20. *See also* R. EBERTS & J. STONE, *supra* note 135, at 56-57.

164. Studies of attrition rates in merit pay schemes reveal the following percentage of programs discontinued: 81%, *see* NATIONAL EDUCATION ASSOCIATION, RESEARCH DIVISION, *QUALITY OF SERVICE PROVISIONS IN SALARY SCHEDULES, 1958-59, 39-43* (1959); 66%, *see* D. McKinley, *A Study of Merit Evaluation for Salary Purposes in the Public Schools of the United States* (Ed. D. dissertation, Washington State University 1953) reported in *MERIT PAY FOR TEACHERS, supra* note 156, at 26-27; and 62%, *see id.* at 32, 35, 40 (this figure was derived independently by dividing the number of systems with either present or past merit plans by the number of plans currently in effect).

165. *See* *MERIT PAY FOR TEACHERS, supra* note 156.

166. *See id.* at 43. For a thoughtful argument on the institutional unsuitability of merit pay in public education, *see* Johnson, *Merit Pay for Teachers: A Poor Prescription for Reform*, 54 *HARV. EDUC. REV.* 175 (1984).

167. *See* *MERIT PAY FOR TEACHERS, supra* note 156, at 43.

168. For example, 14 of the 16 states having at least three districts with merit plans also authorize teacher collective bargaining, and have intensive collective bargaining experience. *Compare id.* at 36 with *supra* note 29 and Table 6, *infra* following note 262.

There is, unfortunately, no data available comparing the failure rates of merit pay schemes in unionized and non-unionized states.

accommodate declining school enrollments.<sup>169</sup> Like private sector unions, teachers' unions have responded to the necessity of layoffs by demanding that junior employees be released first. As the earlier review of teacher contracts illustrates, the teachers' unions have made considerable progress in negotiating seniority protections, even though their success rate is considerably below that of private sector unions.<sup>170</sup>

This progress has been made in the face of substantial opposition, it is true. Contract provisions for seniority-based staff reductions elicit hostilities not unlike those elicited by the single salary schedule. Critics of these provisions point out that they result in several adverse consequences for the schools—retention of an older and more high-salaried teaching staff, and elimination of junior teachers with sometimes superior teaching abilities.<sup>171</sup> Seniority provisions for teacher layoffs also appear to be opposed by public opinion, notwithstanding their prevalence in the unionized private sector.<sup>172</sup>

Factors independent of bargaining, however, have greatly enhanced the position of teachers' unions bargaining for the seniority principle. Because the need for teaching staff reductions did not arise until recent years, seniority-based practice lacks the extended history of the single salary schedule. The seniority principle in layoff decisions, nevertheless, has a strong foundation in institutional practice and labor relations norms. It has been a cornerstone of the American labor movement,<sup>173</sup> and is widely recognized even in the non-unionized private sector.<sup>174</sup> Furthermore, seniority has been

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169. Public school enrollments have declined by 10.7% between 1970-71 and 1980-81. See *CONDITION OF EDUCATION*, *supra* note 64, at 48. During this period the demand for additional teachers declined 20%. *Id.* at 85. In 1979, less than 1% of all employed teachers lost their positions. *Id.* at 86. As of 1983, however, 6% of all teachers surveyed reported that they had received notice of termination. NATIONAL EDUCATION ASSOCIATION, *TEACHER OPINION POLL DEMOGRAPHIC HIGHLIGHTS* (1983). Between 1979 and 1988, moreover, a 14% reduction in public secondary classroom staff is expected. See *CONDITION OF EDUCATION*, *supra* note 64, at 48.

170. See Table 4, *supra* following note 152.

171. See, e.g., Randles & Moser, *Employers and Employees in Public Schools: A Tentative Model for Prediction*, 11 *J. COLLECTIVE NEGOTIATIONS PUB. SECTOR* 351, 360 (1982). See generally Jascourt, *The Role of Negotiations in the Equation "Declining School Enrollments = Layoffs": An Overview*, 7 *J. LAW & EDUC.* 239 (1978).

172. In a 1981 Gallup poll, 78% of the respondents stated that teachers should be laid off on the basis of performance rather than seniority. Gallup, *The 13th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, *PHI DELTA KAPPAN*, Sept. 1981, at 33, 43.

173. See generally R. FREEMAN & J. MEDOFF, *supra* note 81, at 122-35.

174. Freeman & Medoff report, for example, that 68% of non-unionized firms agree that seniority is the most important factor in determining employee layoffs, compared to 84% of unionized firms. *Id.* at 124.

codified in the public employment laws of the majority of states. Most states, for example, have enacted "tenure" laws that expressly recognize the superior job entitlement of senior teachers.<sup>175</sup> Moreover, recent investigation of school district termination practices reveals that seniority is a significant determinant of the order of staff reductions regardless of the presence of a collective bargaining provision, though such a provision does increase the influence of the seniority factor.<sup>176</sup> In fact, a "striking" result of this research was the finding that teacher transfers—where there is no threat to job security—follow the hierarchy of school seniority, independently of the presence of a specific contractual requirement.<sup>177</sup>

Perceived weaknesses of the "merit" alternative to the seniority principle may also have contributed to the unions' success. Experience with "merit" staff reduction discloses several of the administrative and personnel problems that attend implementation of merit pay plans. Merit reductions, like merit pay, necessitate the adoption of carefully designed and implemented evaluation procedures. One investigator, based on intensive field research in studying school districts experimenting with merit staff reduction, found that the programs had disrupted the educational function of school principals, created distrust between school administration and the teaching staff, and significantly lowered the morale of the teaching staff.<sup>178</sup>

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175. Virtually every state has some form of legal tenure, most often prescribed by statute. These laws provide that, after a given probationary period (usually three years), teachers have a contractual right to continued employment except where "cause" for termination can be established. Many of these laws also provide that, when reductions in the teaching force are required, probationary teachers must be released before tenured ones. For general discussion of state tenure laws, see A. CRESSWELL & M. MURPHY, *supra* note 25, at 185-86; L. FISCHER, D. SCHIMMEL & C. KELLY, *supra* note 70, at 31-44; Doherty, *supra* note 21, at 525 n.53. Note also that only two states have considered alterations in their tenure laws as part of educational reform efforts, and these changes do not disturb the basic tenure principle. See THE NATION RESPONDS, *supra* note 3, at 88, 94.

176. In Ebert and Stone's study of teacher termination practice, regression analysis revealed that a teacher's years of experience had greatest effect on the likelihood of that teacher's retention during reductions in force. When the existence of a contractual seniority provision was entered into the equation, the provision was found to increase the likelihood of a junior teacher being dismissed. The size of that effect, however, as suggested by t-statistics (a measure of the *statistical significance* of variations in the mean values of a variable), was less than that of a teacher's experience acting alone. R. EBERTS & J. STONE, *supra* note 135, at 118-20. For an explanation on the use of t-statistics, see INTERNATIONAL ENCYCLOPEDIA OF STATISTICS 544-46 (W. Kruskal & J. Tanur eds. 1978).

177. R. EBERTS & J. STONE, *supra* note 135, at 116-18.

178. Johnson, *Performance-Based Staff Layoffs in the Public Schools: Implementation and Outcomes*, 50 HARV. EDUC. REV. 214, 216, 223-29 (1980). Johnson also found evidence that traditional school practice and institutional factors undermine attempts to implement merit staff reductions. One of the primary obstacles to introduction of merit layoffs was the need to formalize (and bureaucratize) procedures for evaluation at the local school level. Such formalization was found to interfere with principal-teacher collegiality, and to convert the

Though promising in theory, merit reduction proved nettlesome in practice.

Thus, the principle of seniority is a major institutional feature of public schools and draws life from a variety of social and administrative norms. There is little doubt that teacher collective bargaining has contributed to the entrenchment of the seniority principle, and that it will prove a major impediment to advocates of a less structured, performance-responsive system of personnel administration. The origins of the seniority principle, however, are not to be found in collective bargaining, and any attempt to root out the principle by manipulation of the bargaining process would prove ineffectual.

### 3. CONTRACTUAL REGULATION OF TEACHERS' WORK PRACTICES AND THE PROBLEM OF PRODUCTIVITY

The effort by teachers to bargain over the extent of their work responsibilities is perhaps as controversial as the prevalence of the seniority principle in public education. In recent years, many unions have negotiated express limitations on the length of the teachers' work day and work year, restrictions on the number and size of classes, and either restrictions on or additional compensation for non-instructional duties.<sup>179</sup> Such contractual stipulation of teacher responsibilities represents, at least in form, a major dilution of past administrative powers, which are plenary in the operation of public schools.<sup>180</sup>

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role of principal from that of educational leader to evaluator. *Id.* at 224-25. Similar reservations are expressed in Murnane, *Interpreting the Evidence on School Effectiveness*, 83 *TEACHERS C. REC.* 19, 29 (1981):

There is very little systematic evidence concerning how either layoff policy [seniority- or merit-based reductions] has affected the quality of education provided to children. However, there is limited evidence, much of it anecdotal, that the latter policy has been less successful in some districts than was hoped, for several reasons. First, effective teachers may resign, not because they anticipate losing their positions, but rather because they find that the competitiveness bred by this system diminishes the enjoyment that they derive from their job. Second, the quality of education provided in schools in these districts may decline as teachers adjust their behavior to take into account the fact that they are being compared with their colleagues. This can take the form of reluctance to share teaching materials or to help a fellow teacher deal with a particularly difficult child. Third, over time, as teachers alter their behavior, principals may find that their evaluations of teachers no longer reflect performance as well as they once did. (The studies that found that principals' evaluations accurately reflect teacher performance were carried out in districts where this information was not used in layoff decisions; consequently, the evaluations did not evoke the behavioral responses just described.)

179. See Table 4, *supra* following note 152.

180. See generally Wollett, *supra* note 9.

The notion that employers should bind themselves to a declared schedule of work responsibilities and compensation is unexceptional in the private sector. In the field of public education, however, such a notion not only alters the traditional prerogatives of school administrators,<sup>181</sup> it arouses suspicions that unionized teachers are negotiating reductions in their own productivity. Whereas teachers are perceived once to have labored the open-ended work day of the true professional, they are now perceived to have negotiated a lighter and shorter work load—and worked to that reduced commitment.<sup>182</sup>

The reports of a reduced work effort among unionized teachers are usually based on informal observations of the schools,<sup>183</sup> and are in this respect reminiscent of perennial complaints about union featherbedding and unproductivity.<sup>184</sup> The latter complaint, interestingly, has been challenged in recent years, as studies of private and public sector unionism have usually found no reduction in productivity from unionization, and in several instances have discovered improvements in worker productivity.<sup>185</sup>

The same finding is suggested by recent systematic study of the work practices of teachers in unionized school districts. In the heavily-unionized school districts of the northeast and midwest, teachers' work practices are seldom significantly different from those of teachers in the sparsely-unionized districts of the southeast. Teachers from the unionized regions, as a group, devote as much time to compensated and uncompensated school activities and carry pupil teaching loads similar to those of non-unionized teachers.<sup>186</sup> Fur-

181. See *supra* note 20.

182. See, e.g., M. LIEBERMAN, *supra* note 137, at 160-62; Clark, *supra* note 137, at 86-87; Doherty, *supra* note 137, at 68-69; Lieberman, *Educational Reform and Teacher Bargaining*, 4 GOV'T UNION REV., 59, 60 (Summer 1983).

Lieberman, for example, makes the following claims without reference to any supporting evidence: "[i]t is virtually certain . . . that the overall impact of public sector bargaining on productivity has been negative. The extent obviously varies, but it seems disingenuous to contend that the issue is really in doubt." M. LIEBERMAN, *supra* note 137, at 160.

183. See authorities cited *supra* note 137.

184. See generally R. FREEMAN & J. MEDOFF, *supra* note 81, at 162-80.

185. Professors Freeman and Medoff summarize the existing studies on the productivity effect of private sector unions and conclude: 1) that most studies find unionized establishments are more productive than their non-unionized counterparts; and 2) that most studies find no significant union effect on the rate of growth in productivity. *Id.* at 165-71.

186. The evidence on school practices is contained in STATUS, *supra* note 27. STATUS categorizes as "Northeastern" states the following: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania and Vermont. *Id.* at 13. All these states are characterized by "intensive" collective bargaining, i.e., more than two-thirds of state teachers are covered by collective bargaining agreements. See Wynn, *supra* note 75, at 238. STATUS characterizes as "Middle" states the

thermore, little variation exists in the average length of students' instructional time in the nation's school districts, perhaps reflecting the strength and homogeneity of community preferences as to the school schedule.<sup>187</sup> Indeed, over a twenty year period the nation's schools have maintained a surprisingly constant work routine.<sup>188</sup>

Recent quantitative analysis of the work practices of a national sample of teachers also indicates that unionization does not diminish teachers' productivity. Such analysis discloses, for example, that no significant difference exists in the length of the school day in un-

following: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. STATUS, *supra* note 27, at 13. All these states, with the exception of Missouri, are characterized by intensive collective bargaining. See Wynn, *supra* note 75, at 238. STATUS categorizes as "Southeastern" states the following: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia. STATUS, *supra* note 27, at 13. Ten of these 12 states are characterized by "unintensive" bargaining, i.e., one-third or fewer of the states' teachers are covered by collective bargaining agreements. See Wynn, *supra* note 75, at 238.

The following chart lists mean averages, together with standard deviations for a sample of school district practices:

Practice	National Mean	Northeast Mean	Midwest Mean	Southeast Mean
Total Teaching-Related hrs/wk	45.94 (9.8)*	44.40 (9.2)	46.4 (10.3)	45.81 (8.7)
Voluntary School-Related hrs/wk	8.67 (6.5)	8.79 (6.3)	8.20 (6.3)	8.62 (6.2)
Voluntary Instructor-Related hrs, wk	7.53 (5.4)	7.7 (5.0)	7.33 (5.7)	7.2 (5.1)
Required School Day (hrs)	7.29 (.48)	6.99 (.49)	7.36 (.47)	7.33 (.34)
Required School Year (days)	180 (3.7)	181 (3.0)	180 (3.9)	180 (3.6)
Pupil Load per Day	118 (40.3)	117 (35.9)	119 (44.5)	117 (41.5)
Pupil Load per Class	25 (6.2)	24 (5.8)	25 (6.1)	26 (6.5)

\*Standard deviation in parentheses.

See STATUS, *supra* note 27, at 138, 147, 150, 151, 153, 156, 157.

187. See, e.g., Dunlop, *Commentary*, in FACULTY AND TEACHER BARGAINING 80 (G. Angell ed. 1981). In 1983, 49% of those responding in a survey of the public opposed a proposal for lengthening the school year, while only 40% supported it. See Gallup, *Gallup Poll of the Public's Attitude Toward the Public Schools*, PHI DELTA KAPPAN, Sept. 1983, at 33, 40. Similarly, 48% opposed lengthening the school day. *Id.*

188. Between 1961 and 1981, the required work week for teachers declined from 36.8 hours to 36.5 hours (roughly 20 minutes per week). See STATUS, *supra* note 27, at 52. During that same time period there was no reduction in either the number of class periods in the school week, or in the number of weekly class periods taught by teachers. See *id.* at 56-57. The average number of instructional days per year during this period declined from 181 to 180. See *id.* at 59.

ionized and non-unionized districts.<sup>189</sup> Specific analysis of teachers' work practices revealed that, while total daily instructional time was somewhat reduced in unionized districts, the amount of time devoted to classroom preparation, administrative duties and parent conferences more than offset the reduction in instructional time.<sup>190</sup> The cumulative effect of unionization, accordingly, was as much to increase productivity as to decrease it, although the research ultimately concluded that the directional shift in marginal productivity was "unclear."<sup>191</sup>

Studies of the union effect on teachers' pupil assignments are similarly inconclusive. Class size research, the most common means of investigating pupil assignments, offers evidence of both decreased and increased pupil loads resulting from collective bargaining.<sup>192</sup> When effects are found, however, they are small, and other research discloses no effect on class size resulting from collective bargaining.<sup>193</sup> Like research on teachers' work hours, therefore, research on class size undermines the claim that collective bargaining has had either a substantial or consistent impact on the ostensible indicators of teacher productivity.

In the final analysis, teacher productivity ought to be measured by the academic achievement of pupils, though the correlation may never be susceptible to accurate measurement. Calculations of the amount of time put in by teachers can only provide a crude estimate of productivity, for the uses to which such time is put are of greater importance.<sup>194</sup> To a considerable extent, the usage and quality of a teacher's time are determined individually, without being significantly influenced by a bargaining agreement or by administrative supervision. This "loose-coupling" of classroom teachers and school

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189. See Eberts, *supra* note 146, at 355. But see Perry, *supra* note 41, at 12-13. Perry concludes, based on non-quantitative field work in nine school districts, that collective bargaining has had a discernible effect on the length of the school day and school year. As a statement of systemwide bargaining effects, however, Perry's conclusion is suspect. Not only is his conclusion based on anecdotal evidence, but his estimated impact is derived from the experience of three districts out of a total of nine districts visited. Perry may be accurate in reporting that some school districts have experienced work reductions attributable to collective bargaining, but he does not provide evidence of a systematic bargaining effect.

190. See Eberts, *supra* note 146, at 352, 356-57.

191. *Id.* at 357.

192. Compare *id.* at 357-58 (collective bargaining districts have one additional teacher per 200 students and, by inference, have smaller class sizes) with Hull & Carroll, *supra* note 77, at 834-41 (collective bargaining produces an increase of one student per class).

193. See, e.g., A. Cresswell, H. Juris, K. Tooredman & M. Zacharias, *Budgeting and Bargaining Interactions in School Districts* (1979) (unpublished paper presented at the American Educational Research Association Annual Meeting). See also Perry, *supra* note 41, at 12-13 (non-quantitative field research, see *supra* note 189).

194. See, e.g., Murnane, *supra* note 178, at 24-25.

government frustrates attempts to reform the classroom from without.<sup>195</sup>

Administrative efforts to improve teacher productivity depend on a variety of strategies whose consequences for classroom learning will be indirect and incremental at best. One such strategy includes the improvement of teachers' salaries, whether by staffwide increases or by individual increases tied to performance. But an equally significant strategy, according to current reform literature, is improvement of the working conditions of teacher.<sup>196</sup> Without such improvement, one commentator has noted, talk of reforming public school instruction is but "empty rhetoric."<sup>197</sup> The Carnegie Foundation has likewise observed that "[i]mproving working conditions is . . . at the center of our effort to improve teaching."<sup>198</sup> Among the improvements emphasized are increases in teachers' class preparation time, improvements in teacher facilities, decreases in teachers' non-instructional chores, and reductions in teaching loads.<sup>199</sup>

Predictably, the strategy of improving teachers' working conditions has been a primary component of the union's traditional bargaining agenda. In the past, these union efforts have been interpreted as manifestations of professional self-interest and have been resisted by school boards.<sup>200</sup> School boards have not lost sight of the economic costs entailed in providing more hospitable conditions for classroom instruction, and this cost-consciousness more than anything may have frustrated efforts to improve working conditions.<sup>201</sup>

Whether the current reform literature will support traditional union demands for better working conditions remains to be seen. But the reform literature does give another dimension to the ques-

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195. Describing loose-coupling, March notes:

Loose coupling is a fundamental property of schools. The learning activities of children and teaching activities of teachers are only marginally related to the activities of administrators. . . . Most observers agree that direct administrative leverage over education is relatively small and distributed widely through a large number of only loosely coordinated administrative positions.

March, *American Public School Administration: A Short Analysis*, 86 *SCHOOL REV.* 217, 229-30 (1978). *Accord*, Johnson, *supra* note 178, at 223. Similarly, the Rand study reported that teachers in unionized school districts discerned no effect on classroom teaching resulting from collective bargaining. *See* L. McDONNELL & A. PASCAL, *supra* note 47, at 80 (1979).

196. *See, e.g.*, CARNEGIE REPORT, *supra* note 2, at 159-61; J. GOODLAD, *supra* note 2, at 195; T. SIZER, *supra* note 2, at 172-79.

197. J. GOODLAD, *supra* note 2, at 195.

198. CARNEGIE REPORT, *supra* note 2, at 161.

199. *See id.* *See also* authorities cited *supra* note 196.

200. *See* authorities cited *supra* note 182.

201. *See, e.g.*, McDonnell & Pascal, *supra* note 113, at 43.

tion of teacher productivity. What is good for organized teachers, we have been told, may sometimes be good for education.<sup>202</sup> And in an era of fiscal restraint, organized teachers may provide one of the few checks on the tendency of public school government to economize on the subtle yet important conditions for classroom education.

### III. THE EFFECTS OF BINDING ARBITRATION ON TEACHER BARGAINING AGREEMENTS

Teachers' unions have not achieved expected successes under conventional collective bargaining. This result has hardly gone unnoticed by the unions, and they have continued to urge legislative recognition of the right to strike or, alternatively, provision for binding arbitration.<sup>203</sup> With few exceptions, however, there is little indication that the right to strike has gained political acceptability.<sup>204</sup> Moreover, there is growing belief among public sector unions that binding arbitration procedures may be as productive in the local bargaining process as costly strike activity.<sup>205</sup> During the past

202. "It becomes apparent that numerous factors can determine the achievement of students in classrooms and that, if achievement is to be used in the productivity equation, there are numerous ways that collective bargaining can influence productivity. In some ways teachers' unions represent a positive force toward improving productivity." A. CRESSWELL & M. MURPHY, *supra* note 25, at 459.

203. See, e.g., NATIONAL EDUC. ASS'N, *NEA Handbook* 217 (1982-83) (Resolution E-2 supports both the right to strike and binding arbitration as means of resolving bargaining disputes).

204. Our review of bargaining legislation reveals three limited recognitions of the strike right since 1973. In Wisconsin, for example, a right to strike is recognized if the school board and the teachers' union both agree to withdraw from binding arbitration. See WIS. STAT. §§ 111.70-71 (1982) (legislation enacted in 1977). In Minnesota, a right to strike is recognized if either the school board or the union chooses to forego binding arbitration. See MINN. STAT. § 179.64 (1983). In Illinois, teachers may strike unless both parties choose to invoke binding arbitration. See ILL. ANN. STAT. ch. 48, ¶ 1713 (Smith-Hurd Supp. 1984). The Illinois law, it should be noted, seems to be a legislative recognition of the *de facto* legality of strikes that has persisted for some time. See Delaney, *supra* note 79, at 444.

For a general discussion of the growth in public sector arbitration during the 1970's see P. FEUILLE, W. HENDRICKS & J. DELANEY, *THE IMPACT OF COLLECTIVE BARGAINING AND INTEREST ARBITRATION ON POLICING* 94 (Final Report to the National Institute of Justice, U.S. Dep't of Justice, Dec. 1983) [hereinafter cited as *COLLECTIVE BARGAINING*]; Kochan, *supra* note 87, at 152-54. For public and school officials' opinion on the issue of teacher strikes, see *infra* note 295.

205. See A. CRESSWELL & M. MURPHY, *supra* note 25, at 489 ("[U]nions have begun to discover that the right to strike under limited conditions does not necessarily change the balance of power in negotiations. If the threat of a strike is no longer enough to precipitate great concessions from boards of education, unions will probably come to favor alternatives to the strike."); Helsby, *Has Government Preempted Collective Bargaining?* (Address to Society of Professionals in Dispute Resolution, Oct. 25, 1976) reprinted in *GOV'T EMPL. REL. REP.* (BNA) No. 681, at F-1, 3 (Nov. 1, 1976) ("[U]nions are beginning to reassess their previous

decade, for example, the police and firefighters' unions have shifted their political efforts to winning binding arbitration legislation. Twenty-one states now provide arbitration for these and other public employee groups.<sup>206</sup> This shift in strategy, there is now some indication, may be occurring among the teachers' unions.<sup>207</sup>

While arbitration may be winning acceptance among public employee groups, it is usually opposed by local government.<sup>208</sup> The fear that arbitrators will subvert local political processes permeates the critical literature on collective bargaining. The abiding belief is that arbitrators, who are by qualification disinterested and unelected intervenors, will accelerate the loss of local control already perceived to have occurred under collective bargaining. This belief often prompts legal challenges to the constitutionality of binding arbitration statutes.<sup>209</sup> Although these challenges have

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contention that the strike is the so-called 'equalizer' at the table; that the right to strike is an essential ingredient to collective bargaining; that the strike and the threat of a strike are the only ways to receive equity from the public employer. In short, the strike, in most situations, has not proved to be the pressure device and the equalizer that it was expected to be. . . . The result is that many unions are now beginning to push for some form of statutory arbitration."); Kochan, *Dispute Resolution*, *supra* note 87, at 153-54 ("The most important shift that occurred in the last decade was the decline in interest of police and firefighters in the right to strike and their increased preference for various forms of compulsory arbitration. . . This shift in preference developed after several IAFF locals experienced a good deal of public backlash and a decline in political support following a strike.").

206. See Kochan, *supra* note 87, at 154.

207. For example, in 1977 the National Education Association (NEA) amended its official position and resolved to support binding arbitration as an alternative to the strike. Compare NATIONAL EDUC. ASS'N, NEA HANDBOOK 221 (1976-77) with NATIONAL EDUC. ASS'N, NEA HANDBOOK 225 (1977-78). Our discussions with officials in the states of Connecticut and Wisconsin reveal that state affiliates of the NEA were instrumental in securing the passage of arbitration legislation in those states. For a brief account of the NEA's support of binding arbitration through the seventies, see Clark, *Labor Relations in the Decade Ahead: A Management Perspective*, 10 J.L. & EDUC. 365, 371 (1981). The American Federation of Teachers, by comparison, maintains its traditional opposition to binding arbitration legislation, although its largest state affiliate, the New York State United Teachers, now recognizes the local option to invoke binding arbitration procedures. See Hobart, *Public Sector Bargaining Issues in the 1980's: A Union View*, 33 N.Y.U. CONF. ON LAB. 303, 310-11 (1980).

208. See, e.g., Dahl, *supra* note 122, at 298; Feuille, *supra* note 48, at 68 n.21.

209. Binding arbitration statutes have been challenged, successfully, in the following cases: *City of Sioux Falls v. Sioux Falls Firefighters, Local 814*, 234 N.W.2d 35 (S.D. 1975); *Salt Lake City v. Int'l Ass'n of Firefighters Local 1645*, 563 P.2d 786 (Utah 1977).

Binding arbitration laws have been upheld in the following court challenges: *Anchorage Educ. Ass'n v. Anchorage School Dist.*, 648 P.2d 993 (Alaska 1982); *Fire Fighters Union, Local 1186 v. City of Vallejo*, 12 Cal. 3d 608, 526 P.2d 971, 116 Cal. Rptr. 507 (1974); *City of Aurora v. Aurora Firefighters' Protective Ass'n*, 193 Colo. 437, 566 P.2d 1356 (1977); *The Conn. Ass'n of Brds. of Educ. Inc., v. Shedd*, \_\_\_ Conn. Supp. \_\_\_ (Super. Ct. 1984); *Superintending School Comm. v. Bangor Educ. Ass'n*, 433 A.2d 383 (Me. 1981); *City of Biddeford v. Biddeford Teachers Ass'n*, 304 A.2d 387 (Me. 1973); *Town of Arlington v. Board of Conciliation of Arbitration*, 370 Mass. 769, 352 N.E.2d 914 (1976); *City of Detroit v. Detroit Police Officers Ass'n*, 408 Mich. 410, 294 N.W.2d 68 (1980); *Dearborn Fire Fighters*

usually failed,<sup>210</sup> states have responded to them indirectly by enacting detailed statutory provisions to ensure that arbitrators exercise their authority within acceptable boundaries.

One form of statutory restraint on binding arbitration consists of procedural requirements. For example, arbitrators are usually chosen by the negotiating parties, thus ensuring that the parties have control over the nature of the decision makers if not over the decisions.<sup>211</sup> Furthermore, most statutes provide for a tripartite arbitration panel consisting of two partisan arbitrators and one neutral arbitrator.<sup>212</sup> In this manner, advocacy and explication of each party's position are carried forward into the ultimate deliberative process.<sup>213</sup> Finally, in a growing number of jurisdictions, arbitration awards must consist of one party's "last best offer."<sup>214</sup> Under this approach, each party proposes a final offer

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*Local 412 v. City of Dearborn*, 394 Mich. 229, 231 N.W.2d 226 (1975); *City of Richfield v. Local 1215, Int'l Ass'n of Fire Fighters*, 276 N.W.2d 42 (Minn. 1979); *Orleans Educ. Ass'n v. School Dist. of Orleans*, 193 Neb. 675, 229 N.W.2d 172 (1975); *School Dist. of Seward Educ. Ass'n v. School Dist.*, 188 Neb. 772, 199 N.W.2d 752 (1972); *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S.2d 404 (1975); *City of Roseburg v. Roseburg Fire Fighters*, 292 Or. 266, 639 P.2d 90 (1981); *Harney v. Russo*, 435 Pa. 183, 255 A.2d 560 (1969); *Division 85, ATU v. Port Auth.*, 417 Pa. 229, 208 A.2d 271 (1965); *City of Warwick v. Warwick Regular Firemen's Ass'n*, 106 R.I. 109, 256 A.2d 206 (1969); *Yakima County Deputy Sheriffs Ass'n v. Board of Comm'rs*, 92 Wash. 2d 831, 601 P.2d 936 (1979); *City of Spokane v. Spokane Police Guild*, 87 Wash. 2d 457, 553 P.2d 1316 (1976); *State v. City of Laramie*, 437 P.2d 295 (Wyo. 1968). See generally Craver, *The Judicial Enforcement of Public Sector Interest Arbitration*, 21 B.C.L. REV. 557, 561-68 (1980).

An irony of these challenges is that local government, which is usually exercising delegated state powers in governing public employees, often finds itself arguing that arbitration statutes constitute an unlawful delegation of state power. See, e.g., *Conn. Ass'n*, \_\_\_ Conn. Supp. \_\_\_; *Bangor*, 443 A.2d 383; *City of Biddeford*, 304 A.2d 387; *Town of Arlington*, 370 Mass. 769, 352 N.E.2d 914; *Dearborn Fire Fighters*, 394 Mich. 229, 231 N.W.2d 236; *City of Richfield*, 276 N.W.2d 42; *Orleans*, 193 Neb. 675; 229 N.W.2d 172; *Seward*, 188 Neb. 772, 199 N.W.2d 752; *City of Amsterdam*, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S.2d 404; *City of Spokane*, 87 Wash. 2d 457, 553 P.2d 1316; *City of Warwick*, 106 R.I. 109, 256 A.2d 271; *City of Laramie*, 437 P.2d 295.

210. See *supra* note 209. These challenges have been characterized as "puny" in *Structuring Collective Bargaining*, *supra* note 40, at 834. See generally, Craver, *supra* note 209, at 561-63.

211. See H. TANIMOTO, GUIDE TO STATUTORY PROVISIONS IN PUBLIC SECTOR COLLECTIVE BARGAINING: IMPASSE RESOLUTION PROCEDURES 25 (1981). As Tanimoto notes, arbitration statutes usually authorize selection of arbitrators by the disputing party, which is in contrast to the normal appointment of mediators and factfinders. *Id.*

212. See *id.* at 26.

213. See, e.g., Morris, *supra* note 49, at 461.

214. "Last best offer" or "final offer" arbitration is now employed in approximately one-third of public sector arbitration schemes. See H. TANIMOTO, *supra* note 211, at 29. Final-offer arbitration is used in three of the five state statutes that mandate arbitration of all teacher bargaining disputes. See CONN. GEN. STAT. ANN. § 10-153(f) (1980) (issue best offer); IOWA CODE ANN. §§ 20.1-20.29 (1974) (package last best offer); WIS. STAT. § 111.70 (1981-S2). Minnesota requires final-offer arbitration (issue) for school administrators, but uses

on either each disputed issue ("issue last best offer")<sup>215</sup> or on the entire contract ("package last best offer").<sup>216</sup> The arbitrators must then select one of the final offers, rather than constructing their own compromise award as in conventional arbitration.<sup>217</sup> The theory of last best offer schemes is that they more fully limit the scope of arbitrators' discretion and, it is hoped, prompt the parties to make more reasonable offers and perhaps even to reach a settlement.<sup>218</sup>

Arbitration statutes further delimit arbitrator discretion by enumerating criteria that must be considered in formulating an award.<sup>219</sup> These are usually a mixture of normative and accommodative criteria.<sup>220</sup> Normative criteria identify such concerns as "the employees' welfare" or "the public interest," and thus invite exercise of the arbitrator's judgment and sense of fairness. Accommodative criteria require consideration of the parties' relative bargaining positions as well as prevailing economic and labor conditions.<sup>221</sup> Accommodative criteria thus lead the arbitrators to formulate a contract similar to what one would expect had the parties been able to negotiate a settlement.

Though the arbitration process is carefully structured, the intention is that arbitration will seldom be used. Thus, arbitration is invariably the last stage of the bargaining process, and the parties usually must negotiate and mediate their differences prior to

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conventional arbitration to settle teacher bargaining disputes. MINN. STAT. ANN. § 179.69 (West Supp. 1984).

215. See H. TANIMOTO, *supra* note 211, at 31.

216. *Id.*

217. See, e.g., J. STERN, C. REHMUS, J. LOEWENBERG, H. KASPER & B. DENNIS, FINAL-OFFER ARBITRATION 1-4 (1975) (hereinafter cited as FINAL-OFFER ARBITRATION). Conventional arbitration can be generally described as a process in which the arbitrator can adopt a compromise position between the actual bargaining positions of the parties. Conventional arbitration is used in approximately two-thirds of public employee bargaining statutes. See H. TANIMOTO, *supra* note 211, at 29.

218. See, e.g., P. FEUILLE, FINAL OFFER ARBITRATION 12-14 (1975); Morris, *supra* note 49, at 465-66; Zack, *Final Offer Selection—Panacea or Pandora's Box*, 19 N.Y.L. FORUM 567, 573-76 (1974).

219. See H. TANIMOTO, *supra* note 211, at 13-14. Illustrative are the criteria used in Connecticut's teacher arbitration statute, which include "(A) the negotiations between the parties prior to arbitration; (B) the public interest and the financial capability of the school district; (C) the interests and welfare of the employee group; (D) changes in the cost of living; (E) the existing conditions of employment of the employee group and those of similar groups and (F) the salaries, fringe benefits, and other conditions of employment prevailing in the state labor market." CONN. GEN. STAT. § 10-153f(c)(4) (1979). Such criteria are also important in providing a standard sufficient to uphold the delegation of decisional power to arbitrators and in providing some basis for judicial review of arbitration awards. See, e.g., Craver, *supra* note 196, at 565-66; *Structuring Collective Bargaining*, *supra* note 40, at 835.

220. See, e.g., Morris, *supra* note 49, at 469-73, 477.

221. See *supra* note 219.

submitting them to arbitration.<sup>222</sup> Past experience with arbitration schemes indicates that arbitration is in fact used to resolve a minority of bargaining disputes.<sup>223</sup> If voluntary settlement is the primary goal of arbitration schemes, then, they have had some success.<sup>224</sup>

The relatively minor number of disputes ending in arbitrated awards, however, may conceal the systemic effects of those awards. An arbitration award, like a judicial ruling, has considerable precedential value. It constitutes a disinterested determination of the merits of a dispute, and presages future decisions by arbitrators who confront the same or similar issues.<sup>225</sup> Because negotiating parties always have the option of invoking arbitration, arbitral precedents can provide critical bargaining leverage. In theory, then, the outcomes of arbitration proceedings can have dramatic effect on non-arbitrated outcomes.

In the following discussion, we examine contemporary research into the nature of bargaining outcomes under binding arbitration schemes. Because our special concern is educational collective

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222. See H. TANIMOTO, *supra* note 211, at 207.

223. The most recent evidence on the percentage of bargaining disputes resolved by binding arbitration is summarized in Weiler, *Striking a New Balance: Freedom of Contract and the Prospects for Union Representation* 98 HARV. L. REV. 351, 380-81 (1984). A similar summary is found in B. DOWNIE, *supra* note 48, at 19-44. The rates of arbitration range from as low as 4% to as high as 49%, but the average is usually under 33%. See *id.*

224. Throughout the past decade there has been an abundance—in our opinion an overabundance—of research concerning arbitration's effect on the rate of bargaining impasse. There is, however, little agreement on the subject of what constitutes an acceptable rate of bargaining impasse; consequently, the ostensible empirical debate seems often a normative one. The following trilogy of discussion illustrates our point: Feuille, *Analyzing Compulsory Arbitration Experiences: The Role of Personal Preferences*, 28 INDUS. & LAB. REL. REV. 432 (1975); Thompson & Cairnie, *Analyzing Compulsory Arbitration Experiences: The Role of Personal Preferences—Reply*, 28 INDUS. & LAB. REL. REV. 435 (1975) [hereinafter cited as Thompson & Cairnie, *Reply*]; Thompson & Cairnie, *Compulsory Arbitration: The Case of British Columbia Teachers*, 27 INDUS. & LAB. REL. REV. 3 (1973) [hereinafter cited as Thompson & Cairnie, *Compulsory Arbitration*]. As we suggest in our analysis of arbitration, the actual rate of bargaining impasse seems far less important than arbitration's systemwide effects on the outcome of bargaining behavior. We acknowledge, however, that to the extent that voluntary contract settlement is accepted as an important goal of the process, impasse rates are important. See Bloom, *Is Arbitration Really Compatible with Bargaining?*, 20 INDUS. REL. 233 (1981); Feuille, *Final Offer Arbitration and the Chilling Effect*, 14 INDUS. REL. 302 (1975); Wheeler, *How Compulsory Arbitration Affects Compromise Activity*, 17 INDUS. REL. 80 (1978).

225. See, e.g., *Dearborn Firefighters Local 412 v. City of Dearborn*, 394 Mich. 228, 250-51, 231 N.W. 2d 226, 232 (1975): "[A]rbitration panels . . . recurringly establish the level of wages and working conditions for firemen and policemen across the State. The awards granted by . . . panels establish guidelines affecting compensation packages of other policemen and firemen and establish precedents which are often advanced by other public employees." See also Comment, *Collective Bargaining for Public Employees and the Prevention of Strikes in the Public Sector*, 68 MICH. L. REV. 260, 292 (1969).

bargaining, we shall give primary emphasis to our longitudinal study of school districts in the State of Connecticut. This research, together with preliminary research in the school districts of Wisconsin and Iowa, constitute the first quantitative investigation of arbitration procedures in American public education.<sup>226</sup> To bring perspective to this research, we also advert to studies of arbitration in non-educational collective bargaining. These studies are particularly instructive since non-educational arbitration has provided the experimental model upon which educational arbitration is based.<sup>227</sup> Moreover, findings from both systems prove to be highly consistent, thus suggesting that the dynamics of the arbitration process are highly uniform across bargaining systems.

#### A. *The Salary Effects of Binding Arbitration.*

There is nothing intrinsic to the process of binding arbitration that leads ineluctably to salary inflation. As disinterested professional intervenors, arbitrators might well render accommodative salary awards that reflect the patterns of local bargaining compromise. If arbitrators are responsive to local labor conditions,<sup>228</sup> and desirous of continued employment,<sup>229</sup> they will follow trends and not set them. Thus, arbitration could be an essentially conservative force whose primary effects are to neutralize hostilities and to legitimate outcomes.

There are reasons to expect, however, that arbitration will exert an inflationary influence on salary levels. First, arbitration transfers ultimate salary authority from interested, locally-elected officials to itinerant "neutrals"; thus, the greatest political impact of arbitration should be some diminution of governmental bargaining power,

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226. Reports on the Wisconsin and Iowa research are found in WISCONSIN CENTER FOR PUBLIC POLICY, THE EFFECT OF THE SENATE BILL 15 AMENDMENTS TO THE MUNICIPAL EMPLOYMENT RELATIONS ACT (1980) [hereinafter cited as WISCONSIN REPORT] and Delaney, *supra* note 75 (Iowa). The Wisconsin study covers the first two years of experience under the state's arbitration statute and employs a variety of qualitative (e.g., surveys and field research) and quantitative (e.g., regression analysis of salary trends) methods. The Iowa study is based on three years of experience under Iowa's arbitration statute, and is limited to quantitative analysis of teacher salaries and salary distributions.

227. In 1972, prior to any state's adoption of arbitration procedures in teacher bargaining, there were 36 arbitration statutes governing public employees in the nation's cities and states. See McAvoy, *supra* note 53, at 1192-93.

228. The most prevalent decisional criterion in arbitration statutes is that of *compatibility*, thus inviting conformity with local labor conditions. See H. TANIMOTO, *supra* note 211, at 13.

229. As noted earlier, see *supra* text accompanying notes 211-18, most arbitration statutes allow the parties to choose their arbitrator(s). For a discussion of the effects of that selection process, see *infra* notes 280-90 and accompanying text.

which is a conservative influence on salaries. Second, because binding arbitration is often viewed as a substitute for the employees' right to strike, unions expect some improvement in outcomes over those resulting from collective bargaining alone.<sup>230</sup> Finally, statutory criteria usually direct arbitrators to examine "comparable" salaries in the labor market.<sup>231</sup> Consequently, one would expect that the lowest paid employees could invoke or threaten to invoke arbitration to achieve some equalization of salaries with better-paid employees.

Attempts to estimate the salary effect of compulsory arbitration typically employ one of three methods. The more common method is to measure the salary differential between those parties who actually use arbitration procedures and those who do not. A second method, based on the theory that arbitration standardizes salaries and thus improves the economic position of weaker employee units, involves the measurement of the distribution in salary levels among a jurisdiction's bargaining units. The third method, based on the theory that arbitration can affect systemwide salaries simply because it is available, involves measurement of the general change in a jurisdiction's salary levels regardless of arbitration usage. Each of these hypothesized salary effects will be discussed in turn.<sup>232</sup>

### 1. THE SALARY EFFECT OF ARBITRATION USAGE

The most apparent indicator of salary inflation in an arbitration system is the differential between those parties who receive an arbitrated salary award and those parties who negotiate a salary settlement. If such a differential exists, then presumably one has de-

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230. See, e.g., COLLECTIVE BARGAINING, *supra* note 204, at 19; Stevens, *Is Compulsory Arbitration Compatible with Bargaining?*, 5 INDUS. REL. 38, 51 (1966); *Structuring Collective Bargaining*, *supra* note 40, at 860.

231. See *supra* note 228.

232. For further discussion of these salary theories, see B. DOWNIE, *supra* note 48, at 15-16. The data base used in computing salary effects in Connecticut was constructed in the following manner. Four points on the contract schedule were selected as representing a teaching staff's salary experience. These include a teacher with two years' experience and a bachelor's degree (BA2), a teacher with eight years' experience and a master's degree (MA8), a teacher with thirteen years' experience and a master's degree (MA13), and a teacher at the top of the salary schedule with a master's degree (MS). Using these points as our sample, we then computerized all available salary schedules for Connecticut's local school districts, covering the period 1976-1983. The number of such districts (including two public school "academies") equaled 167 (n = 167). The actual number of salary schedules available for the study period was as follows: 1976-77 (n = 162), 1977-78 (n = 164), 1978-79 (n = 158), 1979-80 (n = 159), 1980-81 (n = 162), 1981-82 (n = 162), and 1982-83 (n = 157).

tected the relative salary effect of arbitration. This measure of salary effect constitutes the predominant method in arbitration research to date. Such research reveals little evidence that arbitration usage produces a salary differential. Several studies of arbitration in the police and firefighter services, for example, conclude there is little or no gain from proceeding to arbitration.<sup>233</sup> Similarly, both a two-year study of arbitration in Wisconsin public schools<sup>234</sup> and a three-year study of arbitration in Iowa public schools<sup>235</sup> reveal no significant salary effect resulting from the use of arbitration.

Our research findings in Connecticut confirm those of the studies outlined above. Figure 1 traces the evolution of teachers' salaries in Connecticut since 1977, and encompasses the three years prior to and the four years following the introduction of binding arbitration. This figure identifies four representative points in a teacher's career ladder, ranging from the position of the relatively new teacher with a bachelor's degree (BA2) to that of the most senior teacher with a master's degree (MS). Focusing on these positions, Figure 1 distinguishes the average yearly salaries resulting from negotiated settlements (the broken line) and arbitration (the solid line). The salary lines in the period 1977-79, we should note, distinguish the pre-arbitration salaries of those who either did (the solid line), or did not (the broken line), proceed to binding arbitration in 1980. We distinguish these earlier salary levels because they illustrate an important characteristic of bargaining impasse.

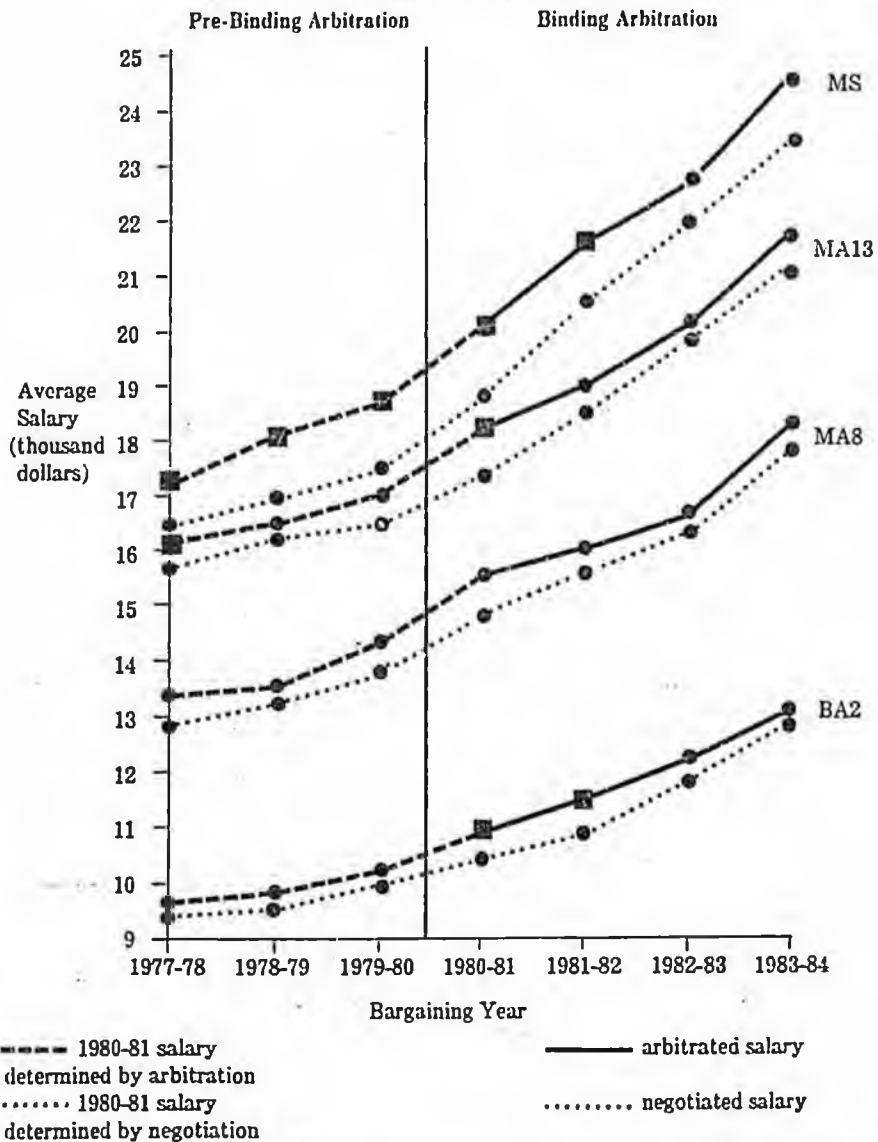
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233. See, e.g., COLLECTIVE BARGAINING, *supra* note 204, at 25; FINAL-OFFER ARBITRATION, *supra* note 217, at 30; T. KOCHAN, M. MIRONI, R. EHRENBERG, J. BADERSCHNEIDER & T. JICK, DISPUTE RESOLUTION UNDER FACT-FINDING AND ARBITRATION: AN EMPIRICAL ANALYSIS (1979) [hereinafter cited as DISPUTE RESOLUTION]; P. MORILANEN & K. MUDIE, COMPULSORY ARBITRATION IN MICHIGAN 9 (1972); Anderson, *Determinants of Bargaining Outcomes in the Federal Government of Canada*, 32 INDUS. & LAB. REL. REV. 224 (1979); Bedzek & Ripley, *Compulsory Arbitration versus Negotiations for Public Safety Employees: The Michigan Experience*, 3 J. COLLECTIVE NEGOTIATIONS IN THE PUB. SECTOR 167 (1974); Bloom, *Collective Bargaining, Compulsory Arbitration, and Salary Settlements in the Public Sector: The Case of New Jersey's Municipal Police Officers*, 2 J. LAB. RESEARCH 369 (1981). *But cf.* Somers, *An Evaluation of Final-Offer Arbitration in Massachusetts*, 6 J. COLLECTIVE NEGOTIATIONS IN THE PUB. SECTOR 193 (arbitrated settlements are slightly higher than negotiated settlements). This latter finding, however, could be attributable to the use of relatively primitive statistical techniques which lacked sufficient control for contaminating factors. See *id.* at 199-203.

234. See WISCONSIN REPORT, *supra* note 226, at 106.

235. Delaney, *supra* note 79, at 445-46. The same finding is reported in a study of teacher arbitration in the province of British Columbia in Canada. See Thompson & Cairnie, *Compulsory Arbitration*, *supra* note 224.

FIGURE 1  
Average Negotiated and Arbitrated Salaries for  
Connecticut School Teachers 1977-78 to 1983-84



■ Arbitrated salary is significantly greater than the corresponding negotiated salary at  $p < .05$ .

Source: Calculated from data in Connecticut Education Association, Teacher Salary Schedules, 1977-78 to 1983-84.

A review of Figure 1 shows perceptible differences between the salary levels of those who negotiate settlements and those who proceed to arbitration, and a few of these differences are statistically significant. One's initial conclusion, then, is that arbitration has a positive salary effect. This conclusion is negated, however, by a closer examination of Figure 1 and by the results of more exact re-

gression analysis.<sup>236</sup> First, Figure 1 reveals that the salary differential predated the introduction of binding arbitration. The data suggest, then, that the letter-paid teachers were more prone to use arbitration.

This hypothesis is confirmed by a series of regression analyses. Other factors being equal, higher salary levels are likely to produce bargaining impasse.<sup>237</sup> At the same time, teachers do not achieve a

236. Multiple regression is a sophisticated statistical procedure that produces an equation which allows the researcher to predict the value of one variable (e.g., salary levels) from the values of others (e.g., use of arbitration, etc.). Each variable will have a particular regression weight, indicating its importance in the regression equation. Thus, this technique enables the researcher to simultaneously control the effects of a number of variables in order to focus on the effect of the remaining variable. For general outlines of multiple regression theory and techniques, see H. BLALOCK, *SOCIAL STATISTICS* 450-504 (rev. 2d ed. 1979); Cain, *Regression and Selection Models to Improve Non-Experimental Comparisons*, 2 *EVALUATION STUD. REV. ANN.* 93 (1977). For a discussion of the application of multiple regression techniques to legal problems, see Bloom & Killingsworth, *Pay Discrimination Research and Litigation: The Use of Regression*, 21 *INDUS. REL.* 318, 321-23 (1982); Fisher *supra* note 75.

237. A series of regressions was conducted in an attempt to predict which school districts were more likely to proceed to arbitration. The dependent variable for this analysis was whether the school district contract was settled by voluntary agreement or by arbitration award (IMPASSE). This analysis employed a series of independent variables, concerning different features of the bargaining context. First, there were variables measuring characteristics of the school district: 1) the population of the school district (CITYSIZE); 2) the school district's ability to pay (ABILITY) (The measure of ability to pay used in these analyses was the "adjusted equalized net grant list per capita." This is the measure of town wealth used by the State of Connecticut Board of Education to calculate state Education Equalization Aid to towns for 1981-82. For a definition of this measure, see STATE OF CONN. BD. OF EDUC., 2 *CONDITION OF EDUCATION* 1980-81, at xi (1982)); 3) the school district's effort to pay (EFFORT) (for a definition of this term, see *id.*); and 4) the school district's student need (STUDNEED) (for a definition of this term, see *id.*). Second, there were variables measuring characteristics of the school: 1) the size of its student population (STUDPOP); 2) the size of the faculty (STAFFSIZE); 3) the mean age of the faculty (MAGE); 4) the mean teaching experience of the faculty (MEXP); and 5) the four measures of teaching salary adopted in our study (SALARY: BA2, BA3, MA13, MS) (each of these levels was entered into a separate regression for that salary level). Third, there was a series of dummy variables dealing with professional negotiation representatives to control for: 1) the union affiliation of the teachers (CEA, CFST); and 2) the type of attorney, if any, representing the school boards (FIRM, INDEPENDENT) (FIRM was limited to an attorney practicing in one of the major labor firms in Connecticut; all other attorneys were scored INDEPENDENT). Finally, there was a series of variables measuring the impasse history of the school district: 1) a measure of the school district's post-1966 strike history (STRIKE); 2) a measure of the number of times that the school district had resorted to advisory arbitration under the previous statute (ADARB); and 3) a measure of the number of binding arbitration awards previously rendered for the district (BARB). Thus, the basic regression equation for determining the causes of impasse was:

$$\text{IMPASSE} = a_1 + b_1\text{CITYSIZE} + b_2\text{ABILITY} + b_3\text{EFFORT} + b_4\text{STUDNEED} + b_5\text{STUDPOP} + b_6\text{STAFFSIZE} + b_7\text{MAGE} + b_8\text{MEXP} + b_9\text{SALARY} + b_{10}\text{CEA} + b_{11}\text{CFST} + b_{12}\text{FIRM} + b_{13}\text{INDEPENDENT} + b_{14}\text{STRIKE} + b_{15}\text{ADARB} + e_i$$

higher rate of increase by invoking arbitration.<sup>238</sup> In fact, the difference between negotiated and arbitrated rates of increase—which were seldom significant—appears to have decreased somewhat during the past four years of binding arbitration.<sup>239</sup>

In short, the formal arbitration process is essentially a conservative one in which negotiated salary trends are followed. This conservatism is facilitated considerably by the structure of the process. The majority of school districts commence bargaining at approximately the same time in the calendar year.<sup>240</sup> Since arbitration proceedings commence only after negotiations toward voluntary settlement fail, contract settlements will occur in a number of districts before there is need to render any arbitration award.<sup>241</sup> The participants in arbitration thus make their offers in the context of established salary trends. And, given the statutory admonition to examine comparable salaries in the jurisdiction,<sup>242</sup> arbitrators are highly disposed to follow those trends.<sup>243</sup>

Therefore, the inflationary effect of arbitration, if any, occurs through its indirect influence on negotiation behavior. While this may seem inconsistent with the general finding that arbitration be-

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A series of regressions was conducted for each of the four salary levels. The impasse equations for the first two years were significant, in general beyond the 1% level, and explained between 28 to 45% of the variance in impasse experience. In the last two years, the equations explained 20% of the variation in impasse. In all these equations, the dominant variable was MEXP, the mean *teaching experience* of the faculty. Our interviews with members of the teachers' unions indicated that this variable captured a "professionalism" factor: the more experienced teachers were particularly frustrated with the level of salaries. Interestingly, those teachers in the relatively better-paid school districts demonstrated the greatest willingness to arbitrate. Thus salary level was a variable of frequent importance in the regression equations: the higher the salary at each of the four levels of the schedule, the more likely it was that the bargaining unit would proceed to arbitration. It is interesting to note that this latter finding is opposite to the initial Wisconsin experience, where low-salaried teachers were more likely to invoke arbitration. See WISCONSIN REPORT, *supra* note 226, at 113. Notwithstanding, both studies show no salary effect resulting from arbitration usage.

238. T-tests for differences in the rates of salary increase for negotiated and arbitrated contracts revealed significant differences for only one salary level (MA8) in the second and third years of bargaining ( $p < .05$ ).

239. This phenomenon is illustrated in Figure 1, which shows minor convergence of the arbitration and negotiation salary lines from 1980 to 1983.

240. Most school districts commence bargaining in the late summer or fall, in accordance with statutory timetables keyed to the budget submission date for local towns. See CONN. GEN. STAT. § 10-153d(b) (1979).

241. As discussed earlier, see *supra* text accompanying notes 219-24, most arbitration statutes require that the parties first exhaust negotiation and mediation efforts prior to invocation of arbitration procedures. Connecticut's statute is similarly structured. See CONN. GEN. STAT. § 10-153(b), (c) (1979).

242. See *supra* note 228.

243. This same pattern of arbitration behavior was found in teacher negotiations for the province of British Columbia. See Thompson & Cairnie, *Reply*, *supra* note 224.

havior follows negotiation behavior, it is not. First, the fact that arbitration outcomes follow negotiation trends may tend to standardize salary settlements. That is, traditionally low-paying school districts will be forced to "catch up" with better-paying districts, thus increasing the statewide salary bill.<sup>244</sup> Second, the prospect of arbitration may prompt employers to settle at a higher figure because of the anticipated costs of arbitration. These costs include the actual procedural expenses of arbitrating, as well as the risk that arbitrators might select the union's position on salary as well as other issues.<sup>245</sup> This latter factor can be particularly important, since labor negotiators and employers share the belief (correctly or not) that arbitrators tend to inflate salary settlements.<sup>246</sup>

## 2. THE EFFECT OF ARBITRATION ON SALARY DISPERSION

The possibility that binding arbitration might lead to the equalization of salaries within a state has social as well as labor relations implications. As discussed earlier, there have been numerous, largely unsuccessful attempts to remedy inequalities in school expenditures in recent years.<sup>247</sup> These inequalities, as we also have noted, are closely related to differences in instructional expenditures.<sup>248</sup> Therefore, if theorists of binding arbitration are correct in positing a "catch-up" effect for salaries, arbitration might be employed in education to achieve both labor and social reforms.

The effect of arbitration on salary equalization should be manifested in the degree to which the distribution of district salary levels is compressed (suggesting salary equalization) or dispersed (suggesting widening differences). Past studies of police and firefighter

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244. The belief that arbitration provides a means by which weaker bargaining units can "catch up" with better-paid units is common in the labor literature. See, e.g., B. DOWNIE, *supra* note 48, at 62 ("[I]t seems logical to assume that regression toward the mean is enhanced under arbitration because the very high and the very low stand out and the extremes in the labour market become more difficult to defend and maintain."); Howlett, *Contract Negotiation Arbitration in the Public Sector*, 42 U. CIN. L. REV. 47, 64 (1973).

245. See generally COLLECTIVE BARGAINING, *supra* note 204, at 80-81; Bloom, *Is Arbitration Really Compatible with Bargaining?*, 20 INDUS. REL. 233 (1981); Farber, *Splitting-the-Difference in Interest Arbitration*, 35 INDUS. & LAB. REL. REV. 70 (1981).

246. See WISCONSIN REPORT, *supra* note 226, at 81-85. The data from our surveys of school board negotiators and their attorneys in Connecticut support this conclusion. Sixty-four percent of the board members considered arbitrator fiscal settlements to be "somewhat larger" than prior awards, while 19% reported that arbitration salaries were "much larger." The corresponding figures for the school board attorneys were 50% and 47%.

247. See *supra* text accompanying notes 58-64.

248. See *supra* text accompanying notes 65-71.

arbitration have found minor evidence of salary compression,<sup>249</sup> but the trend appears to have been short-lived.<sup>250</sup> Moreover, a recent study of arbitration in Iowa school districts actually reveals evidence of slight salary dispersion.<sup>251</sup>

Our findings from a seven-year review of salary distribution in Connecticut reveal that binding arbitration has little lasting effect on statewide salary compression. Instead, arbitration perpetuates (and may ultimately increase) the dispersion of salaries that existed under collective bargaining. Surprisingly, this dispersion occurs at a time when, pursuant to court mandate, Connecticut has attempted to redress the inequalities in local school funding by providing poorer school districts additional revenues with which to fund education.<sup>252</sup>

Figure 2 graphically illustrates the dispersion of teachers' salaries from 1977 to 1983, based on a sampling of positions on the teachers' salary schedule. As the graph slopes upward, the coefficient of variation<sup>253</sup> increases, thus signifying increasing differences in the salaries of poorer and better paid teachers. Figure 2 reveals that salary dispersion was increasing prior to the advent of binding arbitration, that salary dispersion plateaued for a brief time after the introduction of binding arbitration, and that prior rates of salary dispersion largely resumed by the third year of arbitration.

249. See, e.g., DISPUTE RESOLUTION, *supra* note 233, at 73 (police and firefighters under conventional arbitration in New York State); FINAL-OFFER ARBITRATION, *supra* note 217, at 144-45 (the dispersion of base salaries declined steadily for Wisconsin police during the first two years of package last best offer arbitration, but the date was unclear for firefighters).

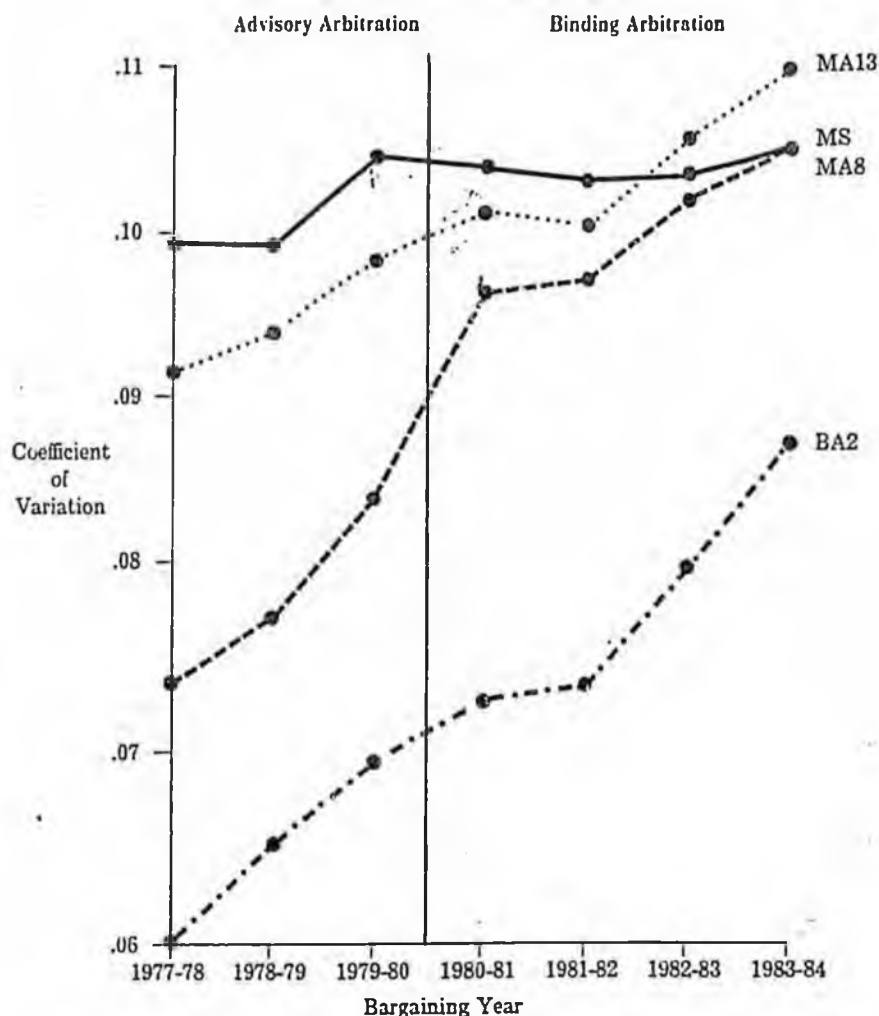
250. See, e.g., DISPUTE RESOLUTION, *supra* note 233, at 71. The strong "catch up" effect for police and firefighter bargaining under conventional arbitration in New York State was limited to the first round of bargaining. But it should be noted that it is difficult to ascertain whether even this limited salary compression can be attributed to arbitration, as the "catch up" effect was also operating during the last round of negotiations under the previous fact-finding scheme.

251. Delaney, *supra* note 79, at 443-44. Unfortunately, Delaney does not report the salary dispersion trend prior to the years under review, 1978-79 to 1980-81. As binding arbitration was introduced in Iowa public schools in 1975-76, Delaney's work does not indicate the initial impact of this procedure upon salary dispersion.

252. See Horton v. Meskill, 172 Conn. 618, 376 A.2d 359 (1977).

253. The coefficient of variation is simply the ratio of the standard deviation of each salary level for each year to its mean salary. See, e.g., FINAL-OFFER ARBITRATION, *supra* note 217, at 144. Thus, the lower the coefficient of variation, the less dispersion that exists in the salary distribution and vice-versa. This statistic is the most standardized measure of dispersion, thus allowing ready comparison between the dispersion of different salary levels on the schedule over time. A declining trend in the coefficient of variation is indicative of salary compression among school districts.

FIGURE 2  
Coefficient of Variation for Connecticut School  
Teachers for 1977-78 to 1983-84



Source: Calculated from data in Conn. Educ. Ass'n, Teacher Salary Schedules 1977-78 to 1983-84.

This finding seems inconsistent not only with the theory of a "catch-up" effect, but also with a widely-held belief that arbitration standardizes salary behavior. Our further examination of salary trends, however, revealed a basis for reconciling the concomitant phenomena of standardized salary behavior and continued salary dispersion. This explanation is premised on the pervasive practice of negotiating percentage increases in salaries, rather than increases in actual dollar amounts. When the trend in dispersion of percentage increases is examined, we in fact find a compression in salary increases; that is, the range of percentage increases has narrowed since

the advent of arbitration.<sup>254</sup> By negotiating in percentage increases, however, the system's participants ultimately magnify disparities—as is evidenced in Figure 2. This is because percentage increases build on an unequal salary base; for example, ten percent of \$20,000 yields a larger salary increase than ten (or even twelve) percent of \$15,000. Thus, our analysis indicates that the predictions of salary compression are inaccurate not because they are premised on the phenomenon of standardization; they err, instead, by disregarding the logic of salary determination in collective bargaining. This logic, with its emphasis on percentage changes, has an inherent regressive tendency. As a consequence, arbitration can produce salary compression only if arbitrators consciously decide to give poorer bargaining units larger real salary increases than those awarded to better-paid bargaining units.<sup>255</sup> Otherwise, the standardization of salary behavior under arbitration shows no potential to remedy historical salary disparities.

### 3. THE EFFECT OF ARBITRATION ON SYSTEMWIDE SALARY LEVELS

Even though the evidence does not indicate a salary effect resulting from arbitration usage or salary compression, the conventional wisdom is that the availability of arbitration may produce a small inflationary impact on employee salaries throughout the system. This conclusion is largely based on the study of arbitration in other common law nations—Canada, Australia and Great Britain—whose experience with arbitration is much lengthier.<sup>256</sup> A small number of studies in non-education public service in America have

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254. The following chart illustrates the change in coefficients of variation for the annual percentage increase in salary at all salary levels measured in our study, encompassing the years 1978 through 1983. With the exception of a few anomalous coefficients—which are probably a product of the high sensitivity of this measure—the distribution of percentage increases has contracted with a fair amount of consistency.

<u>Year</u>	<u>BA2</u>	<u>MA8</u>	<u>MA13</u>	<u>MS</u>
1977-78	.447	.447	.481	.489
1978-79	.448	.397	.463	.391
1979-80	.320	.250	.340	.355
1980-81	.283	.281	.383	.351
1981-82	.293	.266	.593	.410
1982-83	.281	.250	.403	.244

255. Assuming unequal salary bases of some magnitude, arbitrators would have to either 1) award percentage increases to poorer districts that are large enough to yield real salary catch-up, or 2) award dollar increases that are larger than dollar increases awarded better-paid bargaining units. Obviously, either action would reverse the usual conservative role of arbitrators, and thus are not to be expected.

256. See, e.g., Anderson & Kochan, *Impasse Procedures in the Canadian Federal Service: Effects on the Bargaining Process*, 30 INDUS. LAB. REL. REV. 283 (1977); Subbarao, *Im-*

failed to produce any clear and unequivocal inference regarding the impact of binding arbitration upon salaries. Several studies of varying quality have concluded that compulsory arbitration has had a small to modest wage effect,<sup>257</sup> while others have reported no economic impact.<sup>258</sup>

The evidence from the educational sector gives reason to believe that some statewide salary effect may result from arbitration, even though it is difficult to know how much.<sup>259</sup> One

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pass: *Choice and Wages in the Canadian Federal Service*, 18 *INDUS. REL.* 233 (1979). See generally B. DOWNIE, *supra* note 48, at 52-54.

257. See, e.g., *DISPUTE RESOLUTION*, *supra* note 233 (conventional arbitration, firefighters and police); *FINAL-OFFER ARBITRATION*, *supra* note 217 (final offer arbitration, Michigan and Wisconsin firefighters and police); Loewenberg, *Compulsory Arbitration for Police and Firefighters in Pennsylvania in 1968*, 23 *INDUS. & LAB. REL. REV.* 367 (1969) (conventional arbitration); Olson, *The Impact of Arbitration on the Wages of Firefighters*, 19 *INDUS. REL.* 325 (1980) (final offer arbitration, Wisconsin).

The most comprehensive study of binding arbitration in the non-educational public sector is that of *COLLECTIVE BARGAINING*, *supra* note 204. This study encompasses a wide variety of jurisdictions in the United States, and covers a large number of collective bargaining agreements and bargaining years. The authors' best estimate of the salary effect of the availability of arbitration is that it increases salary levels by 1.4 to 4%. *Id.* at 24, 102. Their conclusion, after using more refined statistical models to calibrate the arbitration effect, is that "arbitration's causal influence on higher police salaries may be rather modest overall and even nonexistent in several arbitration states." *Id.* at 103.

The study by Feuille, Hendricks and Delaney (*COLLECTIVE BARGAINING*, *supra* note 204) is particularly instructive as to the effects that crude statistical measures can have on study results. The researchers employed a series of increasingly refined measures, and demonstrated that a large arbitration (or bargaining) effect may often be attributable to extraneous factors—for example, the historical level of salaries in a jurisdiction prior to the introduction of arbitration legislation. See *id.* at 98-99. Thus, their original estimate of arbitration's effect—3 to 9%—was reduced to 1.4 to 4% upon further analysis. See *id.* at 22-24, 102, 03.

There is reason to suspect, therefore, that arbitration studies often overestimate the impact of arbitration on salaries. See, e.g., *infra* note 261. Furthermore, very general salary data—like those listed in our Tables 5 and 6—should be treated with caution, since they may suggest a somewhat exaggerated view of the true effects of arbitration and strike legislation.

258. See, e.g., Bloom, *supra* note 224 (conventional arbitration, New Jersey police); Lipsky & Barocci, *Final-Offer Arbitration and Public-Safety Employees: The Massachusetts Experience*, in *PROCEEDINGS OF THE ANNUAL WINTER MEETING OF THE INDUSTRIAL RELATIONS RESEARCH ASSOCIATION* 65 (1978).

259. To ascertain the "true" effect of the availability of bargaining on teacher salaries, it is necessary to obtain a measure of teacher salaries determined in an arbitration jurisdiction,  $S_a$ , and a measure of the salaries that the same group of teachers would have been awarded were arbitration not available,  $S_n$ . Then  $S_a - S_n$  would be a "true" measure of the effect of the availability of arbitration, as the research design has controlled for all other factors that contribute to the determination of salaries. But once arbitration is instigated,  $S_n$  never occurs and it is impossible to know what salary levels would have actually been in the absence of arbitration.

There are two alternative approaches that can be taken to estimate the effect of the availability of arbitration. First,  $S_a$  can be compared with  $S_c$ , the salary level of a group of teachers from a jurisdiction without arbitration but that are comparable to the teachers used to obtain  $S_a$ . Of course, the estimate obtained by  $S_a - S_c$  is not likely to be an unbiased estimate

study, based on a national sampling of teachers from arbitration and non-arbitration states, estimates that salaries in arbitration states may be nine percent higher.<sup>260</sup> This study probably overstates the arbitration effect, however, for it does not measure the amount of increase attributable to arbitration and does not control for a number of potentially influential factors.<sup>261</sup>

Tables 5 and 6 contain alternative methods of gauging the arbitration effect through, respectively, a measurement of salary trends in states both before and after the adoption of arbitration, and a comparison of salary trends in arbitration and non-arbitration states. We emphasize that these measures invite several methodological criticisms, and we do not offer them as proof of the magnitude of the arbitration effect.<sup>262</sup> Cumulatively, however, these measures appear to suggest the presence of some inflationary effect.

Table 5 sets forth the rate of salary increases occurring in each of the binding arbitration states for the three years prior to the enactment of compulsory arbitration and the four years following adoption of the process. The rates of salary increase are measured both in terms of actual dollars and 1967 dollars, and those rates are

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of the impact of the availability of arbitration upon salaries. It is a difficult methodological task to match two groups of teachers such that they are identical *but for* the availability of arbitration in one group. For example, the political and economic processes that lead to the instigation of arbitration in a jurisdiction may produce a bargaining context quite different from that of a non-arbitration jurisdiction. For a more detailed critique of problems associated with using this approach to estimating the impact of arbitration, see Anderson, *The Impact of Arbitration: A Methodological Assessment*, 20 INDUS. REL. 129, 133-41 (1981).

Second, a wage determination econometric model can be used to estimate  $S_n$ . Using a number of variables highlighted by the wage determination theory,  $S_n$  is estimated by use of sophisticated wage equations. For examples of wage determination models, see Eloch & Kuskin, *supra* note 75; Fogel & Lewin, *supra* note 75. Of course, this approach is limited by the accuracy and comprehensiveness of the wage equation.

260. Delaney, *supra* note 79, at 445-46.

261. As discussed *supra* note 257, the failure to control for pre-existing salary levels in arbitration jurisdictions has potential to overstate appreciably the independent impact of arbitration. Furthermore, CPS data fail to control for such factors as a school district's *ability to pay*, and as Delaney concedes, such failure will overstate the salary effect if those factors are themselves correlated with the existence of arbitration legislation. See Delaney, *supra* note 79, at 444 n.49. Finally, Delaney's classification scheme contains certain errors. See *supra* note 86.

262. In essence, Table 6 is an extension of the  $S_n$ - $S_c$  method of estimating the impact of the availability of arbitration upon teacher salaries discussed in *supra* note 259. Rather than matching the salaries in one jurisdiction where arbitration is available with the salaries of a comparable group of teachers in a jurisdiction without arbitration, Table 6 compares all the arbitration jurisdictions, in general, with all the non-arbitration jurisdictions. Of course, this technique is subject to all the criticisms of the  $S_n$ - $S_c$  method of estimation outlined in *supra* note 259. Furthermore, as both Tables 5 and 6 incorporate state-level average salaries, any inferences based on these data are also limited by the critique of state-level studies offered in *supra* notes 75-76.

TABLE 5  
Average Salary of Public School Teachers in Binding Arbitration States for the Period  
Three Years Before and Four Years After the Enactment of Binding Arbitration

Year	Average Salary in Dollars	Average Salary in 1967 Dollars	Percent Increase in Average Salary	Percent Change in Average Salary in 1967 Dollars	Year	Average Salary in Dollars	Average Salary in 1967 Dollars	Percent Increase in Average Salary	Percent Change in Average Salary in 1967 Dollars		
		Nebraska (1972)						Minnesota (1973)			
1970-71	8,125	6,782	10.2*	5.0	1971-72	10,218	8,247	4.7	1.0		
1971-72	8,465	6,832	4.2	0.7	1972-73	10,553	8,143	3.3	-1.7		
1972-73	8,704	6,716	2.9	-1.7	1973-74	11,076	7,789	5.0	-4.3		
1973-74	9,168	6,447	5.3	-4.0	1974-75	11,790	7,490	6.4	-3.8		
1974-75	9,264	5,886	1.0	-8.7	1975-76	12,726	7,589	7.9*	1.3*		
1975-76	10,409	6,207	12.4*	5.5*	1976-77	13,963	7,858	9.7*	3.5*		
1976-77	11,172	6,287	7.3*	1.3*	1977-78	14,167	7,456	1.5	-5.1		
		Iowa (1974)						Wisconsin (1978)			
1972-73	9,597	7,405	4.5	-4.4	1976-77	13,242	7,452	7.2*	1.2*		
1973-74	9,854	6,930	2.7	-6.4	1977-78	14,045	7,390	6.1	-0.8		
1974-75	10,655	6,769	8.1	-2.3	1978-79	14,906	7,132	6.1*	-3.5*		
1975-76	12,132	7,234	13.9*	6.9*	1979-80	16,006	6,745	7.4*	-5.4*		
1976-77	12,533	7,053	3.3	-2.5	1980-81	17,606	6,671	10.0	-1.1		
1977-78	13,340	7,021	6.4*	-0.5*	1981-82	19,387	6,807	10.1*	2.0*		
1978-79	14,186	6,788	6.3*	-3.3*	1982-83	21,496	7,279	10.9*	6.9*		
		Connecticut (1979)									
1977-78	14,299	7,526	4.7	-2.1							
1978-79	15,482	7,408	8.3*	1.6*							
1979-80	16,229	6,839	4.8	-7.7							
1980-81	17,404	6,595	7.2	3.6							
1981-82	18,858	6,621	8.4	3.9*							
1982-83	20,731	7,020	9.9*	6.0*							
1983-84	22,624	7,317	9.1*	4.2*							

\*Percent increase in state average salary exceeds the national means.

Source: Calculated from data in National Education Association Research, Estimates of School Statistics (revised) (unpublished). The 1983-84 statistic for Connecticut is an unrevised estimate.

TABLE 6  
 Percentage Increase in Average Salaries of Public  
 School Teachers, 1980-81 to 1982-83.\*\*

<u>Binding Arbitration States*****</u>		<u>Other Collective Bargaining Intensive States****</u>		<u>Collective Bargaining Unintensive States</u>	
Wisconsin	24.20%	North Dakota	24.55%	Texas	24.42%
Connecticut	19.38	Utah	24.09	New Mexico	22.53
Iowa	17.72	Colorado	21.07	Virginia	20.42
UNITED STATES	17.20*	Maryland	19.94	Louisiana	20.33
Nebraska	17.00	Kansas	19.55	Alabama	17.40
		Florida	19.30	UNITED STATES	17.20*
MEAN	19.58%	New Jersey	18.62	Kentucky	16.83
		Nevada	18.33	West Virginia	15.83
		New York	17.70	South Carolina	14.47
		Arizona	17.26	Missouri	13.44
<u>Right to Strike States***</u>		UNITED STATES	17.20*	Georgia	12.74
Montana	21.99%	Indiana	16.43	North Carolina	12.45
Ohio	18.34	Idaho	16.15	Mississippi	10.03
Oregon	18.03	California	15.47		
Pennsylvania	17.38	Rhode Island	15.39	MEAN	16.75%
Hawaii	17.26	Tennessee	15.26		
UNITED STATES	17.20*	New Hampshire	14.47		
Alaska	16.89	Delaware	14.24		
Illinois	16.43	South Dakota	14.10		
Vermont	13.30	Maine	12.71		
Michigan	12.97	MEAN	17.61%		
MEAN	16.95%				

- The national average includes data from the three states and the District of Columbia that could not be categorized as either collective bargaining intensive or un-intensive.
- \*\* 1982-83 data is only an estimate and has yet to be revised.
- \*\*\* This list includes Illinois, Ohio and Michigan which effectively have a "de facto" right to strike. While other states arguably fall into this category, these three were chosen because they have a particular problem with "illegal" teacher strikes. Without these three states, the mean would be 17.48.
- \*\*\*\* Massachusetts (1.59%) has not been included among the "Other Collective Bargaining Intensive States" as that state's school districts have been subject to an abnormal, legal taxing limitation since 1980. If included, the mean would be 16.80%.
- \*\*\*\*\* Minnesota (25.42%) has not been included among the "Binding Arbitration States," as since 1980 teachers have had the choice of either striking or going to binding arbitration.

Source: Calculated from data in National Education Association, *The Ranking of the States, 1981 and 1983.*

compared to the national figures. There is no exact pattern duplicated in each of the binding arbitration states. Because each of these arbitration systems was introduced into a different educational system in a different economic and political climate, it is not surprising that the salary effects recorded on Table 4 do not replicate each other. There is, however, a general trend indicating that the salary rates in most binding arbitration states consistently overtook national averages within two to three years of the introduction of binding arbitration.

Additional inferences of the economic impact of arbitration may be drawn when one compares the rates of salary increase in arbitration states with those in other jurisdictions. Table 6 sets forth the rates of salary increase occurring in the various states from 1980 to 1983. As Table 6 demonstrates, the average rate of salary increase in arbitration states<sup>263</sup> exceeds both that in states with the right to strike, and that in states where collective bargaining is intensive but does not culminate in resolution by strikes or arbitration. The salary effect varies considerably from state to state, however, and thus it is not possible to quantify a consistent arbitration effect.

In summary, the best available evidence from the educational and non-educational employment sectors suggests that teachers' salaries may be moderately inflated by the introduction of binding arbitration procedures.<sup>264</sup> And to the extent that such salary inflation does occur, it will occur through the influence of arbitration on negotiation behavior. For this reason, the relatively modest effect of arbitration is not surprising. Even though professional negotiators may be influenced by arbitration to negotiate somewhat larger salary settlements, one would not expect substantial salary increases in the absence of a signal from arbitrators that they will establish substantial salary precedents—and this, the evidence indicates, does not occur. Therefore, even though arbitration may "matter," "'market' factors appear to matter more."<sup>265</sup>

This does not suggest that binding arbitration is an undesirable impasse resolution technique for teachers. In a system of localized

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263. The 1980-83 period was chosen because it is the earliest time period in which arbitration legislation was in effect for all states listed.

264. This analysis focuses on salaries, and thus does not reflect the impact of arbitration on economic fringe benefits. Such fringe benefits are clearly a factor in estimating the general economic impact of arbitration. The work of Feuille, Hendricks and Delaney, (*COLLECTIVE BARGAINING*, *supra* note 204), reveals that arbitration's impact on salaries and fringe benefits is similar—there is "little effect on the general levels of fringe benefits and total compensation or on specific fringe benefits. . . ." *Id.* at 30. But clearly more work on this subject is needed.

265. *Id.* at 27.

collective bargaining, marginal improvement in salary levels may be better than no improvement at all. In addition, if arbitration is relatively as effective in improving salaries as the right to strike, it is probably preferable to the social and political turmoil that result from a shutdown of the schools.<sup>266</sup> There is, however, no indication that arbitration has the potential to produce change of such magnitude as will lift teachers' salaries to a competitive level in the labor market.<sup>267</sup> As a technique for educational reform, therefore, it is as unpromising as other variations on the system of localized collective bargaining.

#### *B. The Effects of Binding Arbitration on School Governance and Educational Policymaking*

While the predominant fear of local government is that arbitration will inflate the local budget, there is also serious concern over its non-economic implications. In particular, there are numerous policy issues that arise in collective bargaining which are thought unsuited for resolution by anyone other than the parties. As noted by one commentator:

[P]rofessional employees often bargain over programs. For example, teachers' unions may demand certain kinds of educational offerings or limits on class size. Even if arbitrators were capable of dealing with the complexities of budgeting and choosing programs, elected officials should not delegate the duty they owe to the electorate to settle these questions. Deciding policy issues is the vocation of officials, not of arbitrators.<sup>268</sup>

The claim that certain policy matters should be non-arbitrable has had little effect on the scope of arbitration statutes. Arbitration legislation generally recognizes a scope of arbitration that is coextensive with the scope of negotiations.<sup>269</sup> As a consequence, arbitra-

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266. See *infra* text accompanying notes 299-302.

267. See *supra* note 79.

268. Bernstein, *supra* note 53, at 467. Accord, Grodin, *Political Aspects of Public Sector Interest Arbitration*, 64 CALIF. L. REV. 678, 689-90 (1976).

269. A review of statutes that authorize some form of arbitration in teacher bargaining (compulsory or voluntary) reveals but three states that limit the scope of arbitration. These limitations interestingly, prohibit arbitration of economic rather than policy issues. See ME. REV. STAT. ANN. tit. 26, § 965.4 (1974); N.H. REV. STAT. ANN. § 273-A:12 (1979), R.I. GEN. LAWS § 28-9.3-12 (1980).

When binding arbitration legislation was debated in the Connecticut Senate, an unsuccessful amendment was introduced to restrict the scope of arbitration to issues involving compensation and fringe benefits. See 22 CONN. GEN. ASSEMBLY, 1979 SENATE PROCEEDINGS 2719 (May 8, 1979). In support of this amendment, one state senator argued that "I am not sure that we are ready with our long history and tradition of local control of education to have

tors cannot avoid deciding policy proposals that remain unsettled in negotiations. In theory, then, arbitrators could exercise their decisional authority to determine such matters as class size, teachers' work schedule, teachers' work duties, and even merit pay.

Prior studies of education arbitration have not examined the effects of arbitration on policy issues, and there is little evidence from the non-educational sector.<sup>270</sup> In an effort to investigate this effect, we analyzed the composition of all arbitration offers, awards and opinions rendered during the first four years of binding arbitration in Connecticut. This analysis identified both the extent to which arbitration is invoked to obtain change in policy-related matters, and the extent to which such attempts have succeeded. Furthermore, the results of arbitration were compared with those of negotiated settlements, thereby permitting some estimate of the relative effect of arbitration on bargaining outcomes. These findings are illustrated in Table 7, which represents a cross-section of the major substantive proposals made during the study period.<sup>271</sup>

As Table 7 illustrates, the direct impact of arbitration on policy issues is surprisingly small. Teachers' proposals for policy change have been overwhelmingly rejected to the extent these proposals affect the scheduling or size of classes, the length of the workday,<sup>272</sup> the scope of teachers' work duties, or the qualifications for teacher advancement. Teachers' field of success, by comparison, has been

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these important management and educational decisions made by an outside arbitrator." See *id.* at 2721.

270. See *infra* notes 276-77 and accompanying text.

271. The contract sample constitutes 70% of all bargaining agreements in effect in the school year 1979-80. The arbitration proposal and award sample cover all arbitration proceedings. (Because we were able to obtain contract samples for those districts where policy issues have been arbitrated, the percentage figures for contract and arbitration changes coincide.) Our selection of issues encompasses those policy-related proposals that have appeared with any frequency in arbitration proceedings. We have not included those proposals that, in our judgment, make minor or technical modifications in existing policy. In exercising this judgment we relied both on our interviews with personnel in Connecticut and our knowledge of the bargaining system gained through review of bargaining agreements and arbitration proceedings. Needless to say, there is a margin of error in this approach, but we do not think it affects the strong trends reported on Table 7.

272. Proposals affecting the length of the teachers' work day (proposal 6) were often opposed by school boards on the ground that they are *permissible* subjects of bargaining. This argument seems well-founded in *West Hartford Educ. Ass'n, Inc. v. DeCourcy*, 162 Conn. 566, 287 A.2d 739 (1972), and thus the unions' failure to win such proposals may be largely explained on legal grounds. The arbitrators' response to this scope challenge has not been altogether favorable to the school boards, however. As demonstrated in proposal five ("compensation for longer day-year") arbitrators have thought it equitable to require additional compensation for teachers in the event the school boards mandate the lengthening of the work day or work year.

TABLE 7  
Changes in Contract Composition: 1979-1983

Provision	1979 Frequency (N = 117) As percentage of contracts	All Changes (1979-83) As percentage of contracts	Negotiated Changes As percentage of contracts	Arbitrated Changes As percentage of contracts	Arbitration Success Rate As percentage of proposals
<b>TEACHER PROPOSALS</b>					
1) Seniority rights for layoff	50%	32% (37)	25% (29)	7% (8)	57% (8/14)
2) Seniority rights for rehiring	32	26 (30)	19 (22)	7 (8)	62 (8/13)
3) Compensation for longer day/year	12	17 (21)	7 (8)	11 (13)	87 (13/15)
4) Binding grievance arbitration	70	15 (19)	13 (15)	3 (4)	67 (4/6)
5) Agency fee (a)	N/A	56 (65)	33 (39)	22 (26)	64 (25/39)
6) Work day limit (b)	50	6 (7)	6 (7)	0	0 (0/13)
7) Work year limit	66	8 (9)	8 (9)	—	—
8) Teaching period limit	38	2 (3)	2 (2)	1 (1)	8 (1/13)
9) Teaching subject limit	32	1 (1)	1 (1)	—	—
10) Increased preparation time (c)	N/A	N/A	N/A	1 (1)	6 (1/18)
11) Class size limits	47	3 (3)	3 (3)	0	0 (0/13)
12) Change in teacher duties (c)	N/A	N/A	N/A	7 (8)	22 (8/37)
13) Change in degree qualifications (c)	N/A	N/A	N/A	0	0 (0/12)
14) Transfer restrictions	20	22 (3)	2 (3)	0	0 (0/4)
<b>BOARD PROPOSALS</b>					
15) New hire salary discretion	26	3 (3)	3 (3)	0	0 (0/2)
16) Merit-related salary (d)	48	0	0	0	0 (0/3)
17) Management rights	69	2 (2)	2 (2)	0	0 (0/2)
18) Change in teacher duties (c)	N/A	N/A	N/A	4 (5)	38 (5/13)
19) Change in degree qualifications (c)	N/A	N/A	N/A	12 (14)	58 (14/24)

Notes: (a) Agency fee provisions were not legal at the time the contract sample was compiled.

(b) See note 260 for further explanation.

(c) Changes in contract composition for these items were not obtained.

(d) This provision refers only to the contractual power of school boards to withhold salary increases for poor performance.

(e) N/A = either the information was not available or not obtained.

limited to a rather narrow range of traditional union concerns—recognition of seniority rights in staff reductions, provision of additional compensation for a lengthened work schedule, institution of grievance arbitration, and authorization of agency fee provisions (a costless item for school government). What is noteworthy in this award pattern is that arbitrators have consistently refrained from interjecting themselves into the routine managerial concerns of school government.

These findings take sharper focus when compared to the general composition of arbitration disputes. Arbitration, it turns out, is used primarily to settle economic disagreements.<sup>273</sup> Just as economic disputes are the leading cause of strike activity, they also prompt most instances of bargaining impasse and arbitration.<sup>274</sup> Salary disputes were the principal component of virtually every arbitration proceeding; and both survey and field research confirm that non-economic disputes are secondary concerns in most arbitration proceedings.<sup>275</sup>

Our findings of arbitrator conservatism on policy issues are consistent with experience in the non-educational public sector. A comprehensive national study of arbitration in the police services, for example, found that the unions obtained change on non-economic matters in but one-fifth of the cases.<sup>276</sup> This study's authors thus concluded that "arbitrators seem to view their role in a conservative rather than innovative manner."<sup>277</sup> A similar appraisal has been offered by the chairman of the New York City Office of Collective Bargaining: "[a]s for the fear that arbitrators will impose unique, innovative provisions that may prove unworkable, it is interesting to note that there has been a reticence on the part of arbitrators to be

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273. During the first four years of arbitration in Connecticut, approximately 58% of the issues concerned economic matters like salaries and fringe benefits. Furthermore, among the remaining 42% of non-economic issues, a large number were minor procedural refinements of existing language (e.g., expanding time limits for asserting grievances).

A similar finding is reported in *COLLECTIVE BARGAINING*, *supra* note 204, at 21, 62. Their multi-state survey of police arbitration revealed that the "vast majority" of arbitrated issues (78%) were economic. *Id.* at 21.

274. Salary disputes are found to be the leading cause of strike activity among teachers. See B. COOPER, *supra* note 44, at 76-79.

275. Our study of arbitration proceedings in Connecticut reveals that virtually all disputes include the issue of salaries. One union official informed us that salaries are the point of contention in the great majority of bargaining impasse, and that non-economic issues are of secondary concern. Similarly, surveys of school board chairmen, superintendents and teacher representatives reveal that salaries are, overwhelmingly, the most important issue in local contract negotiations. The next two issues of importance are insurance benefits and reduction in force.

276. See *COLLECTIVE BARGAINING*, *supra* note 204, at 21-22, 56-58.

277. *Id.* at 22.

innovative. It appears that most arbitrators prefer to follow, or perhaps it is fair to say that the parties expect the arbitrators to follow, predictable paths."<sup>278</sup> Regarding the propensity of arbitrators to follow bargaining patterns, it is also noteworthy that in those limited areas where Connecticut's arbitrators have shown willingness to award policy change, it is usually in the context of strong bargaining trends.<sup>279</sup>

Thus, there is little evidence that binding arbitration produces, or is invoked to produce, significant change in educational policy or school governance. In part, this finding may reflect the arbitrators' self-imposed limitations. Arbitrators typically have backgrounds in the law and dispute resolution, but little or no experience in the particular governmental service that is regulated by the bargaining agreement.<sup>280</sup> Therefore, arbitrators may quite sensibly conclude that neither their expertise nor their role lends itself to the determination of matters of policy. Furthermore, arbitrators are involved in the negotiation process for a very brief time, and thus have limited acquaintance either with the parties' historical bargaining relationship or the particular nature of the local governmental service.

There are also important process dynamics at work in public sector arbitration, which implicitly encourage arbitrator conservatism. An arbitrator, whatever his quasi-governmental status, is a professional intervenor whose employment is directly dependent on his continued acceptability to labor and management. The arbitrator's acceptability, in turn, is largely a function of his awards, which must neither wholly please nor wholly displease a party. Any perception of unfairness or bias will quickly stigmatize an arbitrator,

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278. Anderson, *Lessons from Interest Arbitration in the Public Sector: The Experience of Four Jurisdictions*, in *ARBITRATION-1974* (BNA) 59, 64 (1975) (proceedings of the Twenty-Seventh Annual Meeting, Nat. Acad. of Arbitrators, April, 1974); accord B. DOWNIE, *supra* note 48, at 55 ("[A]rbitrators almost invariably are conservative with respect to change.").

279. See Table 7, *supra* following note 272. The exceptions to this generalization are proposals three and five. Proposal three appears to be an anomalous result attributable to a peculiarity of Connecticut's bargaining law. See *supra* note 272. Proposal six, however, is a clear example of an issue where arbitrators have generated a bargaining trend through their rulings. Nonetheless, agency fee provisions are a costless item for school government and thus do not have serious implications for school governance.

280. See, e.g., Weiler, *supra* note 223, at 377-78. By way of example, only one of the neutral arbitrators on the Connecticut panel has a background in teaching and administration. The most prevalent occupation of arbitrators is law. See CONNECTICUT STATE DEPARTMENT OF EDUCATION, *PER DIEM FEE SCHEDULES MEDIATORS AND ARBITRATORS* (Conn. 1983) (unpublished).

and will result—as has happened in Connecticut—in his unemployability.<sup>281</sup>

The arbitrator's need to remain marketable manifests itself in several respects. One phenomenon, discussed already, is that arbitrators tend to avoid controversiality and innovation.<sup>282</sup> This perception is confirmed by professional bargaining representatives of both unions and school boards, who agree overwhelmingly that arbitrators are often "hesitant . . . to alter the status quo in contract provisions" and "unwilling to deal with proposals that are innovative."<sup>283</sup> This conservatism most often works to the detriment of unions, who are the primary proponents of policy innovation,<sup>284</sup> but it can also frustrate the efforts of an aggressive management that seeks change through the processes of collective bargaining.<sup>285</sup>

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281. Arbitration statutes in the public sector almost always permit the parties to choose their arbitrator(s). See H. TANIMOTO, *supra* note 211, at 25-26. In Connecticut, this process is normally one in which each party selects a "partisan" arbitrator from a panel designated by the state, and these partisan arbitrators mutually agree on the selection of a "neutral" arbitrator. See CONN. GEN. STAT. ANN. § 10-153F(a), (c)(1) (1979). Such use of a tripartite panel is common among public employee arbitration statutes. See H. TANIMOTO, *supra* note 211, at 25-26. During the first years of arbitration in Connecticut, one neutral arbitrator was perceived as "anti-union" and was selected to arbitrate but three disputes. Ultimately, that arbitrator resigned from the arbitration panel.

282. See *supra* notes 256-78 and accompanying text.

283. Eighty-one percent of school board representatives, and 91% of union representatives agreed that "arbitrators are often hesitant to award proposals that alter the status quo in contract provisions." Eighty-nine percent of board representatives and 86% of union representatives agreed that "arbitrators are often unwilling to deal with proposals that are innovative."

284. As Table 7 illustrates, *supra* following note 272, the unions are far more aggressive in seeking change in school administration through collective bargaining. The school boards' area of success consists primarily of efforts to increase administrative control over contract rights previously won by teachers. For example, boards have succeeded in obtaining limitations on the subject area of academic degrees that will qualify teachers for higher salaries. See *id.* A similar observation has been made by a union representative with experience under the Wisconsin teacher arbitration laws:

[c]onsequently, the desire to remain competitive through the arbitrator selection process can create a compulsion to remain cautiously attached to the status quo. The status quo generally conforms more comfortably with the employer's position than with the union's, since it is the union which has been seeking change (improvement) through its bargaining demands.

Lentz, *Can Compulsory Arbitration Work in Education Collective Bargaining? A Second Look*, 9 J. L. & Educ. 85, 90 (1980).

285. A management representative, with experience under the Wisconsin teacher arbitration statute, has noted the existence of a "no take back" rule, which prevents management from reversing earlier concessions to the unions. See Rynecki, *Can Compulsory Arbitration Work in Education Collective Bargaining? A Second Look*, 9 J.L. & Educ. 93, 98-99 (1980). Our review of arbitration proceedings in Connecticut reveals some effort by management to "take back" previous concessions; but aside from those attempts that are based on legal grounds (i.e., previous concessions are not within the mandatory scope of bargaining and thus

The conservatism of arbitrators on policy issues may work in tandem with another decisional phenomenon: arbitrators typically render awards that offer a measure of success to both sides. Arbitration, our survey research indicates, is generally viewed as an accommodative process whose outcomes should largely reflect the trade-offs and compromise of bargaining.<sup>286</sup> Any award lacking "balance" may be considered a distortion of the bargaining process and will surely alienate one of the parties. Thus, the great majority of bargaining representatives report that they expect a "proportionate" number of successes and failures in arbitration "regardless of the proposals' actual merit."<sup>287</sup>

The "balance" in an arbitrated contract, however, does not resemble the *quid pro quo* of a conventional contract. For while teachers continually seek greater compensation, fringe benefits and job security, school boards have few affirmative gains to be won through collective bargaining.<sup>288</sup> Instead, the school board's success is measured by the extent to which their managerial prerogatives are preserved against encroachments of unions through collective bargaining. Therefore, in the context of arbitration, both school board success and award balance are reflected in arbitrators' rejection of union policy proposals, or in their acceptance of less intrusive board counterproposals.

There are, then, process dynamics that encourage arbitrators to enhance certain employee benefits (primarily economic ones) while preserving fundamental aspects of administrative control. Central to these process dynamics is the fact that arbitrators usually are chosen by the parties. Such a selection process ensures a measure of "accountability" that, in the words of one commentator, "may be no more circuitous than the public official's accountability."<sup>289</sup> It is thus paradoxical that binding arbitration is viewed by school boards as a unilateral threat to local school governance. For, as our analysis shows, the principal dilutants of local educational control have been

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can be deleted by management at will) there has been little effort to win back major substantive rights.

286. For a discussion of the accommodative actions of arbitrators, see Horton, *supra* note 52, at 500-01; Krislov, *supra* note 52, at 73.

287. Eighty-four percent of school board representatives and 81% of union representatives agreed that "arbitrators often feel compelled to render 'balanced' awards that grant each party a proportionate number of its proposals, regardless of the proposals' actual merit."

288. See, e.g., Doherty, *supra* note 137, at 73. See also Metzler, *Preparing for Negotiations*, in *COLLECTIVE BARGAINING TECHNIQUES IN EDUCATION* 121 (J. Herring & J. Sarthory eds. 1980) ("Many boards fail to face the facts of collective bargaining, fail to recognize that theirs is essentially a defensive not an offensive position.").

289. Krislov, *supra* note 52, at 73. See also Summers, *supra* note 57, at 1200.

the voluntary concessions made by school boards in collective bargaining.<sup>290</sup>

#### IV. SOME THOUGHTS ON THE FUTURE OF EDUCATIONAL COLLECTIVE BARGAINING

In the preceding sections we have reviewed and interpreted the evidence concerning the effects of collective bargaining in public education. Our primary contention is that teacher bargaining has not proven to be the monolithic force in school government that some feared. Contrary to early speculation, the power of organized teachers in local school districts is relatively less than that of organized employees in private industry—particularly in the economic aspects of bargaining. Furthermore, organized teachers have not arrogated control over school policymaking through the negotiation process. The more significant success of teachers has been the attainment of various employment rights vis-a-vis administrative authority in personnel decisions; and even these job protections, the evidence indicates, are unexceptional among the conventions of labor relations.

Future developments in educational collective bargaining—whether they be changes in the methods of dispute resolution, in the scope of bargaining, or in the distribution of bargaining authority—will depend on the objectives that state government chooses to emphasize. In the early years of bargaining, these objectives often have been unarticulated and confused. Collective bargaining policy has sought simultaneously: 1) the prevention of work stoppage; 2) the provision of economic benefits and employment conditions sufficient to retain an able teaching force; 3) the preservation of a political tradition of local educational control; and 4) generally, the maintenance of an effective educational program. This ambitious wish list has, expectedly, gone unfulfilled. But a reconsideration of these objectives, in light of the schools' initial experience with collective bargaining, may at least suggest what realistically can be achieved in the coming years.

##### *A. Prevention of Work Stoppage*

One of the surest conclusions to be drawn from experience is that binding arbitration will, with infrequent exceptions, prevent strikes.<sup>291</sup> The record of labor peace in both the educational and

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290. See, e.g., Table 7, *supra* following note 272.

291. The WISCONSIN REPORT, *supra* note 226, notes that there were 51 teacher strikes in the six years preceding introduction of arbitration procedures in Wisconsin teacher bar-

non-educational public sector demonstrates that unionized employees are reluctant to flout the authority of arbitrators. The reasons for this record of compliance are not altogether clear. Unions may be anxious to support a system for which, in many cases, they have lobbied. The unions, furthermore, may have made a pragmatic assessment that the marginal gains resulting from arbitration are the most to be expected in the local bargaining climate. But compliance also may reflect the unions' belief in the ultimate "fairness" of an outcome derived from a "neutral" process. Arbitration is, after all, the routine method of settling individual grievances within the school system, and the *sine qua non* of an acceptable bargaining agreement.<sup>292</sup> The moral authority behind an arbitrated contract, therefore, should not be underestimated.<sup>293</sup>

Even though binding arbitration may be a successful medication for the strike problem, one might reasonably ask whether strikes should be a "problem" at all. Indeed, in recent years some commentators have argued that the public employee strike no longer strikes fear in the hearts of local government officials, and that local government therefore no longer needs legal protection from the strike threat.<sup>294</sup> If such is the case, then public annoyance is arguably the greatest cost of a strike, and the legislatures might wish to reconsider their historical opposition to the strike.

It is not our purpose to resolve the strike question here. But we would note some factors in educational bargaining that might give educators and supporters of public education pause in pressing for the legalization of strikes. First, the public does not want strike legalization, and, according to our surveys, neither do school boards

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gaining. Since the introduction of arbitration, none have been reported. *Id.* at 185. Similarly, data supplied to us by the Connecticut Education Association show there were 49 teacher strikes in the 12 years preceding introduction of arbitration, and none since implementation of arbitration. Researchers in Canada report that no strike has occurred in the 40 year experience of British Columbia teachers with arbitration. See Thompson & Cairnie, *Compulsory Arbitration*, *supra* note 224, at 11 (note that only economic items are arbitrable in British Columbia, and that strike data concerns only those disputes that are arbitrable).

Of course, one cannot expect that any legislative scheme will provide a fool proof method of strike prevention. See generally, *Structuring Collective Bargaining*, *supra* note 40, at 831. Nonetheless, the experience with arbitration reveals incontrovertible evidence that it is an exceptionally strong deterrent of strike activity.

292. See Table 7, *supra* following note 272. See generally, Craver, *The Judicial Enforcement of Public Sector Grievance Arbitration*, 58 TEX. L. REV. 329 (1980); Getman, *Labor Arbitration and Dispute Resolution*, 88 YALE L.J. 916 (1979).

293. See *Structuring Collective Bargaining*, *supra* note 40, at 832-33.

294. See, e.g., Burton & Krieger, *The Role and Consequence of Strikes by Public Employees*, 79 YALE L.J. 418 (1970); Cohen, *supra* note 41, at 192-93; Hanslowe & Acierno, *supra* note 39, at 106S-72. There is also some evidence that the bargaining impact of legal strike activity is relatively small and inconsistent. See *supra* notes 85-90 and accompanying text.

and school administrators.<sup>295</sup> And while such opposition is not ground for defaulting on the issue, there are reasons to question the wisdom of pursuing such a highly controversial technique for resolving teacher bargaining disputes. As noted earlier, the consumers of public education are a minority of the voting public; consequently, support for the schools depends on political persuasion rather than confrontation.<sup>296</sup> With an aging population, declining public school enrollments, growing competition from private schools, and increasing enrollments of politically disadvantaged students,<sup>297</sup> the public schools hardly can afford the public resentment that often attends the shutdown of local schools. In short, because of the weaker political leverage of educators, there is reason to think that strike activity in public education will be counter-productive over the long term.

There is also the possibility that strike-based bargaining will perpetuate, if not exacerbate, the current educational inequalities among local school districts. Experience with public sector strike activity indicates that its impact can vary widely,<sup>298</sup> depending in part on the balance of political power in local communities. One might speculate that the strike will be more productive where the employee unit is already relatively advantaged in the political process and less productive for weaker employee groups.<sup>299</sup> Therefore, if statewide educational equality remains a state government goal, recognition of the strike right may be undesirable in a decentralized system of collective bargaining.

Of course, the evidence we have adduced shows that binding arbitration will itself be no panacea for disparities in instructional funding.<sup>300</sup> In this respect, both binding arbitration and the right to strike carry the strong imprint of local conditions. Nonetheless, the fact that arbitration tends to equalize at least one component of the salary equation may suggest that arbitration is somewhat less objec-

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295. The Gallup survey of public attitudes in 1980 found that 52% of the respondents opposed recognition of the right to strike, a slight increase in opposition from 1975. Gallup, *The 12th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, Sept. 1980, at 33, 40. Our surveys of all state school superintendents and board chairmen in Connecticut reveal that more than 75% of each group oppose even a limited right to strike, and more than 90% of each group opposed a full right to strike.

296. See *supra* notes 94-109 and accompanying text.

297. See *supra* notes 102-04 and accompanying text.

298. See *supra* note 87.

299. The limited evidence on this subject lends support to this theory. See B. COOPER, *supra* note 44, at 75 (citing a study of public employee strikes where it was concluded that "well compensated unions may press for more, whereas lower wage groups may not. . .").

300. See *supra* text accompanying notes 244-59.

tionable than the right to strike.<sup>301</sup> Still, the relative advantage is small and, as a matter of public policy, one might legitimately question whether it is an advantage at all.

*B. Maintaining the Salaries and Employment Conditions of Teachers*

The central dilemma for public education today is the same as that of earlier decades—how to fund a grand program of compulsory education for all. Much has been expected of the schools in post-war America, and the price has been considerable. In an era of generally rising costs, the schools have been charged with educating a larger body of students, many of whom require more costly forms of instruction.<sup>302</sup> It is not surprising that teachers' salaries have remained at the bottom of the professional scale or that teaching work loads have remained steady. Local government simply has not been willing to bear the rather imposing costs of "educational excellence," for all that phrase entails in a pluralistic society.<sup>303</sup>

Experience with conventional forms of teacher collective bargaining, we have argued, holds little promise for economic improvement of an order that would fundamentally change the professional status of teachers. The potential of teacher bargaining as a tool for reform, if any, depends on adoption of alternative bargaining strategies. One such strategy, binding arbitration, promises at least relative improvement in the level of teachers' salaries. Furthermore, there is some indication that binding arbitration may be as effective as the strike right in raising salaries, without the public and political costs entailed by a shut-down of the schools.<sup>304</sup>

There are significant limitations, however, to the potential of binding arbitration. First, there is reason to believe that arbitration systems stabilize over time and that arbitrators exert a conservative influence in the system. Arbitration, we have demonstrated, is essentially an accommodative process in which existing bargaining trends are duplicated. The marginal effect of arbitration on the overall system, therefore, cannot proximate the salary gains that are needed to make a qualitative difference in teacher compensation levels. Fur-

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301. As demonstrated earlier, binding arbitration does lead to measurable compression in the range of percentage salary increases—the standardization effect. See *supra* note 254. If salary levels were roughly proximate, then weaker bargaining units would either maintain parity with stronger units, or the decline in parity would at least be somewhat slowed.

302. See generally D. RAVITCH, *supra* note 60, at 267-328; Bakalis, *American Education and the Meaning of Scarcity*, PHI DELTA KAPPAN, Oct. 1981, at 102.

303. See Bakalis, *supra* note 302.

304. See Table 6, *supra* following note 262; see also note 86.

thermore, arbitration shows little potential to affect those conditions of classroom education with cost implications—like class size, teaching loads and teaching duties—since arbitrators refrain from awarding change in those areas.<sup>305</sup>

An alternative to arbitration is the centralization of the bargaining process, or at least centralization of its economic component. In practice, arbitration achieves some degree of centralization because it tends to standardize bargaining outcomes throughout a jurisdiction. But arbitration does not affect several important features of the bargaining system—salary trends still are established by a series of local negotiations, existing salary disparities remain unaffected, and salary funding continues to be provided mainly by local taxation. This continued funding obligation of local government has proven to be one of arbitration's most fractious features, as local government complains loudly that state arbitrators are dictating local budgetary decisions and taxing policy. Therefore, if the state wishes to raise the general level of teachers' salaries, arbitration hardly seems the politically legitimate means of doing so.

Centralized salary determination and funding seem the inevitable direction of public education finance, though the change may be a gradual one. Already, state government has surpassed local government in the general funding of local schools.<sup>306</sup> As the state's funding role increases, the state's claim to a role in determining salary levels should also increase. Furthermore, centralized salary policy would provide a direct means of ensuring greater equality among the instructional expenditures of school districts, a goal the states have yet to meet.<sup>307</sup> If past experience with localized collective bargaining teaches anything, it is that legal variations on the local bargaining process pale next to the influence of local wealth and local willingness to tax and spend for education.<sup>308</sup> Thus, a greater state

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305. See Table 7, *supra* following note 272.

306. In 1979, the state share of revenues for public elementary and secondary education surpassed the local share for the first time in recent history. The shares of state and local government were, respectively, 46% and 45%. See *CONDITION OF EDUCATION*, *supra* note 64, at 39-40, 56-57.

307. See *supra* notes 63-64 and accompanying text.

308. Past studies of teachers' salaries show that "[w]ealth of the community [is] the most powerful determinant of salary." A. CRESSWELL & M. MURPHY, *supra* note 25, at 447. In an attempt to test these findings, we performed a series of regressions to determine the causes of salary levels in Connecticut school districts. Employing a regression model like that reported in *supra* note 237, we found that a school district's ability to pay explained 70-85% of the variance in salaries at the top of the salary schedule ( $p < .001$ ), and 30-60% of the variance at other points on the salary schedule ( $p < .001$ ). Thus, our results strongly confirm the determinative value of local wealth in instructional funding.

role in determining and funding instruction costs of education may serve objectives of both quality and equality.

It is noteworthy that the governmental response to reformers' appeals for higher teacher salaries has occurred primarily at the state level.<sup>309</sup> State government has already demonstrated the greatest power to summon public attention to the needs of education and, more importantly, has the means to fund those needs other than through the local property tax.<sup>310</sup> While none of these efforts reveal a legislative intent to exercise full control over the determination of teaching salaries, the refocusing of attention on centralized solutions is itself significant. Growing state involvement should increase the organizational strength of teachers in the political process,<sup>311</sup> and should defuse the power of localized tax resistance. Moreover, the conspicuous role of state government in establishing salary policy may weaken the claim that salary determination is predominantly a matter of local concern.

Yet, even if centralized salary policy is the final destination of public education, one should not exaggerate the implications of that development in and of itself. The success of instructional reform depends ultimately on political will. The magnitude of costs of restoring teachers' salaries to a competitive market position is imposing.<sup>312</sup> One would be more sanguine about the possibility of such reform if the federal government's role were increased, and national educational goals received a national funding commitment like that of public transportation or pupil welfare programs. In the absence of a federal commitment, the possibility of reform remains uncertain even at the state level.

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309. See *supra* note 2. See also *THE NATION RESPONDS*, *supra* note 3, at 15 ("state leadership is one of the hallmarks of this reform effort.").

310. The proportion of state revenues derived from the property tax is quite small. See *STATISTICAL ABSTRACT*, *supra* note 22, at 287. Most states rely, instead, on a diverse group of alternative revenue sources like the personal income tax, the corporate income tax and general sales taxes. See F. WIRT & M. KIRST, *SCHOOL POLITICS* 235 (1982). During the past decade, as public resistance to the property tax increased, school financing shifted both to the state level and to non-property tax sources. The result has been an increasing role for state legislators and the state executive branch in public education. The current centralized efforts at educational reform, accordingly, should strengthen the shift in educational control to the state level. See generally *id.* at 207, 216-18, 234-36.

311. See *supra* note 117.

312. See, e.g., Odden, *supra* note 83, at 311 (estimates for raising teachers' salaries to a competitive level range from \$5 billion to \$20 billion nationally). Howe, *Education Moves to Center Stage: An Overview of Recent Studies*, *PHI DELTA KAPPAN*, Nov. 1983, at 167 (estimate for raising teachers' salaries equals \$20 to \$30 billion a year nationally).

### C. Preserving Local Control of Education

By far, the greatest resistance to teacher collective bargaining has come from the advocates of local educational control. Just as local control has been a "powerful and persuasive political shibboleth" in the struggle against state efforts to reclaim a leadership role in education,<sup>313</sup> local control has been a mainstay of opposition to recognition of the duty to bargain,<sup>314</sup> to expansion of the scope of bargaining,<sup>315</sup> and to adoption of impasse resolution techniques like binding arbitration.<sup>316</sup> Some of this opposition—the Wellington and Winter critique, for example—has been based on substantive fears that economic and educational outcomes might be adversely affected by a diminution of local powers.<sup>317</sup> A large measure of the opposition, however, has been premised on process values. In particular, proponents of local control have worked from the premise that local school control is a quintessentially democratic process which is effectively under lay control.<sup>318</sup> Collective bargaining, conse-

313. F. WIRT & M. KIRST, *supra* note 20, at 114; accord *SCHOOL FINANCE*, *supra* note 42, at 348 ("The most frequently raised argument against school finance reform is the fear that it will result in a loss of local control. The concept of local control exasperates reformers, who claim that local control is a myth."). For an interesting general account of how the rhetoric of local control is employed to legitimate the decentralized state structure, see G. CLARK & M. DEAR, *STATE APPARATUS: STRUCTURES AND LANGUAGE OF LEGITIMACY* 157-59 (1984).

314. See, e.g., M. LIEBERMAN, *supra* note 137, at 69-92; R. SUMMERS, *supra* note 41, at 1-17; Scott, *The Case Against Collective Bargaining in Public Education*, 3 *GOV'T UNION REV.* 16, 21 (1983). For a recent iteration of Professor Summers' view, see Summers, *Public Sector Collective Bargaining Substantially Diminishes Democracy* 1 *GOV'T UNION REV.* 5, 13 (1980).

315. See, e.g., A. CRESSWELL & M. MURPHY, *supra* note 25, at 172-73, 477-78; Metzler, *The Need for Limitations Upon the Scope of Negotiations in Public Education*, I, in *EDUCATION AND COLLECTIVE BARGAINING* 33, 45-51 (A. Cresswell & M. Murphy eds. 1976).

316. See, e.g., M. LIEBERMAN, *supra* note 137, at 93-95. Challenges to the legality of binding arbitration statutes have often been based on "home rule" laws, which constitute a legal manifestation of the local control theme. See, e.g., *The Conn. Ass'n of Brds. of Educ. v. Shedd*, \_\_\_ Conn. Supp. \_\_\_ (1984); *Dearborn Fire Fighters Union, Local No. 412 v. City of Dearborn*, 394 Mich. 229, 243, 231 N.W. 2d 226, 229 (1975); *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 332 N.E.2d 290, 371 N.Y.S.2d 404 (1975).

317. See *supra* notes 71-72 and accompanying text.

318. See, e.g., R. SUMMERS, *supra* note 41, at 2-3; Metzler, *supra* note 315, at 45-51. An excerpt from R. SUMMERS, *supra* note 41, illustrates the popular view. Writing of public education in the pre-bargaining era, Summers observes that:

"democracy probably functioned more robustly [in education] than in any other local public benefit activity. In nearly all aspects of local educational decision making, powerful interest groups did not hold sway. There was usually substantial citizen interest and participation in school policy at local levels, and elected officials were by law accountable and frequently responsive.

*Id.* at 2.

quently, has been forced to defend itself against suspicions that it is, above all else, undemocratic.<sup>319</sup>

The tradition of lay governance in education is almost uniquely American;<sup>320</sup> even within American government one can think of few close analogues. The instrument of lay government, the local school board, is usually an elected body which is chosen in non-partisan campaigns.<sup>321</sup> Though elected to operate the largest and most costly public service of local government,<sup>322</sup> board members serve on a part-time basis, receiving neither remuneration<sup>323</sup> nor full-time staff assistance.<sup>324</sup> Moreover, though professional training and certification are required of those who implement the educational program,<sup>325</sup> board members themselves usually have no more professional expertise than the laity they represent.<sup>326</sup>

Expertise, concededly, is not always a virtue in government. Given the important role of public schools in socializing and acculturating children, there is something to be said for the ideology of lay governance. Yet, this ideology largely obscures the reality of governance. For it is now "widely confirmed"<sup>327</sup> by investigation of school government processes that local educational policymaking is dominated by professional school administrators. Notwithstanding a formal structure of lay government, the influence of the laity—either directly or through its representatives on the school board—is quite limited.

An impressive amount of research in local school government, dating back to the 1960's, has led most observers to regard the

319. See authorities cited *supra* note 314.

320. See H. TUCKER & L. ZEIGLER, *supra* note 111, at 19.

321. See *id.* at 17, 229; Peterson, *The Politics of American Education*, in *REVIEW OF RESEARCH IN EDUCATION* 348 (F. Kerlinger & J. Carroll eds. 1974).

322. See *supra* notes 65-66 and accompanying text.

323. See McDonnell & Pascal, *supra* note 118, at 40; Peterson, *supra* note 321, at 351.

324. See *e.g.*, F. WIRT & M. KIRST, *supra* note 20, at 80; Cohen, *supra* note 6, at 446.

325. See, *e.g.*, Project, *supra* note 16, at 1378-79.

326. See, *e.g.*, SCHOOLS IN CONFLICT, *supra* note 18, at 129; F. WIRT & M. KIRST, *supra* note 20, at 79; Project, *supra* note 16, at 1486.

327. Boyd, *supra* note 111, at 548; accord H. TUCKER & L. ZEIGLER, *supra* note 111, at 229 ("The superintendent and other professional administrators consistently dominate the lay school board and public, regardless of arena or topic of decisionmaking."); Project, *supra* note 16, at 1486 ("The increasing complexity of administrative and policy problems generates the attitude among elected board members that they lack the competence to make policy decisions. The result is deference to an even narrower and less responsible circle of experts who frequently believe that they alone are capable of making policy. This has had the effect, particularly in large cities, of virtually excluding representatives, let alone parents, from a significant role in the educational systems, thus undermining one of the traditional bases of the public school system.").

school board's role as one of legitimation.<sup>328</sup> In practice, it is professional school administrators who determine the content and scope of the agenda for school board meetings.<sup>329</sup> Board action on this agenda almost always results in affirmation of the administration's proposals.<sup>330</sup> Moreover, those issues of central concern to educational policy making—curriculum, student affairs and personnel matters—are among the first matters ceded to administrative determination.<sup>331</sup> As a result of this pattern of continual deference to professional school administrators, it is said that "the board becomes the agent of legitimation that provides a facade of public control, while power is really being exercised by administrators."<sup>332</sup>

This view of the school board as a legitimating agent contains, no doubt, some overstatement. There is evidence, for example, that school board influence is appreciably stronger on "external" issues pertaining to the school budget and school facilities.<sup>333</sup> Furthermore, there is some evidence that smaller, exurban school districts exhibit a higher degree of school board and community involvement than is commonly suggested.<sup>334</sup> Nonetheless, there is incontrovertible evidence that the prevailing image of school government processes bears little resemblance to the normal operation of those processes.<sup>335</sup>

The image of lay control also is dispelled by study of public participation in school politics. Actual citizen participation in school government affairs may be the lowest of any institution of American government.<sup>336</sup> Public turnout at both school board elections<sup>337</sup>

328. See, e.g., L. ZEIGLER & M. JENNINGS, *GOVERNING AMERICAN SCHOOLS* 250 (1974); Kerr, *The School Board as an Agency of Legitimation*, 38 *SOC. EDUC.* 34-59 (1964); Peterson, *supra* note 321, at 351.

329. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 123-25; L. ZEIGLER & M. JENNINGS, *supra* note 328, at 190.

330. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 144-45, 231; L. ZEIGLER & M. JENNINGS, *supra* note 328, at 14-15.

331. See, e.g., L. ZEIGLER & M. JENNINGS, *supra* note 328, at 128; Boyd, *supra* note 111, at 567; Wollett, *supra* note 9, at 1018.

332. Peterson, *supra* note 321, at 351. See generally Wertheim, *The Myth of Local School Control*, 102 *INTELLECT* 55 (1973).

333. See, e.g., Boyd, *supra* note 111, at 565-67; Peterson, *supra* note 321, at 354.

334. See Boyd, *supra* note 111, at 560-61, 573. But see Cohen, *supra* note 6, at 438-39.

335. Conventional labor law analysis, to our knowledge, has yet to incorporate any of the social science findings discussed above. The de facto authority of school administrators has been noted, however, by two advocates of teacher collective bargaining. See Kay, *The Need for Limitation Upon the Scope of Negotiations in Public Education*, II, in *EDUCATION AND COLLECTIVE BARGAINING* 52, 53 (A. CRESSWELL & M. MURPHY eds. 1976); Wollett, *supra* note 9, at 1018.

336. See H. TUCKER & L. ZEIGLER, *supra* note 111, at 229.

337. See *SCHOOLS IN CONFLICT*, *supra* note 18, at 95 ("One clear point is that there is little voter turnout for board elections, even more indifference than that for other government

and school board meetings<sup>338</sup> is surprisingly low. Past attempts to encourage public involvement, furthermore, suggest that widespread participation could not be induced "under any imaginable system of local control of schools."<sup>339</sup> In addition, the public appears to have little interest in, or views on, issues of educational policy.<sup>340</sup> Like the school boards themselves, citizens confine their interest to external issues affecting local tax burdens and school facilities<sup>341</sup>—with occasional interest in ideologically-laden issues like textbook censorship.<sup>342</sup> Matters of educational policy invoke the same deference to professionalism that is common among school board members.<sup>343</sup>

There is, then, ample evidence that the school boards function as "symbolic democracies,"<sup>344</sup> and that lay control is often more "ritual"<sup>345</sup> than substance. This is not to say that local factors have no influence on the educational process. Local financing decisions, as

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offices."); Reed & Mitchell, *The Structure of Citizen Participation: Public Decisions for Public Schools*, in PUBLIC TESTIMONY ON PUBLIC SCHOOLS 194-95 (S. Weinstein & D. Mitchell eds. 1975).

338. According to a 1983 Gallup survey, 8% of the public (including both parents and non-parents) attended a local school board meeting in the 1983 school year. See Gallup, *The 15th Annual Gallup Poll of the Public's Attitudes Toward the Public Schools*, PHI DELTA KAPPAN, Sept. 1983, at 43.

339. G. LANOUÉ & B. SMITH, *THE POLITICS OF SCHOOL DECENTRALIZATION* 229 (1973). The pattern of public indifference appears also to extend to the collective bargaining process, notwithstanding claims that the public has been involuntarily excluded from that process. The Rand study of teacher bargaining found, for example, that the public had declined to participate even when actively solicited. Thus, the Rand researchers concluded that advocates of community involvement lead a "phantom army." L. McDONNELL & A. PASCAL, *supra* note 47, at 43-44; accord Doherty, *supra* note 21, at 546; Perry, *supra* note 41, at 3, 5.

340. See, e.g., H. TUCKER & L. ZEIGLER, *supra* note 111, at 231-32; *SCHOOLS IN CONFLICT*, *supra* note 18, at 130-31; Cohen, *supra* note 6, at 442.

341. See, e.g., Boyd, *supra* note 111, at 566-67; Peterson, *supra* note 321, at 354. See also Belasco, Alutto & Glassman, *A Case Study of Community and Teacher Expectations Concerning the Authority Structure of School Systems*, 4 EDUC. & URB. SOC'Y 85, 90-93 (1971) (survey data showing that the community expects greatest lay control over budget, facilities and salaries).

342. Based on a survey of citizens, officials and local civic leaders, one researcher concluded that:

[they had] no particular interest in curriculum, text books, subversive activities, personalities, athletics, race relations. . . . This suggests that these areas provide a reservoir for what we have called episodic issues—issues which emerge under unusual or special conditions and shortly subside. Thus, it is not textbooks which cause concern, but a particular textbook under a special set of circumstances.

R. MARTIN, *GOVERNMENT AND THE SUBURBAN SCHOOL* 55 (1962).

343. See, e.g., Boyd, *supra* note 111, at 566-67. Surveys of community attitudes indicate that most parents believe *school personnel* should control issues of instructional policy. See Belasco, Alutto & Glassman, *supra* note 341, at 93.

344. H. TUCKER & L. ZEIGLER, *supra* note 111, at 13.

345. Cohen, *supra* note 6, at 438.

we have demonstrated, have significant impact on the quality of public education.<sup>346</sup> Furthermore, local parties still have a pivotal role in educational policy making and implementation, even if those parties are unelected professionals.<sup>347</sup> Thus, "local control" may have operational meaning even if "lay control" does not.

Advocates of collective bargaining in the schools should be relieved, however, of their historical burden of proving its compatibility with democracy. If contemporary school politics are abnormally undemocratic, the loss is attributable to causes other than collective bargaining. Thus, the question put by teacher bargaining is not whether the public or the professionals shall determine educational policy; it is whether an already pervasive professional influence in the public schools should be distributed differently. The latter question, as we shall suggest in the following section, is eminently debatable. But it is an altogether different question from the one that has preoccupied labor critics in the past.

#### *D. Collective Bargaining and the Educational Program*

Most critical attention in recent years has disregarded the possibility that teacher bargaining might have salutary effects for the schools. At least until the release of reform reports in 1983, concern over teacher compensation and working conditions was drowned out by more vocal concern over local tax burdens and the diminution of local control.<sup>348</sup> The premise of critics usually has been that bargaining effects, whatever they are, are negative.<sup>349</sup>

While teacher unionism is certainly not an unalloyed good, its relationship to the educational program is far more complex, and far more ambiguous, than is often suggested. The fact that teachers' unions continually press for higher salaries and reduced work loads, for example, undoubtedly shows a measure of professional self-interest. But self-interest does not obviate the realities of the labor market or the exigencies of teaching performance; an examination of these factors suggests that professional and educational goals may sometimes be closely related.<sup>350</sup> Furthermore, the self-interest of school government and local taxpayers has its part, too, in the prob-

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346. See *supra* text accompanying notes 94-109.

347. See *infra* notes 354, 359-60 and accompanying text.

348. See, e.g., authorities cited *supra* note 314. See generally R. SUMMERS, *supra* note 41.

349. For a recent example of one genre of this type of criticism of teacher bargaining see Baird, *Teacher Unions, Educational Quality, and a Free Market Remedy*, 5 *GOV'T UNION REV.* 3:12 (1984).

350. See *supra* notes 11, 196-99 and accompanying text.

lems of public education. As one advocate of reform has observed, "[t]here is a disturbing duplicity in a society that fails to create the conditions that would foster teacher competence and then complains of incompetent teachers."<sup>351</sup>

Perhaps the strongest case to be made against teacher collective bargaining concerns its effect on the processes of school administration. Like other legislative programs in the schools, statutory bargaining contributes to a process of administration by rules<sup>352</sup> — rules, moreover, that are formulated at the school district level rather than at the school site where they must be applied.<sup>353</sup> Critics rightly apprehend that such rules may compromise the leadership role of school administrators, a role that has proven important in successful schools.<sup>354</sup> And while the evidence of such impact is neither consistent nor unequivocal, there is little reason to doubt that bargaining has affected the processes of school administration, and that sometimes the effect has been detrimental to the schools.<sup>355</sup>

Yet, if collective bargaining is less than ideal as a method of ordering school labor relations, it must be compared to what it has replaced. School administration in the pre-bargaining era was characterized by broad, unilateral control over the teaching staff.<sup>356</sup> In an earlier period, unrestricted administrative discretion seemed no more objectionable than the schools' economic dependence on a fe-

351. CARNEGIE REPORT, *supra* note 2, at 161.

352. See Yudof, *supra* note 100, at 897, 904. See generally B. WISE, LEGISLATED LEARNING 103-06 (1980).

353. Collective bargaining agreements are, with the exception of a statewide agreement in Hawaii, negotiated at the school district level. See *supra* note 17. In 1980, there were 15,912 public school districts. See DIGEST OF EDUCATION STATISTICS, *supra* note 17, at 59. By comparison, there were more than 86,000 public schools during school year 1976-77, the most recent year of reference. See *id.* at 65.

354. See, e.g., CARNEGIE REPORT, *supra* note 2, at 219-29; Wellisch, MacQueen, Carriere & Duck, *School Management and Organization in Successful Schools*, 51 SOC. OF EDUC. 211 (1978).

355. The empirical evidence on collective bargaining's effect on school administration is reviewed in Nicholson & Nasstrom, *The Impact of Collective Negotiations on Principals*, 58 NAT'L ASS'N OF SECONDARY SCHOOL PRINCIPALS BULLETIN 100 (Oct. 1974). The authors conclude:

[t]he variety of results from these studies strongly suggest considerable care in discussing implications. Nevertheless, it would appear that principals will find their decision-making role affected in the future by professional negotiations. The role is not destroyed, however, it will simply require that principals understand how to share decision-making power while exercising it.

*Id.* at 106. See also Johnson, *Teacher Unions in Schools: Authority and Accommodation*, 53 HARV. EDUC. REV. 309 (1983).

356. See *supra* note 133.

male labor supply debarred from more lucrative careers.<sup>357</sup> These conditions would eventually lead, however, to the widespread unionization, as teachers exerted collective strength to win greater professional recognition and a greater participatory role in school processes. The very fact that, in 1980, one-half of all teachers' union members worked in rural or small towns, and two-thirds described themselves as politically "conservative,"<sup>358</sup> is testimony to the broad appeal of the teachers' labor movement.

There is also a strong educational claim for teacher participation in school government, and this claim is no less compelling than the need for educational leadership. Effective schools will be founded on effective teaching.<sup>359</sup> It is the teaching staff, after all, that must implement the intangible program called "educational policy." And as past experience makes clear, neither legislative initiatives nor managerial directives can succeed unless there is willing and intelligent participation by the teaching staff.<sup>360</sup> The law may attempt to preserve educational policy making as the special responsibility of management,<sup>361</sup> but the realities of the educational process say it cannot.

The structure of district-wide collective bargaining, of course, hardly seems the best mechanism for ensuring fluid and responsive school administration at the school site. It is the nature of collective

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357. See, e.g., Grant, *The Teacher's Predicament*, 84 *TEACHERS C. REC.* 593 (1983) ("The drainage out of teaching has been the result of a variety of factors, not least of which is the success of the feminist movement in lifting the professional horizons for women who in earlier eras would not have looked beyond the helping professions of teaching, nursing, and social work. This was especially true of talented women who entered elite colleges; twenty years ago four times as many Smith College graduates went into teaching as into business—today the reverse is true.") accord A. CRESSWELL & M. MURPHY, *supra* note 25, at 62-63; D. RAVITCH, *supra* note 60, at 323.

358. See *STATUS*, *supra* note 27, at 16, 19.

359. See, e.g., Murnane, *supra* note 178, at 26-27. See also *CARNEGIE REPORT*, *supra* note 2, at 154-85.

360. See, e.g., Murnane, *supra* note 178, at 26 ("A necessary condition for effective teaching may be that teachers adapt instructional strategies and curricula to their own skills and personalities, and to the skills, backgrounds, and personalities of their students. In this view of teaching and learning, the technical characteristics of instructional strategies and curricula are not, by themselves, the critical components. Instead, what matters is the extent to which teachers are willing and able to adapt the curricula and instructional strategy to their needs and to the needs of their students."); McDonnell & Pascal, *supra* note 118, at 44 (concerning the importance of teacher participation to the success of federally-funded programs). See also Johnson, *supra* note 355, at 319-20 (concerning the interdependence of teachers and administrators). Significantly, those empirical studies that find a correlation between school effectiveness and administrative leadership also find that successful administrators are highly involved with classroom teachers in the coordination and implementation of the instructional program. See Wellisch, MacQueen, Carriere, & Duck, *supra* note 354, at 216-17, 219.

361. See *supra* note 124 and accompanying text.

bargaining agreements to substitute rule and formality for trust and informality.<sup>362</sup> This seems especially so in public education, where the evolution from unilateral school government has occurred under the watchful eye of school critics, and where the political legitimacy of the teacher labor movement has never been fully accepted.<sup>363</sup> Moreover, the zeal with which accountability measures have been forced on the schools has predictably led educators to seek contractual declaration of their rights and their defenses.<sup>364</sup>

In the final analysis, the contribution of collective bargaining to school personnel relations may come not from its generation of rules, but from its expansion of the non-contractual role of teachers in school policy making.<sup>365</sup> Even more encouraging is evidence that strong educational leadership can coexist with collective bargaining if teachers and administrators are willing to accept their mutual roles.<sup>366</sup> This suggests that it is often the quality of a school's personnel, and the culture they generate, that determine the success of school labor relations. As one commentator has observed:

Those who predicted that teacher unionism would transform the schools into hostile, rigid institutions expected that teachers would pursue their self-interests narrowly, that they would aggressively enforce the contract provisions negotiated on their behalf, and that traditional educational values—flexibility, responsiveness, cooperation—would be abandoned for conformity, confrontation, and formality. Such commentators discounted the reciprocal school setting, the interdependence of teachers, and the day-to-day realities of school work.

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362. See Yudof, *supra* note 100, at 892-93.

363. See authorities cited *supra* note 314.

364. On the proliferation of state accountability legislation, see D. RAVITCH, *supra* note 60, at 315-16. See also Cohen, *supra* note 6, at 445 ("In reality . . . public schools have suffered from an excess of accountability most of their history. . . . Public-school professionals have only recently begun to attain the power that enables them to deal with local communities and special interests with some degree of autonomy, but they are still held more accountable to the community than are members of any other profession."). For a discussion of the effects on personnel of accountability practices like merit pay and merit staff reductions, see *supra* notes 164-65, 178 and accompanying text.

365. There is, in fact, evidence to suggest that an informal participatory role for teachers has evolved in mature bargaining relationships. See, e.g., Perry, *supra* note 41, at 15-16. Perry, we should note, does not conclude whether the effects of expanded teacher participation are beneficial for the schools. See *id.* at 17. There is, however, a disappointing lack of evidence of any consistent increase in teacher participation in unionized school districts. See *supra* note 146. This suggests that the development of informal participatory mechanisms may depend on the nature of personnel relations in individual school districts.

366. See, e.g., L. McDONNELL & A. PASCAL, *supra* note 47, at 81-82; Johnson, *supra* note 355, at 325-26; Williams, *The Impact of Collective Bargaining on the Principal: What Do We Know?*, 11 EDUC. & URBAN SOC'Y 168, 178 (1979).

Teachers in this study did not want to run the schools, but they were prepared to support a principal who demonstrated that their schools could be run well. For most teachers, being part of a good school took precedence over union membership or close enforcement of the contract.<sup>367</sup>

As is the case with educational finance, then, school labor relations may be little affected by legislated labor policy. Collective bargaining usually will not interfere with schools that work well, and collective bargaining seldom will rehabilitate schools that are run poorly. The task of labor law, therefore, is to cultivate an environment in which the better potential of educators and administrators can develop. For this reason, the legislatures should act cautiously in imposing unproven reform measures, like merit pay, on the schools. Though such measures may seem the needed antidote for an untoward union influence, their greatest potential may be to undermine the collegial working relationship that is a prerequisite to effective schools.<sup>368</sup>

Needed is some equilibrium between the rightful influence of professional educators and the imperative that the schools be managed. Collective bargaining may be an imperfect means of reaching that equilibrium, but it holds greater promise than the managerial traditions it replaces. Teacher collective bargaining is, after all, a relatively young institution, which has carried a heavy burden of past custom during its early years. As the realm of possibilities is reimagined, there is reason to hope that labor relations can evolve in a direction that will accommodate both professional and public interests.

## V. CONCLUSION

The problems of contemporary educational reform are also largely the problems of school labor relations. Most prominent among these is the schools' incessant need for greater financial support, particularly in funding the costs of instruction. Experience with educational collective bargaining demonstrates that the teachers' unions, far from having "disproportionate power" as claimed by Professors Wellington and Winter, may be at a disadvantage in the

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367. Johnson, *supra* note 355, at 326. See also Vaughn, *Public Sector Bargaining Issues in the 1980's: A Neutral View*, 33 N.Y.U. CONF. ON LABOR 317, 323 (1980) ("There is now a growing body of empirical evidence emerging confirming what most professional industrial relations experts have always known—that the nature of the labor-management relationship in an organization can have significant positive or negative effects on productivity, depending on the quality of the relationship.").

368. See Johnson, *supra* note 166, at 183-85.

local political process. Nor is this disadvantage one that can be remedied legislatively by recognition of teachers' right to strike or arbitrate. This financial dilemma seems to inhere in the current localized processes for funding teachers' salaries, and the dilemma is exacerbated in poorer school districts. This suggests that, if reform of teacher compensation is to come, it must originate at higher levels of government where there is both the political will and the economic means to pay for it.

Experience with teacher labor relations is less suggestive of strategies for reforming the non-compensatory aspects of public education. Clearly, the schools must avoid the excesses of either an arbitrary school administration or a workplace regimented by contractual rules. Yet, while there is agreement on this in the abstract, practical proposals are lacking. The history of labor relations may also reveal the dominant influence of custom, personality and professional identity in the schools, and the futility of legislative reforms—like merit pay—that ignore the school culture. One suspects, however, that the sociologically informed labor policies will ultimately yield to public opinion, given the public's irrepressible fancy that it can—and does—run the schools.

Whatever the progress of educational reform, the public schools must address the problem of dispute resolution. Indeed, if significant reform is not forthcoming, dispute resolution may become the predominant issue in school labor relations. Both our research and the research of others indicate that there is a solution to work stoppage—binding arbitration. Yet, having discarded the common law notion that teachers' strikes are *malum in se*, one must ask further whether the remedy is less appealing than the malady.

Present evidence suggests that local government will pay a moderate economic cost under binding arbitration. Whether that cost is an enduring one remains to be seen. Local school government will not, however, surrender many of its important managerial prerogatives to arbitrators (excepting some fiscal control); arbitrators are a conservative lot, by and large, and arbitration schemes provide disincentives for those who would view the process as a progressive or innovative one. Thus, arbitrators, like the parties themselves, concede and compromise so far as compelled to by their environment.

There remains the question: Is binding arbitration a politically legitimate process? The answer is indisputably "yes", insofar as both teachers and school government show an overwhelming willingness to abide by the outcome of arbitration. Furthermore, one cannot fully credit the argument that arbitration threatens local

control, since public education is a state responsibility, just as one cannot give credence to those who find arbitration a threat to "free" collective bargaining—free bargaining was never a feature of a system that denied teachers the right to strike.

Still, one is left with a niggling doubt that binding arbitration may mask the political timidity of state government, and that it may offer merely an easy peace. Binding arbitration is a tentative step toward centralized educational governance, but one under which the state can control neither the costs nor the direction of educational decision-making. It is just such diffusion and delegation of responsibility that has brought our educational system to its present sorry state.

# Conferring Strike Rights by Statute: Experience Outside California

by

B. V. H. Schneider\*

In view of the changing status of the strike in California's public sector, readers may be interested in an up-to-date review of how the strike question has been handled in other states. The following article briefly describes the current standing of the strike in California, summarizes the principal criticisms of the state Supreme Court's controversial *County Sanitation* decision and then discusses how those states that have conferred strike rights by statute have handled the matter.

The compilation of other states' strike laws shows that, although California's new standard for determining whether a strike is legal or illegal was created by different means, the standard itself and the suggested safeguards of the public interest set forth in the court's decision do not vary greatly from those contained in the statutes of most other states. The primary difference lies in the statutory procedures provided elsewhere to encourage dispute resolution short of a strike.

## Status of the Strike in California

**Local government.** In May 1985, in a case arising under the Meyers-Millas-Brown Act (MMBA), the state Supreme Court broke with long-standing precedent both in this state and throughout the United States by ruling that "[T]he following standard may properly guide courts in the resolution of future disputes . . . : strikes by public employees are not unlawful at common law unless or until it is clearly demonstrated that such a strike creates a substantial and imminent threat to the health or safety of the public."<sup>1</sup>

How is this standard to be applied? After noting that the presumption of essentiality of most governmental service is questionable at best and that it is the nature of the service provided which determines its

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Note: This article is reprinted from CPER, No. 74, September 1987, © by The Regents of the University of California, Berkeley.

<sup>1</sup> *County Sanitation Dist. No. 2 v. Los Angeles Co. Employees Assn.*, 38 Cal. 3d 564, 119 LRRM 2433; see CPER No. 65X (June 1985), pp. 1-3 and appendix, and No. 65 (July 1985), pp. 2-16.

essentiality and the impact of its disruption on the public welfare, the court went on to "recognize that there are certain "essential" public services, the disruption of which would seriously threaten the public health or safety." The court cautioned "that the right of public employees to strike is by no means unlimited." Strikes of fire fighters have already been prohibited by statute. The legislature "may conclude that other categories of public employees" should be prohibited from striking. Meanwhile, "the courts must proceed on a case-by-case basis" to apply the enunciated standard, perhaps guided by "existing statutory standards" in other states where employees have "a limited right to strike" and where injunctive relief is available to prevent strikes which threaten public health or safety.<sup>2</sup>

Of course, the practical impact of *County Sanitation* could prove to be no greater than an acknowledgement of the existing state of affairs in local government. In the vacuum created by the absence of an administering agency to interpret the MMBA, or even mandatory impasse procedures, local government strikes have occurred, sometimes injunctions have been sought, and sometimes restraining orders have been granted, occasionally because of a demonstrated threat to public health or safety. While the court's departure from common law may have been dramatic, it is unclear what—if anything—will change.

*Public schools.* Under the Educational Employment Relations Act (EERA), we see a different situation—an administrative agency, the state Public Employment Relations Board (PERB), which has been wrestling for years with the problem of how to deal with strikes when the statute arguably neither grants nor prohibits the right to strike and the impasse procedure terminates in fact-finding. (The court in *County Sanitation* made it clear that it was not deciding the strike question under any statute other than MMBA. The application of the decision to statutes under PERB's jurisdiction remains unresolved.)

A significant series of PERB and court decisions interpreting EERA culminated in *Modesto*, PERB Dec. 291 (1983), in which the board came to two firm conclusions: (1) strikes occurring before completion of the statutory impasse procedures were per se unfair practices and therefore enjoined and (2) any strike provoked by an employer's bad faith conduct was protected by the act.<sup>3</sup> However, the legality of a strike *after* completion of the impasse procedures (where no employer provocation could be found) was not dealt with directly by the board until last year. In the Oakland Unified School District strike of 1986, PERB refused to enjoin a post-impasse strike but did not issue a written decision explaining its rationale.<sup>4</sup>

<sup>2</sup> *Id.*, 119 LRRM 2441, 2443.

<sup>3</sup> See *CPER* No. 56 (March 1983), pp. 2-10.

<sup>4</sup> See *CPER* No. 68 (March 1986), pp. 44-49.

This year, in *Compton USD*, Ord. IR-50, however, the board did seek an injunction in a post-impasse strike and issued a written decision which moved sharply away from its previous positions. In a 2-1 holding, the board specifically overruled its earlier finding in *Modesto* that at least some strikes are protected (by virtue of employer provocation) and, in the facts of the case before it, held that the strike was unlawful because of the damage done to the educational process.<sup>5</sup> At present, it seems that the board has decided that *no* strike is "protected" by EERA. Whether some or all strikes are actually prohibited—that is, are per se unfair practices—is less clear and probably subject to additional interpretation by the board in the future.

Therefore, at the two levels of government where nearly all strikes occur—local government and public schools—we find a mixed picture. Under the MMBA, the strike is legal, but no state agency or statutory guidelines exist to regulate dispute resolution processes. Both agency and guidelines are present under EERA, but there has not been a clear decision on the circumstances in which the strike can be a legitimate step in the process.<sup>6</sup>

#### **Criticism of County Sanitation**

Most criticism of *County Sanitation*, starting with Justice Lucas's dissent to the decision, has centered on the comparative advantages of a legislative, rather than judicial, solution to the strike problem.

Justice Lucas, in his dissent, touched on most of the objections later heard from other analysts:

The decision to allow public employee strikes requires a delicate and complex balancing process best undertaken by the Legislature, which may formulate a comprehensive regulatory scheme designed to avoid the disruption and chaos which invariably follow a cessation or interruption of governmental services. The majority's own proposal, to withhold the strike weapon only where "truly essential" services are involved . . . and a "substantial and imminent threat" is posed will afford little guidance to our trial courts who must, on a "case-by-case" basis . . . decide such issues. In the absence of an administrative agency . . . presumably all strike-related issues will go to

<sup>5</sup> See *CPER* No. 72X, pp. 1-5.

<sup>6</sup> Of course, California's public sector bargaining scheme provides separate statutes for state employees (State Employer-Employee Relations Act) and higher education (Higher Education Employer-Employee Relations Act). Both are under PERB jurisdiction and presumably are subject to the same interpretation of the strike question, although the paucity of strikes in those sectors has provided no opportunity for the board to address the issue. Labor relations of transit districts are governed by each district's enabling statute. Most of the latter laws have been found to grant the right to strike based on language giving employee organizations the right to participate in "concerted activities" or to engage in "collective bargaining."

the courts in the first instance, but the courts are poor forums for the resolution of such issues. Of the few states that permit strikes by public employees, virtually all do so by comprehensive statutory provisions. In contrast, the majority's new California rule is hopelessly undefined and unstructured.<sup>7</sup>

The comments of recent law review articles primarily express (1) indignation at the court's "usurpation" of the legislature's role and (2) dissatisfaction with a system which allows strikes but fails to set clear guidelines for identifying "unlawful" strikes and fails to provide impasse resolution procedures.

For example, in the first category, the focus of attention has been on the *judicial* nature of the action and its infringement on the political role of the legislature:

"The California Supreme Court failed to recognize judicial limitations when it embarked upon this policy analysis, an analysis that all other jurisdictions have reserved for the legislature."<sup>8</sup>

"The legislature necessarily had a purpose in expressly denying public employees the protections afforded private employees. . . . In reaching the opposite conclusion . . . , the court not only intruded upon determinations best left to the legislature, but also unnecessarily reconsidered a decision the legislature had already made. In doing so, the court misconstrued statutory provisions. . . ."<sup>9</sup>

". . . [T]he California Supreme Court has obliterated any conceptual distinction between private sector and public sector impasse resolution. The consequence of doing so is to trivialize the influence of the citizen in public sector labor relations. When the right to strike is granted statutorily, the citizen is at least permitted a voice in designing the system, and that voice presumably assures that the interest of the citizen has been adequately protected. The California common law rule avoids even that degree of electoral power."<sup>10</sup>

On the other hand, one writer sees the decision as likely to start a trend among state courts:

<sup>7</sup> See fn. 1, *supra*, 119 LRRM 2457, 2458.

<sup>8</sup> Note, "California Public Employees Granted Right to Strike Without Legislative Authorization," *Washington University Law Quarterly*, 64 (Winter 1986), 269.

<sup>9</sup> G. Murray Snow, "County Sanitation District No. 2 v. Los Angeles County Employees Association, Local 600: A Study in Judicial Legislation," *Brigham Young University Law Review* (Winter 1986), p. 206.

<sup>10</sup> Raymond L. Hogler, "The Common Law of Public Employee Strikes: A New Rule in California," *Labor Law Journal*, 37 (February 1986), 102-103.

The common-law rule . . . provided for a wholesale denial of the freedom of public employees to withhold their labor. Such denial is justified only where it has clearly been established that the public welfare is threatened. By granting . . . a limited right to strike, the . . . Court produced a decision worthy of consideration by courts currently advocating the abrogation of the common-law rule. A number of courts are likely to follow the precedent set by this court.<sup>11</sup>

The second category of reaction covers (1) what critics see as a failure of the court to expand on what might constitute a "substantial and imminent threat to the health and safety of the public," that is, what that should mean in a practical context beyond the more obvious cases, such as police and fire fighters, (2) the need for impasse resolution procedures and (3) the lack of uniformity that may result as a number of lower courts, with no particular expertise in labor relations, seek to administer the law in a variety of different fact situations. Some examples are:

"The opinion of the court in *County Sanitation* stated that 'essential' public employees could be prohibited from striking. However, the court did not state at what point the determination of essentiality is to be made. The statutes of other states . . . provide important guidance on how to deal with the problems which will soon face the California legislature . . . By providing mandatory special impasse procedures such as arbitration, mediation, and fact-finding, the California Legislature can assure that crippling public employee strikes will only occur as a last resort."<sup>12</sup>

"Public employees [in Pennsylvania] are granted a right to strike, but that right is delimited by various procedural requirements designed to insure reasoned, mature deliberation in the negotiations process. In contrast [the California rule] provides for no impasse techniques . . . nor are there any specified periods during which a strike may not occur."<sup>13</sup>

"A court is not the governmental body that determines the functions in which government should engage. Therefore, courts should not determine which governmental functions are essential. While some governmental functions are clearly

<sup>11</sup> Lori E. Shaw, "Labor Law: The California Supreme Court Confers a Limited Right to Strike Upon Public Employees Through Judicial Fiat," *University of Dayton Law Review*, 11 (Winter 1986), 436.

<sup>12</sup> Gregory Thomas Fain, "Local Public Employees Right to Strike After *County Sanitation District v. Los Angeles County Employees Association*," *Pacific Law Journal*, 17 (January 1986), 551-552.

<sup>13</sup> Hogler, *supra*, p. 101.

not essential, a bright line for drawing such distinctions does not exist. States have the right to determine whether certain public employees may strike or whether because of the importance of their function they may not. However, such determinations should be made by the legislature, which is better equipped to draw such important distinctions."<sup>14</sup>

"Although good reason may exist for permitting public employee strikes, the legislature is in the best position to weigh the competing interests of public sector employees and their employers in determining when a strike is permissible."<sup>15</sup>

"It is quite probable . . . that the California legislature would have implemented certain procedural requirements [which are] not only advantageous to the parties involved in a dispute and to the court which must resolve such a dispute, but . . . also beneficial to the general public. . . . Such measures alleviate confusion regarding the appropriate action to be taken to prevent or halt a strike, delineate who is responsible for taking such action, and establish when such action should occur."<sup>16</sup>

The consensus of these critics could perhaps be summarized as, If there is to be a right to strike, it should be granted by the legislature and, if there are to be limitations on the right, explicit procedures should exist to guide the parties and protect the public interest. Two of the authors point out that some states with a statutory strike right provide no more guidance than *County Sanitation*, but both authors emphasize that there is public input implicit in legislation and that a legislature has the capacity to reevaluate its standards on a continuing basis.<sup>17</sup>

#### **Background: The Strike Right Elsewhere**

California is the first state to overturn the common law doctrine that there is no right to strike for public employees absent a legislative grant of the right. It is also the only state with a comprehensive statutory system, such as EERA, where the status of the strike is unclear and the administering agency has been left to develop a case law on the subject.

What has happened in other states? Since the late sixties, 10 states have granted legislatively the right to strike to certain groups of public employees—Alaska, Hawaii, Illinois, Minnesota, Montana, Ohio,

<sup>14</sup> Snow, *supra*, pp. 211-212.

<sup>15</sup> Note, *supra*, pp. 269-270.

<sup>16</sup> Shaw, *supra*, pp. 430-431.

<sup>17</sup> See Note, *supra*, p. 269, fn. 52, and Shaw, *supra*, pp. 429-431.

Oregon, Pennsylvania, Vermont and Wisconsin.<sup>18</sup> How did this come about?

In the mid-sixties, the most advanced thinking on the whole issue of public sector employment relations came from New York State's Taylor Commission, which had been convened to study the feasibility of a law for that state. Its terms of reference emphasized two policy goals: "protecting the public against the disruption of vital public services, while at the same time protecting the rights of public employees."<sup>19</sup> In its final report, the committee argued against conferring the right to strike and articulated the tradeoff which has characterized most public sector legislation up to the present time: "It is elementary justice to assure public employees who are stopped from using the strike, that they have the right to negotiate collectively."<sup>20</sup> The upshot for New York State was recommendations for procedures based loosely on the private sector model, but adapted to public sector differences—notably the substitution of mediation and fact-finding for the right to strike, coupled with penalties for violations of the strike ban.

By 1967, legislation in 21 states allowed participation of some public employees through collective bargaining in the determination of their pay and conditions of employment, while the strike remained unauthorized as incompatible with the nature of the government employer. Modified bargaining systems were intended to make the strike unnecessary, and mediation/fact-finding procedures were expected to evolve into an acceptable substitute.

When the Taylor Commission first contended that the strike was inappropriate in the public sector, it based its view on two points. First, the strike is incompatible with the orderly functioning of our democratic form of representative government, in which political forces, rather than economic power, shape governmental decisions. Second, while admitting that some public employees may provide unique but not "essential" services, and others are engaged in work identical to that performed in the private sector, it concluded that "a differentiation between essential and nonessential governmental services would be the subject of such intense and never-ending controversy as to be administratively impossible."<sup>21</sup> It also dispensed with compulsory arbitration as an option: "There is serious doubt whether it would be legal because of the obligation of the designated executive heads of government departments or agencies not to delegate certain fiscal and other duties.

<sup>18</sup> On the other hand, 38 states have statutes which prohibit strikes by all or some public employees. At least 22 states have litigated the strike issue and found that no right exists in common law absent a statutory grant.

<sup>19</sup> New York Governor's Committee (Taylor) on Public Employee Relations, *Final Report* (March 31, 1966), p. 9.

<sup>20</sup> *Id.*, p. 20.

<sup>21</sup> *Id.*, pp. 18-19.

Moreover, it is our opinion that such a course would be detrimental to the cause of developing effective collective negotiations."<sup>22</sup>

The Taylor Commission's views were widely shared. Writing in 1967, Andrew W.J. Thomson observed that no legislature "has yet permitted its employees to strike, and public opinion seems to indicate that such a development is not likely in the foreseeable future. The furthest that any legislative body has gone is to prohibit specifically only strikes which endanger the health, safety or welfare of the public as in Vermont. . . ." <sup>23</sup> A similar view was put forward a year later by Ida Klaus who saw government as unyielding on the strike, in part because of the unwillingness of the public to accept any action that would sanction strikes by public employees.<sup>24</sup> As had the Taylor Commission, both writers emphasized the difficulty of distinguishing between essential and nonessential services.

Pennsylvania was the first state to take a radically different line, moving directly from a 1947 no-strike statute to compulsory tripartite arbitration for police and fire fighters in 1968, and then to a comprehensive law and circumscribed right to strike for other public employees in 1970. The commission that recommended this particular approach took a decidedly different view of the matter: "Twenty years of experience [under a no-strike law] has taught us that such a policy is unreasonable and unenforceable, particularly when coupled with ineffective or nonexistent collective bargaining. It is based upon a philosophy that one may not strike against the sovereign. But today's sovereign is engaged not only in government but in a great variety of other activities. The consequences of a strike by a policeman are very different from those of a gardener in a public park."<sup>25</sup>

"Essentiality" as an insurmountable barrier to the right to strike was dismissed by the Pennsylvania Commission: "The collective bargaining process will be strengthened if this qualified right to strike is recognized. It will be some curb on the possible intransigence of an employer; and the limitations on the right to strike will serve notice on the employee that there are limits to the hardships that he can impose. . . . Strikes can only be effective so long as they have public support. . . . We can look upon the limited and carefully defined right to strike as a safety valve that will in fact prevent strikes."<sup>26</sup>

<sup>22</sup> *Id.*, p. 46.

<sup>23</sup> *Strikes and Strike Penalties in Public Employment* (Ithaca: New York State School of Industrial and Labor Relations, Cornell Univ., 1967), p. 8.

<sup>24</sup> "A Look Ahead," in *Labor-Management Relations in the Public Service*, Pt. 6 (Honolulu: Industrial Relations Center, Univ. of Hawaii, September 1968), pp. 775-776.

<sup>25</sup> Governor's Commission to Revise the Public Employee Law of Pennsylvania, *Report and Recommendations* (June 1968), p. 7.

<sup>26</sup> *Id.*, pp. 13-14. Hawaii took the same step in 1970 and for roughly the same reasons.

### Today: Right-to-Strike Statutes

Given the historical aversion to the strike in the public sector, one of the most interesting developments in employment relations has been the statutory granting of this right. The main reasons seem to be those touched on by the Pennsylvania Commission: a belief that the bargaining process will be strengthened and that essentiality can be adequately defined so as to protect the interests of both public employees and the public. It is the latter objective which has most strongly marked these statutes.

In no case is the right to strike unfettered. In all cases, a threat to the public health, safety, and/or welfare triggers some kind of "no-strike" mechanism. In most cases, certain prestrike impasse procedures must be complied with, often involving the passage of considerable time. Others include devices to bring the public into the picture and methods designed to encourage harder bargaining. In states that provide statutory strike rights, where "essential" employees are denied the strike they are given the right to compulsory interest arbitration instead.<sup>27</sup>

Alaska<sup>28</sup> divides its employees into three categories:

1. Those who provide services which may not be given up for even short periods of time—police, fire protection, prison, and hospital employees. An impasse in this case is followed by mediation and binding arbitration.

2. Those whose services may be interrupted for a limited period—public utility, snow removal, and sanitation employees. This class may strike for a limited time after mediation if a majority of employees in a unit vote by secret ballot to do so. The time period is determined by impact on the health, safety, or welfare of the public. Either the employer or the administering agency may apply to the court for an order enjoining the strike. The court is to consider the "total equities," *i.e.*, the impact of a strike on the public and the extent to which the parties have met their statutory obligations. If an impasse still exists after issuance of an injunction, the parties must proceed to binding arbitration.

3. Those (all other employees) who provide services where work stoppages may be sustained for extended periods without serious effects on the public. A majority of employees in the unit must vote to strike by secret ballot.

<sup>27</sup> Presumably, "essential" employees who are denied strike rights are given arbitration in order to redress the inequity which arises when other employees may strike. It is worth noting, however, that eight states grant compulsory arbitration to at least some of their "essential" employees without providing anything "extra" for the rest of them, *i.e.*, access to the strike is denied for all (Massachusetts, Michigan, Nebraska, New Jersey, New York, Oklahoma, Washington, and Wyoming).

<sup>28</sup> Alaska Stat., Title 23, Secs. 23.40.070-23.40.260 (1972) as amended 1984 (all except teachers).

Under the Alaska act, public school employees are excluded from the definition of "public employee" and therefore have no right to strike.<sup>29</sup>

Hawaii<sup>30</sup> prohibits strikes by (1) employees not in a certified bargaining unit, (2) employees in a unit for which final resolution of disputes is by binding arbitration—police, fire fighters and, where the parties have mutually agreed to its use, (3) essential employees. Essential employees provide services whose disruption, in the opinion of the administering agency, would constitute an "imminent or present danger to the public health and safety."

Other employees may strike after (1) agency-initiated mediation and fact-finding have been complied with in good faith, (2) proceedings for the prevention of unfair practices have been exhausted, (3) 60 days have elapsed since the fact-finding board has made public its findings and recommendations and (4) the exclusive representative has given a 10-day notice of intent to strike to the agency and the employer.

If an employee or employee organization violates the above requirements, or there is reason to believe that there will be a violation, the employer may seek injunctive relief.

Illinois<sup>31</sup> has two laws, one for public schools and the other for the balance of public employees. Both permit the strike (1) if the employee is represented by an exclusive agent, (2) a contract has expired and does not prohibit strikes, (3) disputed issues have not been submitted to voluntary arbitration, (4) mediation is unsuccessful and (5) five days have elapsed after notice of a strike is given.

Under the general law, peace officers, fire fighters, paramedics, and security employees are prohibited from striking. For these groups, mandatory mediation must commence 30 days and compulsory arbitration proceedings 14 days before contract expiration. All terms of the arbitrators' decision are subject to review by the governing body, who may reject any term by a three-fifths vote. In the case of rejection, the parties return to the panel for a supplemental decision.

Under both laws, an injunction may be sought by an employer if a strike is or has become a danger to public health or safety. Under the education law, an employer unfair practice or "other evidence of lack of clean hands" in negotiations with the union may constitute a union defense to an injunction proceeding.

Minnesota<sup>32</sup> allows strikes by employees other than confidential, managerial, supervisory, and essential employees, and principals and

<sup>29</sup> *Anchorage Educ. Assn. v. School Dist.*, 114 LRRM 3377 (1982).

<sup>30</sup> Hawaii Rev. Stat., Ch. 89, Secs. 89-1-89-20 (1970) as amended 1986 (all).

<sup>31</sup> Illinois Stat. Ann., ch. 48, Secs. 1601-1627 (1983) as amended 1986 (all except schools and higher educ.); Secs. 1701-1721 (1983) as amended 1985 (schools and higher educ.).

<sup>32</sup> Minnesota Stat. Ann., Ch. 179A, Secs. 179A.01-179A.25 (1971) as amended 1985 (all).

assistant principals. Essential employees are peace officers, fire fighters, guards at correctional institutions, and employees of hospitals other than state hospitals. For state employees, essential means all employees in law enforcement, health care professional, correctional guard, professional engineering, and supervisory units. Disputes affecting essential employees can be settled by binding arbitration on the request of either side and if the director of mediation services determines that further efforts to negotiate would be fruitless.

Other employees may strike when (1) an agreement has expired, (2) the parties have participated in mediation for at least 45 days (30 days in the case of teachers) and (3) written notice is served on the employer and director of mediation services by the exclusive representative at least 10 days prior to the start of a strike (25 days for teachers).

A strike is also permitted if the employer disregards an arbitration decision, or if the legislative commission on employee relations has not given approval during a legislative interim to a negotiated agreement or arbitration award, or if the entire legislature rejects or fails to ratify a negotiated agreement or arbitration award which has been approved by the legislative commission.

Engaging in an unlawful strike is an unfair practice. Employer unfair practices are not a defense to an illegal strike; however, such factors may be considered by a court in mitigation of penalties.

Montana<sup>33</sup> has three laws. One, passed in 1969, covers nurses in both the public and private sectors, contains no impasse procedures, and allows strikes on 30 days' notice provided there is no other strike at a health care facility within a 150-mile radius.

A law covering fire fighters requires mediation and fact-finding followed by binding arbitration on the application of either party. Regarding strikes, the statute simply states that strikes are prohibited "during the term of any contract and negotiations or arbitration of that contract."

Montana's law covering other employees is of interest because it includes an employee organization right to engage in "concerted activities," which the state supreme court has interpreted to include the right to strike.<sup>34</sup> The court commented that no different interpretation is required because public employees are involved, particularly as nowhere in the law are such employees prohibited from striking.

Ohio<sup>35</sup> has a rather lengthy procedure with particularly stringent safeguards. Mediation is followed by fact-finding, both to take place within 50 days prior to contract expiration. Seven days, at most, after

<sup>33</sup> Montana Rev. Code, Title 39, Ch. 31, Secs. 39-31-101-39-31-409 (1973) as amended 1985 (all); Ch. 32, Secs. 39-32-101-39-32-[ ] (1969) as amended 1983 (nurses); Ch. 472, Secs. 39-34-101-39-34-106 (1979) (fire arb.).

<sup>34</sup> *Montana v. Public Employees Council*, 88 LRRM 2012 (1974).

<sup>35</sup> Ohio Rev. Code Ann., Ch. 4117, Secs. 4117.01-4117.23, and Secs. 4, 5, 7, and 8, as enacted by S.B. 133, L. 1983 (1983) (all).

the fact-finders' recommendations are issued, the parties are asked to accept them as is or as modified. If rejection is considered, votes must be taken. Either the employer or the union membership may reject the recommendations by a three-fifths majority of the total body. (In the case of the state, a 60 percent vote of the members of both houses is necessary to reject a recommended contract.) If the vote by both is at least 41 percent in favor, the contract is ratified. If either rejects the recommendations, an impasse exists and the findings are published. If there is still no agreement within seven days, designated employees (safety services, nurses, corrections employees, mental health attendants and employees of retirement systems) go to final-offer arbitration. All other employees may strike after 10 days' notice, unless they have selected another procedure (*e.g.*, arbitration) in advance.

If a lawful strike is believed to create a danger to public health or safety, the employer may petition the court for a 72-hour restraining order. The employer may then petition the administering agency for permission to require a further injunction of up to 60 days on the same grounds. During this period, the parties are expected to continue bargaining with the assistance of a mediator, who may require bargaining in private or in public. At any time after 45 days, the mediator may make public a report on the current positions of the parties, including a statement by each party of its position and offers of settlement.

An illegal strike is an employee organization unfair practice. An unfair practice by the employer is not a defense to an injunction proceeding.

**Oregon**<sup>36</sup> impasse procedures start when, after "a reasonable period of negotiation," either or both parties notify the board, or the board determines itself, that an agreement cannot be reached. Mediation commences. After 15 days of mediation, either party or the board may initiate fact-finding. A lawful strike is permissible after fact-finding if (1) the employees are in a certified unit, (2) an involved employee is not an emergency telephone worker, police officer, fire fighter, or guard at a correctional institution or mental hospital, (3) mediation and fact-finding have been pursued in good faith, (4) proceedings for the prevention of prohibited practices have been exhausted, (5) 30 days have elapsed since the fact finders' findings have been made public and (6) the exclusive representative has given 10 days' notice and stated the reasons for its intent to strike to the board and the employer.

When mediation and fact-finding have been completed, employees who are prohibited from striking proceed to binding arbitration. The factfinding step can be skipped if neither side requests it.

When, in the view of the employer, a strike occurring or about to occur creates a "clear and present danger or threat to the health, safety

<sup>36</sup> Oregon Rev. Stat., Ch. 243, Secs. 243.650-243.655 (1967) as amended 1986 (all).

or welfare of the public," the employer may petition the court for equitable relief. If relief is granted, the court must order that the dispute be submitted to binding arbitration within 10 days. The act specifically states that "danger or threat" does not include an "economic or financial inconvenience to the public or the public employer that is normally incident to a strike by public employees."

An unfair practice by an employer is not a defense to a prohibited strike.

**Pennsylvania**<sup>37</sup> has two laws. One, covering only police and fire fighters, moves directly from a negotiations impasse or rejection of an agreement by the employer to binding arbitration. Strikes are not permitted.

The general law calls first for mediation. If agreement is not reached within 20 days or in any event no later than 130 days prior to the budget submission date, the board may appoint a fact-finding panel. If the findings are not accepted, they are published. Refusal to submit to these procedures is an unfair practice; a strike during them is prohibited.

Units of prison guards or mental hospital attendants or units of employees directly involved with and necessary to the functioning of the courts are prohibited from striking at any time. They move from mediation to binding arbitration, with the proviso that arbitrators' decisions requiring legislative enactment are advisory only.

Other employees may strike following mediation and fact-finding unless and until a strike creates a "clear and present danger or threat to the health, safety or welfare of the public." In such cases, the employer may initiate an action in court for equitable relief.

An employer unfair practice is not a defense to a prohibited strike, although a court is to consider such actions in fixing fines or imprisonment for contempt.

**Vermont's**<sup>38</sup> municipal law requires mediation, followed by fact-finding, before a strike is permissible. A strike is not prohibited unless (1) it occurs sooner than 30 days after delivery of the fact finder's report, (2) it occurs after binding arbitration has been agreed to, or (3) it will "endanger the health, safety or welfare of the public." The employer may petition a court for equitable relief in the event of a violation.

**Wisconsin**,<sup>39</sup> in its municipal law, includes a unique strike/compulsory arbitration procedure. (Police and fire fighters are covered under a separate law allowing binding arbitration on the application of either party, following mediation.) If a dispute has not been settled

<sup>37</sup> Pennsylvania Stat. Ann., Title 43, Ch. 19, Secs. 101-2301 (1970) as amended 1976 (all); Ch. 7, Secs. 1-11 (1968) (police and fire arb.).

<sup>38</sup> Vermont Stat. Ann., Title 21, Ch. 20, Secs. 1721-1735 (1973) as amended 1984 (local).

<sup>39</sup> Wisconsin Stat. Ann., Secs. 111.70-111.71 (1959) as amended 1986 (local); Secs. 111.77 (1971) as amended 1978 (police and fire).

after mediation (and fact-finding if either party requests it and the administering agency agrees), either party may initiate binding, final-offer arbitration. On petition of at least five citizens of the jurisdiction affected, filed within 10 days of the arbitrator's appointment, the arbitrator must hold a public hearing to allow the parties to explain their positions and the public to offer comments. Either party may, within a time limit established by the arbitrator, withdraw its final offer. If *both* withdraw, the employee organization may strike after giving 10 days' notice. If either party does *not* withdraw, the final offer of neither party is deemed to be withdrawn and the arbitration proceeds.

In the case of a prohibited strike or a strike which is a "threat to public health or safety," the employer or any citizen may petition the court to enjoin the strike. Issuance of an injunction must include an order to the parties to submit new final offers for binding arbitration. Penalties for unlawful strikes include fines and loss of dues checkoff.

Finally, as a point of interest, Idaho's law for fire fighters<sup>40</sup> prohibits strikes during the term of a contract. The state's supreme court has interpreted this to mean that firemen have a "residual" right to strike after expiration and before a new contract is consummated; the "parties are free to negotiate one way or another depending upon their relative economic strengths."<sup>41</sup>

### Summary

In 1985, the state Supreme Court decided in *County Sanitation* that strikes under MMBA are not unlawful unless they create a substantial and imminent threat to public health or safety. This year, PERB reversed its 1983 ruling that, under EERA, a strike provoked by an employer's bad faith is protected. In both cases, the decisions were made under statutes which contain no clear language on the strike right.

Criticism of the *County Sanitation* decision has focused on the court's alleged usurpation of the legislature's right to act on this subject and on the lack of adequate guidelines and procedures to regulate strikes and the dispute resolution process. (Such criticism could apply equally to current experience under EERA.)

<sup>40</sup> Idaho Code, Ch. 18, Secs. 44-1801-44.1811 (1970) as amended 1977 (fire).

<sup>41</sup> *Firefighters v. City of Coeur d'Alene*, 100 LRRM 2079 (1978).

In no other state has the common law rule on strikes been overturned.<sup>42</sup> However, 10 states permit strikes by statute. An examination of these statutes shows that the standard created by the California Supreme Court and its recommended safeguards of the public interest are not that different from legislative determinations elsewhere. The significant difference between *County Sanitation* and the strike statutes in other states is that almost all of the latter contain elaborate procedures designed to promote settlement without strikes.

<sup>42</sup> A recent article takes a different view, holding that the Montana and Idaho court decisions noted above (*see supra* text and fns. 34 and 41), together with California's recent decision, are all common law decisions "bound together by the underlying assumption that, by not acting to expressly prohibit public employee strikes, the legislatures of these states implicitly intended to permit public employee strikes." See Tim Schooner, *Permitted Rights of Striking Public Employees, Industrial Relations Law* (1987), 291. However, of more interest is the author's treatment of discharge liability for participating in a strike, legal or illegal, and how such discharge can conflict with two important protections possessed by most public employees—discharge only for "just cause" and pre- and post-discipline due process procedures. *Id.*, pp. 283-312.

# Teacher arbitration hearings set to begin

TIMES STAFF

Three days of closed-door contract arbitration hearings between the Anchorage School District and the 2,400-member Anchorage Education Association begin today at district headquarters.

Negotiations between the two parties stalled in the first week of December after more than 1,200 hours at the bargaining table. Oregon-based arbitrator George Lehlietner is scheduled to hear the two sides present their cases through Friday.

Lehlietner then will have

about a month to produce a report, which either side can accept or reject. If no agreement is reached, the union will ask its members what to do next, including whether to strike.

Of 93 issues on the table, about 30 remain to be settled, Superintendent Thomas O'Rourke said Tuesday. The arbitrator has the option of trying to mediate a settlement but probably won't because of the high number of unresolved issues, O'Rourke said.

# Teachers, district OK bargaining timetable

A-522  
11/20/91  
By PETER BLUMBERG  
Daily News reporter

An Anchorage teachers strike over an unsettled contract would not happen before February at the earliest, according to the bargaining timetable agreed on by the teachers union and the Anchorage School District.

It will take at least a month — and probably longer, both sides predict — for a third-party arbitrator to render his opinion after hearing two days of testimony from the district and the

Anchorage Education Association in early January.

In several months of negotiating, the district and the union have failed to reach a settlement over a contract that expired in late June.

The decision to call in a professional arbitrator, George Lehlietner of Oregon, marks the final phase of the negotiating process. The arbitrator, who was approved by both sides, hears each side summarize why its contract proposals are fair and then issues a written opinion.

Neither side is obligated to accept the arbitrator's recommendations, but the union cannot legally stage a strike before the opinion is released.

Union representative Arlene Tobias said she's hopeful the contract will be settled even before the arbitrator arrives. She said that a federal mediator who has already helped the two sides make some negotiating progress will return to the bargaining table in early December.

Both sides have agreed until now not to publicize the issues that are at stake in the negotiations, but Superintendent Thomas O'Rourke said the district will make its case public after the arbitrator has visited.

"That is absolutely news to me," said Tobias.

# School district, support staff close to settlement

By ED SCHOENFELD

THE JUNEAU EMPIRE

Juneau's school district has reached a tentative contract settlement with the union that represents its clerical and maintenance staff.

The district and the teachers union, meanwhile, are just beginning their contract negotiations, using a non-traditional bargaining style.

No details are being released on the terms of the proposed settlement between the district and Juneau Educational Support Staff. That union, affiliated with the Alaska Public Employees Association, represents about 175 clerical workers, instructional aides, maintenance and custodial staff, nurses and after-school child-care workers employed in Juneau's public schools.

Union president Tom Stephens said workers will hold a meeting Saturday to discuss and vote on the proposal.

School board member Alan Schorr said that panel will take up the tentative contract at its Jan. 7 meeting.

If both groups approve the agreement, details will be released, Stephens said. If not, they will likely return to the bargaining table, he said.

The union's current three-year contract expires Tues-

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Meanwhile, the district and the Juneau Education Association, which represents about 290 teachers, are just starting their contract talks.

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day. It included a provision that allowed wage negotiations in its final year, which resulted in a 3.3 percent raise this past year.

Though terms of the tentative settlement have not been released, the union at one time was asking for a 5 percent raise, according to a Dec. 6. memo from then-acting schools superintendent Elaine Hopson. The district said it had no money for any significant raises, according to the memo.

The talks started in mid-November.

Meanwhile, the district and the Juneau Education Association, which represents about 290 teachers, are just starting their contract talks.

Bargaining committees from the two groups met Dec. 12 to discuss ground rules, said union president Mike Herold and board vice president Dale Staley, a member

of the district's negotiating team. The committees are scheduled to resume talks mid-January, they said.

The two committees also attended a Dec. 14 training workshop in collaborative bargaining, a negotiating technique they have agreed to try.

In traditional contract talks, committees present demands or offers and negotiate back and forth until they reach an agreement or declare impasse.

In collaborative bargaining, the committees avoid taking positions, instead working together to identify problems and then trying to solve them, Herold and Staley said.

Both sides have said they want to try collaborative bargaining in part to avoid the confrontational style of contract talks that characterized negotiations two years ago.

"I think it's going to be a worthwhile effort for us, although it's not necessarily going to be easy," Staley said. "My feeling is that we're committed to it," Herold said.

Because of the style of collaborative bargaining, the teachers union has not publicly set the amount it hopes to see salaries increase, Herold said.

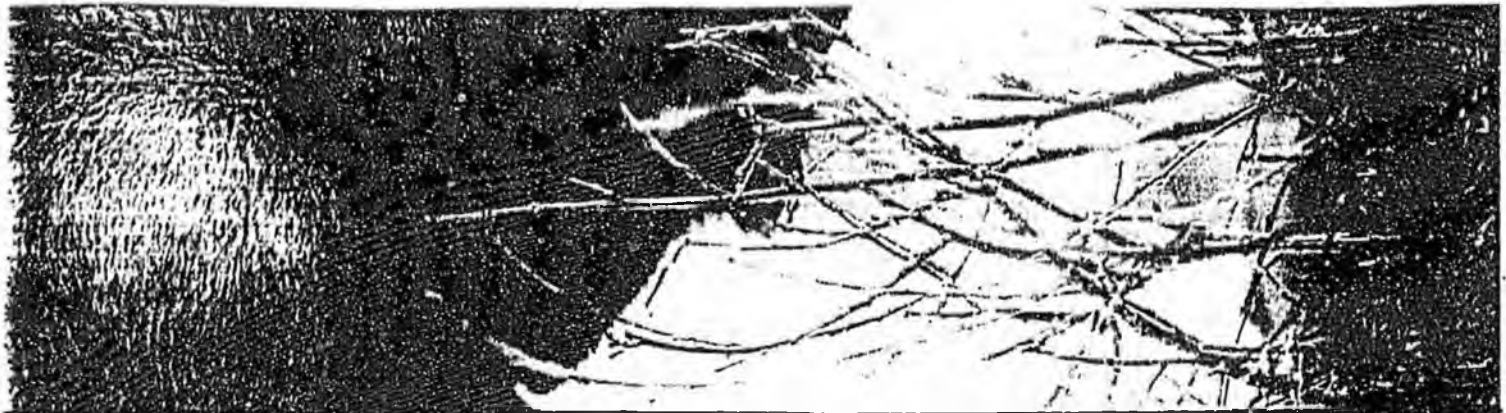
The current two-year contract ends June 30. That contract granted a 3.3 percent across-the-board raise the first year and a 2 percent raise the second year.

As for next year, the district says it has little if any money to work with. Business services director Laraine Glenn earlier this month projected a \$1.6 million shortfall for the 1992-1993 school year.

One change in the bargaining sessions for teachers is that they will likely be closed. The last negotiations were largely open to the public.

Herold said his union's membership is interested in open talks, but Staley said they will probably remain closed.

"To use the collaborative approach, it's probably going to be beneficial to have them closed," Staley said.



Times photo by ROB LAYMAN

A young moose snacks on a few willow trees early Sunday in the Chester Heights subdivision off Northern

Lights Boulevard. The calf chomped on the willow branches for almost an hour before trotting off to find its mother.

## Hickel es home itics

By NE PAGANO

PRESS

Week of what he called trade negotiations in Valter J. Hickel came day to face a special detractors in the oil political infighting. "I?" he said, smiling. "I've seen the first few moments of wide-ranging news. See Hickel, back page

## Union teachers favor strike

### AEA polls 2,400 members as negotiations continue

By JEFF HOUCK

TIMES WRITER

A majority of union teachers in Anchorage favor striking if the city's school district fails to settle a long-disputed contract, a survey's results show.

The Anchorage Education Association began polling its 2,400 members early last week as it continued mediation talks with Anchorage School District negotiators. The two sides have spent more than 700 hours

this year trying to hammer out a new contract. The last contract ran out in July, but teachers have been working under its provisions until a new contract could be agreed upon.

Union president Belinda Daniels said that 71 of 76 schools returned ballots and that about 80 percent of polled teachers said they would vote to strike.

"I surely didn't expect that," Daniels said. "I thought if we got 60 or 65 percent, it would be

good and we'd wait for the rest. But it came out real strong."

A Seattle-based independent mediator helped the two sides settle 12 issues on the table last Thursday, which Daniels labeled as "great progress." She did not say what issues were settled. Negotiations are closed to the public.

The district's chief negotiator, Tom Everitt, agreed with Daniels' assessment.

See Teachers, page B7

## Hikers should respect decision in Ra

and Robert Miller might have early on, the services of a consulting firm. They should have won a few more

lands now, the Millers are, in my view, a couple of nasty folks. They're doing their best to close down the Rabbit Creek Trail, which is public land within Chugach State Park. If they will, a few hikers have the right to get their way and to keep their property.



Terry Carr

TIMES COLUMNIST

property did not make the trail public land. They said the state had not proved a decade of uninterrupted public use

decision. The Millers can count on that. Their critics now have more ammo to build their self-serving image of the evil, land-devouring Millers.

From that perspective, the Millers may not have solved their problems. This merely may be the beginning of a new stage of the whole mess.

"I just hope there's no gun play, is all I can say," the Millers' lawyer, Edgar Paul Boyko, said Monday.

So should we all.

But we have an obvious choice here.

And now they're ticked off.

Which is what they're dealing with.

In the past, spiritual brethren have defended the Miller Millers. In the past, the Miller Millers tried to make a few hikers made a few Miller Millers put up with them.

The controversy

7.  
y's interment will  
n. on Wednesday at  
Funeral Home, 6000  
ton Freeway, Dal-  
22.

### I. Cloutrie

Moody Cloutrie, 86,  
91, in Mobile, Ala.  
s registered nurse,  
s survived by her  
e Ralph E. Moody  
She was preceded  
er sister, Eleanor  
of Mobile, Ala.,  
Graveside services  
to be held by Rad-  
ome in Saraland.

### Ware Sr.

Ware Sr., 56, died  
at his Anchorage

vice is scheduled  
ay at Raspberry  
urch, 3340 Rasp-  
Anchorage. Ar-  
by Kehl's Forest  
& Crematory.

ces

ley

y, 63, died Oct.

27, 1991, at his Anchorage home.  
Funeral arrangements are pend-  
ing at Evergreen Memorial  
Chapel, downtown.

### George P. Bourdukofsky

George P. Bourdukofsky, 72,  
died Oct. 27, 1991, at the Alaska  
Native Medical Center. He was a  
retired civil servant and a life-  
long Alaskan.

Service arrangements are  
pending at Evergreen Memorial  
Chapel, downtown.

### Donald Vernon McLain

Donald Vernon McLain, 49,  
died on Oct. 26, 1991, in Humana  
Hospital-Alaska. Mr. McLain  
was born on Jan. 18, 1942, in Ren-  
ton, Wash.

Funeral arrangements are  
pending at the Witzleben Family  
Funeral Homes and Crematory,  
Bragaw Chapel.

### Muriel Jessie Ferrians

Muriel "Merlie" Jessie Fer-  
rians, 87, died Oct. 27, 1991, at  
Providence Hospital. Arrang-  
ments are pending at Kehl's For-  
est Lawn Mortuary & Cremato-  
ry.

## Teachers

Continued from page B1

"We're very pleased and have  
no reason to believe that pro-  
gress won't be continued," he  
said.

The union reportedly is asking  
for a 15 percent wage increase  
over three years while the dis-  
trict wants a three-year wage  
freeze.

Based on last week's pro-  
gress, additional negotiating ses-  
sions were scheduled for the next  
two weeks. The mediator then is  
scheduled to return for a third  
round of mediation talks in three  
weeks.

Nevertheless, both sides are  
seeking to schedule an arbitrator  
to hear the contract dispute in  
about six weeks. If the latest  
mediation talks fail, an arbitra-  
tor would be called in to issue a  
non-binding ruling that either  
side could refuse. After that, a  
strike vote would be taken.

"If it comes down to an agree-

ment with a mediator sometime  
before then, we'll cancel the ar-  
bitrator," Daniels said.

Union organizers and AEA  
teachers are preparing for a  
strike, despite the recent con-  
tract settlement progress.

The union has notified its state  
and national organization, the  
National Education Association,  
that funds may be needed to sup-  
plement teacher incomes should  
a walkout take place. The last  
teacher strike in Anchorage took  
place in 1979.

"I also about a month ago sent  
out a letter to the members say-  
ing they should get their finances  
in order and not spend a lot of  
money on something right now,"  
she said.

Daniels also said she has no-  
ticed a softer, more receptive at-  
titude by the district at the ne-  
gotiating table. She speculated it  
was because of public pressure  
on the school board to settle the  
contract.

Everitt said his tactics and  
style have not changed.

"My job is to get a settle-  
ment," he said.

## Lands

Continued from page B1

Heinze said Alaska's constitu-  
tion directs state officials to uti-  
lize the land, and that it is  
"screwball" to argue that the  
trust should be shelved just be-

make up the difference.

The natural resources com-  
missioner also took umbrage at a  
coalition claim that the trust  
would be abused by the Hicbel  
administration. The coalition  
groups alleged in a news release  
issued Monday that once state of-  
ficials are freed from public land  
use laws, they will use the trust

nd Sarah Zaobney,  
9 lbs. 13 oz., Native  
John Longbranch,

Kesley Marie, 8 lbs. 2 oz., Valley Hospital,  
Sept. 21.  
MIRAK, Cheri and William Palmer, boy, Wil-  
liam Michael, 7 lbs. 8 oz., Valley Hospital,  
Sept. 27.

# The Anchorage Times

Alaska's Best Newspaper

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ALASKAN OWNED AND OPERATED SINCE 1915

## FINE TEACHERS, DISTRICT

# Make strike cost \$\$\$

**T**HE SUPERINTENDENT of the Anchorage School District, Dr. Thomas O'Rourke, released a trial balloon last week that is rife with possibilities.

He suggested that Alaska consider enacting a law that would assess daily fines of school teachers and the school district in the event of a strike.

Such a law, he told the Anchorage Assembly, has worked well in New York state, where Dr. O'Rourke worked for many years. How does he know it has worked well? There were no strikes.

He's not talking peanuts when he talks about fines.

O'Rourke's proposal would dock striking teachers twice their daily wage, or about \$530 a day. The district itself would be penalized \$1.05 million for each day of the strike. Just the fear of hefty fines like these, the superintendent said, would be incentive for both sides to come to agreement during contract negotiations.

**THE ANCHORAGE** legislative delegation is aware of the superintendent's proposal and we may see some legislation to this effect come next session. It sounds like a great idea to us, with a proviso. Fine money should not revert to the state Department of Education coffers. It should go into a special fund set up to provide education money to those most hurt by teacher strikes: the students.

As the superintendent said, "the district usually wins a little in a contract dispute, the union wins a little, but it's the kids who get chewed up by this sort of thing."

There is much wisdom in that reasoning.

So how could a protracted strike be turned around to help its innocent victims?

**HOW ABOUT** an endowment that could be drawn on by private schools that might find themselves suddenly with more students during a strike. First, of course, the state would have to commit to the idea of tax rebates — vouchers — for parents who don't want to send their children to public school. The fine money could be earmarked for additional classrooms, textbooks and hiring teachers.

More immediate, and of more assistance to students who would be marooned during a strike, would be money to pay for tutors. That way, students wouldn't fall behind while their teachers marched around carrying signs.

Or how about using some of the fine money to set up a training program to assist uncertified professionals who want to teach, thus enlarging the pool of teachers?

While these ideas may sound preposterous, particularly to those who strongly oppose the voucher system and non-certified professionals in the classroom, we present them to make a point.

It is the students who get hurt in a strike. And if the teachers' union and the district can't come to an agreement in their current negotiations, they should be reminded in the pocketbook that they have forgotten those whom they serve.

\* FROM: ETCHEL  
 \* SUBJECT: 92-01-119; PL#2; SB16; 1-22-92 \*  
 \* PRINT DATE: 01/22/92 TIME: 16:05 \*  
 \* \*  
 \*\*\*\*\*

SUBJECT LINE TO READ: TC NO.; PL NO. OR FS; SHORT SUBJECT; DATE

JNU MOD: JAMES

T/C NO: 92-01-119  
 DATE: JANUARY 22, 1992 WEDNESDAY 4:00-6:00 PM  
 SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE  
 SUBJECT: SENATE BILL 16  
 MODERATOR: KAY GORMAN  
 SITE: DILLINGHAM

PARTICIPANT LIST

\*\*\*\*\*  
 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LOU ANN NUNN	DILLINGHAM SCHOOL BOARD MEMBER		SB 16
2. DON RENFROE	DILLINGHAM CITY SCHOOLS		SB 16
3.			
4.			

JNU MOD: JAMES

Y/C NO: 92-01-119  
 DATE: 1-22-92  
 SPONSOR: SENATE LABOR AND COMMERCE  
 SUBJECT: SB 16 EDUCATION EMPLOYEES COLLECTIVE BARGAINING  
 MODERATOR: ALYSON  
 SITE: SOLDOTNA

PARTICIPANT LIST

\*\*\*\*\*  
 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
<del>1. MARILYN DIMNICK/AASE</del>			SB16
<del>2. KAREN MAMURIN/KPESA</del>			
3.			
4.			
5.			

\*\*\*\*\*  
 OBSERVER

NAME/REPRESENTING \_\_\_\_\_ ADDRESS \_\_\_\_\_

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\*  
\* DELIVER TO: LIOCJAM \*  
\*  
\* ORIGINAL \*  
\* SENT: 01/22/92 TIME: 16:31 \*  
\* FROM: LIOCROS \*  
\* SUBJECT: ALERT \*  
\* PRINT DATE: 01/22/92 TIME: 16:31 \*  
\*  
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JAMES, WILLY KASAYULIE IS THE CHAIRMAN OF THE YUPIK SCHOOL DISTRICTS BOARD OF EDUCATION. MIKE WILLIAMS IS UNAVAILABLE AND MR. KASAYULIE IS REPLACING HIM.

~~TIME RESTRAINT FOR JUDY SAHO, SHE WILL BE UNABLE TO TESTIFY ON FRIDAY PLEASE NOTIFY THE CHAIR. THANKS.~~

*Not there! Sam George instead from Aklat.*

ROSETTA AND JUDY

T/C NO: 92-01-119  
DATE: 1-22-92  
SPONSOR: (S) LABOR & COMMERCE  
SUBJECT: SB 16: EDUCATION EMPLOYEE COLLECTIVE BARGAINING  
MODERATOR: KAREN JOHNSON & DOUG NEAL  
SITE: KOTZEBUE

PARTICIPANT LIST#1

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. REGGIE JOULE/NWABSD SCHOOL BOARD MEMBER	P.O. BOX 51, KOTZEBUE 99752	442-3311	SB 16
2. PETE SCHAEFFER/NWABSD BOARD PRESIDENT	P.O. BOX 51, KOTZEBUE 99752	442-3301	SB 16
3. ED GONION/NWABSD SUPERINTENDENT	P.O. BOX 51, KOTZEBUE 99752	442-3472	SB 16
4.			
5.			

\* ORIGINAL \*  
\* SENT: 01/22/92 TIME: 16:18 \*  
\* FROM: LIOCROS \*  
\* SUBJECT: 92-01-119; PL1; SB16; 1/22/92 \*  
\* PRINT DATE: 01/22/92 TIME: 16:18 \*  
\*

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SUBJECT LINE TO READ: TC NO.; PL NO. QR FS; SHORT SUBJ; DATE

JNU MOD: JAMES

T/C NO: 92-01-119  
DATE: 1-22-92  
SPONSOR: (S)L&C  
SUBJECT: EDUCATION EMPLOYEE COLLECTIVE BARGAINING  
MODERATOR: ROSETTA  
SITE: ANCHORAGE

#### PARTICIPANT LIST

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TESTIFIER

NAME/REPRESENTING	ADDRESS/ZIP	PHONE	BILL NO.
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1. JUDY SALO/NEA			
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2. CAROL STOLPE			
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3.			
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4.			
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T/C NO: 92-01-119  
 DATE: 1-22-92 - THUR.  
 SPONSOR: SENATOR LABOR & COMMERCE  
 SUBJECT: SB 16 - EDUCATION EMPLOYEES  
 MODERATOR: LORNA STEELMAN  
 SITE: KODIAK L.I.O.

PARTICIPANT LIST 4

\*\*\*\*\*  
 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. TOM SIMPLER / KBEA			SB 16
<del>2. MIKE SIROFCHUCK / MYSELF AND FELLOW TEACHERS</del>			SB 16
3. KIAT TOLLEFSON / KBEA <i>LCB</i>			SB 16
4. H. DUTCH LAWSON / MYSELF, TEACHERS AND PUBLIC			SB 16
<del>5. PAT JACOBSON / KBEA</del>			SB 16
<del>6. RANDY BUSCH / KBEA &amp; SELF</del>			SB 16
<del>7. JAN CHATTO / SELF &amp; KBEA</del>			SB 16

*not  
 there  
 to  
 testify*

\*\*\*\*\*  
 OBSERVER

JNU MOD: JAMES

T/C NO: 92-01-119  
DATE: 1/22/92  
SPONSOR: S L&C  
SUBJECT: SB 16 ED STRIKE, ETC  
MODERATOR: CHARLOTTE  
SITE: MATSU LIO

PARTICIP LIST # 1

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BOB DOYLE	<i>left early</i>		
<del>2. BILL MUNROE</del>			
<del>3. JO CLARK</del>			
<del>4. JEAN KRAUSE</del>	<del>MAYBE NOT SPEAK</del>		<i>did testify</i>
5. SUZANNE GYR	<del>MAYBE NOT SPEAK</del>		

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OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			

\* FROM: EUGENE \*  
\* SUBJECT: 92-01-119; PL; EDUBAR; 1/22/92 \*  
\* PRINT DATE: 01/22/92 TIME: 16:13 \*  
\* \* \* \* \*  
\*\*\*\*\*

SUBJECT LINE TO READ: TC NO.; PL/ FS; SHORT SUBJECT; DATE

T/ C NO: 92-01-119  
DATE: JANUARY 22, 1992  
SPONSOR: LABOR & COMMERCE  
SUBJECT: EDUC. EMPL. COLL BARG.  
MODERATOR: NELSON  
SITE: BETHEL

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIER

NAMES/REPRESENTING	ADDRESS/ZIP	PHONE	BILL NO.
1. DON <del>SANCHEZ</del> /LKSD <i>Sanchez</i>	BOX 2027	543-2326	

BETHEL, AK. 99559

- 2.
- 3.
- 4.
- 5.

\*\*\*\*\*  
OBSERVER

T/C NO: 92-01-119  
DATE: JANUARY 22, 1992  
SPONSOR: SENATE LABOR AND COMMERCE  
SUBJECT: SB 16:  
MODERATOR: FRAN  
SITE: FAIRBANKS

PARTICIPANT LIST #2

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TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GENE REDDEN - FAIRBANKS SCHOOL BOARD			
2. ANN DOUGHERTY - FAIRBANKS SCHOOL DISTRICT			
3.			
4.			
5.			

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OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			

T/C NO: 92-04-119  
DATE: 1/22/92  
SPONSOR: S L&C  
SUBJECT: SB 16 ED STRIKE, ETC  
MODERATOR: CHARLOTTE  
SITE: MATSU LIO

PARTICIP LIST # 2 - UPDATED!!!

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TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BILL MUNROE			
2. JO CLARK			
3. JO BROOKS			
4.			
5.			

\*\*\*\*\*  
OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

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TESTIFIED: 4  
UNABLE:  
OBSERVED:  
TOTAL:

START TIME: 4 PM

END TIME:

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\*  
\* DELIVER TO: LIOCACB \*  
\*  
\* ORIGINAL \*  
\* SENT: 01/27/92 TIME: 16:02 \*  
\* FROM: LIOCROS \*  
\* SUBJECT: 92-01-148; BL2; (S)L&C; 1/27/92 \*  
\* PRINT DATE: 01/27/92 TIME: 16:02 \*  
\*  
\*\*\*\*\*

T/C NO: 92-01-148  
DATE: 1/27/92  
SPONSOR: (S)LABOR AND COMMERCE  
SUBJECT: SB 16  
MODERATOR: ROSETTA

BRIDGE LIST

\*\*\*\*\*

1. ANC
2. JNU
3. PSG
4. KOD
5. SOL
6. BAR

SEN, PEARCE -

7. DJT
8. FBX
9. KTN
10. MAT

ENATT LIOCROS  
BACK-UP PHONE 561-1199

T/C NO: 92-01-148  
 DATE: JANUARY 27, 1992  
 SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE  
 SUBJECT: SB 16, EDUCATION EMPLOYEE COLLECTIVE BARGAINING  
 MODERATOR: JUNE ROBEINS  
 SITE: KETCHIKAN

## PARTICIPANT LIST

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## TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
<del>1.</del> BRUCE STANTON/KEA	177 SHOUP ST. STC KETCHIKAN, AK 99901	225-4436	SB 16
<del>2.</del> DICK CLEVINGER	2403 2ND AVE. KETCHIKAN, AK 99901		SB 16
<del>3.</del> BOB FERNBAC	P.O. BOX 6316	225-5647	SB 16
4.			
5.			

T/C NO: 92-01-148  
 DATE: 1/27/92  
 SPONSOR: S L&C  
 SUBJECT: SB 16 EDUC EMPLOYEE COLLECTIVE BARGAINING  
 MODERATOR: CHARLOTTE  
 SITE: MATSU LIO

## PARTICIPANT LIST # 3 FROM MATSU

\*\*\*\*\*  
 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JOHN CYR			
2. RICHARD BARLOW			
3. BILL MUNROE			
4. BOB DOYLE			
5.			

SUBJECT LINE TO READ: TC NO.; PL NO. QB FS; SHORT SUBJECT; DATE

JNU MOD: ADAM

T/C NO: 92-01-148  
DATE: 1-27-92  
SPONSOR: L&C  
SUBJECT: SB 16  
MODERATOR: TERRY  
SITE: BARROW

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. PATSY AAMODT POB 169		852-4711	SB 16

2.

SUBJECT LINE TO READ: TC NO.; PL NO. QB FS; SHORT SUBJECT; DATE

JNU MOD: LIOCACB

T/C NO: 92-01-148  
DATE: 1-27-92  
SPONSOR: SENATE LABOR AND COMMERCE  
SUBJECT: SB 16: EDUCATION EMPLOYEES COLLECTIVE BARGAINING  
MODERATOR: ALYSON  
SITE: SOLDOTNA

PARTICIPANT LIST #2

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TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GEORGE CARNAHAN/KP CENTRAL LABOR COUNCIL	PO BOX 1757 SOLDOTNA 99669	776-5570	SB16
2. GEORGE LIEBNER/KPEA	207 CORRAL ST.	262-7844	SB16
3. <i>R JOR</i>			
4.			
5.			

176 NO. 72-01148  
DATE: JANUARY 27, 1992  
SPONSOR: SENATE LABOR AND COMMERCE COMMITTEE  
SUBJECT: SB 16, EDUCATION EMPLOYEE COLLECTIVE BARGAINING  
MODERATOR: JUNE ROBBINS  
SITE: KETCHIKAN

PARTICIPANT LIST

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TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. BRUCE STANTON/KEA	177 SHOUP ST. STG KETCHIKAN, AK 99901	225-4436	SB 16
2. DICK CLEVINGER	2403 2ND AVE. KETCHIKAN, AK 99901		SB 16
3. BOB FERNBACK	P.O. BOX 6316 KETCHIKAN, AK 99901	225-5647	SB 16
4. JUDY JENKINSON	P.O. BOX 5342 KETCHIKAN, AK 99901	225-5839	SB 16

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OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			

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JNU MOD: ADAM

T/C NO: 92-01-148  
DATE: 1/27/92 - MONDAY  
SPONSOR: SENATE LABOR & COMMERCE COMMITTEE  
SUBJECT: SB 16 - EDUCATION EMPLOYEE COLLECTIVE BARGAINING  
MODERATOR: TINA WITTEVEEN  
SITE: KODIAK LEGISLATIVE OFFICE

PARTICIPANT LIST 1

\*\*\*\*\*

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JOHN NUTTALL,			SB 16
2.			SB 16
3.			SB 16

\* SUBJECT: 92-01-148; PL#1-SB16; 1-27 \*  
\* PRINT DATE: 01/27/92 TIME: 15:46 \*  
\* \*  
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SUBJECT LINE TO READ: TC NO.; PL NO. OR FS; SHORT SUBJECT; DATE

JNU MOD: LIOCAB

T/C NO: 92-01-148  
DATE: 1-27-92  
SPONSOR: SENATE LABOR AND COMMERCE  
SUBJECT: SB 16: EDUCATION EMPLOYEES COLLECTIVE BARGAINING  
MODERATOR: ALYSON  
SITE: SOLDOTNA

PARTICIPANT LIST

\*\*\*\*\*  
TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. GEORGE CARNAHAN/KF	CENTRAL LABOR COUNCIL PO BOX 1757 SOLDOTNA 99669	776-5570	SB16
2.	<i>did not want to</i>		
3.	<i>justify</i>		
4.			
5.			

\*\*\*\*\*  
OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			
3.			
4.			
5.			

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*
* DELIVER TO: LIOCBBN
*
* ORIGINAL
* SENT: 11/01/91 TIME: 10:45
* SUBJECT: 91-10-026;FS;SB 16;10\31
* PRINT DATE: 11/01/91 TIME: 10:55
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SUBJECT LINE TO READ: TC NO., PL/ FS;SHORT SUBJECT;DATE

ONU MOD: N/A

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TC NO: 91-10-026
DATE: 10/31/91
SPONSOR: (S) LABOR & COMMERCE
SUBJECT: SB 16
MODERATOR: BARBARA
SITE: ANCHORAGE

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FINAL STATE

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TESTIFIER

NAME/REPRESENTING ADDRESS/ZIP PHONE BILL NO.

	3741 W. 42ND	ANCHORAGE	99517	
18.	STHELLE CASTRODEDO		248-7243	18 16
	513 LORD BARSTOFF	ANCHORAGE	99517	
19.	DAVID L. THIBETTE		277-5299	18 16
	1304 STEWARD DR		99593	
20.	MAURIE THOMAS		234-2507	16 16
	7 S. 800 S. 10782L	ANCHORAGE	99510	
21.	MARION BRADLE			28 16
	18,30K 770180	SIGLE RIVER	99547	
22.	MELBA PAPPELL			28 16
	7 S. 800 S. 10773L	ANCHORAGE	99510	
23.	MATHI BECCOF			28 16
	1601 HIDDEN LAKE	ANCHORAGE	99501	
24.	DAVID SHYDER/STAFF			
25.	MILLIE ANDERSON		286-2999	28 16
		BUREAU	63801	
26.	MARGARET HEATT		277-9901	28 16
	221 E. 34TH	ANCHORAGE	99504	
27.	ROBERT WOOD		272-3351	28 16
	691 H. FLOWER, APT A	ANCHORAGE	99508	
28.	BARBARA M. STEH		232-2554	27 16
	2101 EASTWOOD CT	ANCHORAGE	99594	
29.	BROOBY GARRETT		331-7891	
	807 VALCIN STREET	ANCHORAGE	99509	

35.	ELIZABETH LIEN		537-2006	28 16
	4814 MILLS DRIVE	ANCHORAGE	99508	

\*\*\*\*\*

TESTIFIED: 24  
 UNABLE: .  
 OBSERVED: 15  
 TOTAL: 36

START TIME: 1:00      END TIME: 3:45

2.	SEN. DUNCAN			
3.	SEN. HALFORD			
4.	SEN. COLLINS			
5.	REP. FARWELL			
6.	PAUL LARVI		25-3827	SB 16
	1030X 5278	WETCHIKAN		
7.	PICOT ANOPI		177-5200	SB 16
	201 STERAND RD #10	ANCH	99503	
8.	DAVE SILTON		248-2826	SB 16
	200 W. 100	ANCHORAGE	99517	
9.	SHIRLEY SPETON		276-4443	SB 16
	335 ELEGANTE LANE	ANCH	99501	
10.	DAVID KAYCOR		279-1886	SB 16
	633 GAMBELL, #A	ANCHORAGE	99561	
11.	GOM OBERC/NEA		506-3090	SB 16
	1800 F STREET	JUNEAU	99811	
12.	RAYO FRYZAFLETIO		272-4571	SB 16
	2561 COMMERCIAL DRIVE		99501	
13.	SELINDA DANIELS		243-1886	SB 16
	BOX 130086	ANCHORAGE	99514	
14.	TRINA RICHARDSON		262-7404	SB 16
	BOX 2270	SOLDOTNA		
15.	RICHARD KRONBERG			SB 16
	3511 CHINTAK BAY DRIVE	ANCHORAGE	99515	
16.	PEG STOUT		337-7047	SB 16
	6208 E. 54TH	ANCHORAGE	99504	
17.	LUCILLE HOWITT	277-1371		
	1716 SCENIC WAY DRIVE	ANCHORAGE	99504	
18.	MARILYN ROZENE		842-1095	SB 16
	P.O. BOX 1170	BILLINGHAM		
19.	CLAUDIA DOUGLAS			SB 16
	P.O. BOX 14837	FAIRBANKS	99707	
20.	JUDY TALO			SB 16
		SOLDOTNA		
21.	BOB MANNERS/NEA			SB 16
		ANCHORAGE		

\*\*\*\*\*  
OBSERVER

NAME/REPRESENTING	ADDRESS/ZIP	PHONE	CALL NO.
1. JIM GRIFFIN/DIV OF LEG AUDIT		465-3830	SB 16
	P.O. BOX 0	JUNEAU	99811
2. ROBERTA MCCUTCHEON		243-3648	SB 16
	3701 W. 42RD	ANCHORAGE	99517
3. RICHELLE CASTANDEDO		248-7543	SB 16
	2513 LORD BARANOF	ANCHORAGE	99517
4. DAVID W. DURDETTE		177-5030	SB 16
	201 STERAND RD #10	ANCHORAGE	
5. JAN DE YOUNG		264-2587	SB 16
	P.O. BOX 107023	ANCHORAGE	99510
6. MARCIA BRADLEY			SB 16

X J. Covey

X Rep Boyer - FBX L10

X MAT. SLL (RICHARD BARLOW TO TESTIFY)

X SOL DOTNA

Rep. ~~Parke~~ Bruell







# LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

(5) LABOR & COMMERCE

SPONSOR: \_\_\_\_\_  
 SUBJECT: SB. 16  
 START/END TIME: 4:00 DATE: 10-31-91

#	SIGNATURE	PRINTED NAME - REP.	MAIL ADDRESS	ZIP	PHONE	BILL	Testify	Observe
1	<i>Jim Griffin</i>	Jim Griffin - Div. of Leg. Adm	P.O. Box W Juneau	99811	465-3830			✓
2	<i>Paul Jarvi</i>	Paul Jarvi	P.O. Box 5876 Ketchikan	AK 99901	225-3637		✓	
3	<i>Roberta McCutcheon</i>	ROBERTA MCLUTCHEON	3701 W 42nd Anch		243-3648			✓
4	<i>Michelle Castaneda</i>	Michelle Castaneda	2513 Lord Baranof Anch		248-7343			✓
5	<i>Buddy Maybin</i>	Buddy Maybin	3510 Spenard Rd #110 Anch		277-5200		✓	
6	<i>David C. Burdette</i>	DAVID C. BURDETTE	3510 SPENARD RD #110 ANCH.		277-5200			✓
7	<i>Dave Wilson</i>	DAVE WILSON	3500 W 42	99517	248-2826		✓	
8	<i>Shirley A. Trotter</i>	Shirley A. Trotter	1265 Elegante Ln	99501	276-4443		✓	
9	<i>Jan DeYoung</i>	JAN DEYOUNG	P.O. Box 107026	99520-7026	264-2507			✓
10	<i>David Kaiser</i>	<i>David Kaiser</i>	833 Cornhill Suite A Anch	99501	271-1688			✓
11	<i>BELINDA DANIELS</i>	<i>Belinda Daniels</i>	Box 1400 JG ANCH	99514	243-1666			
12								
13	<i>Per Oberg</i>	Per Oberg NEA-AK	P.O. 7. Street Juneau	99811	581-3090		✓	✓
14	<i>MANIC FRENCH</i>	<i>Manic French</i> AK-AK	FL-910 2001 Commercial Dr	99501	272-4571		✓	
15	<i>Trena Richardson</i>	Trena Richardson	Box 2278 Soldotna AK		262-7404		✓	
16								
17								
18	<i>Bob Lawrence</i>							

